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**IN THE MARYLAND COURT OF SPECIAL APPEALS**

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TRACY A. FAIR and MARY C. MILTENBERGER, on behalf of themselves.  
*Plaintiffs-Appellants,*

v.

ROBERT WALKER, Chairman of The Maryland State Board of Elections, et al.  
*Defendants-Appellees,*

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**APPELLANT'S MOTION FOR RECONSIDERATION**  
**filed in conjunction with REQUEST FOR JUDICIAL NOTICE**

On Appeal from the Maryland Circuit Court for Carroll County  
The Honorable Judge Thomas F. Stansfield - Case No. 06-C-12-060692

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Counsel for Appellees/Defendants

**Jeffrey Darsie**

Assistant Attorneys General  
Office of the Attorney General  
200 St. Paul Place  
Baltimore, Maryland, 21202  
(410) 576-6356

Appellants on behalf of themselves

**Tracy A. Fair**

19 W Obrecht Road  
Sykesville, MD 21784  
410-552-5907

**Mary C. Miltenberger**

514 Valentine Ave.  
Cumberland, Md. 21502  
301-724-9110

Appellees/Defendants:

**Robert L. Walker**, Chairman of the Maryland State Board of Elections;

**Linda H. Lamone**, State Administrator;

**Jared DeMarinis**, Director of the Candidacy and Campaign Finance Division; Maryland  
State Board of Elections

151 West Street, Suite 200, Annapolis, MD 21401

**John P. McDonough**, Maryland Secretary of State,

Office of the Secretary of State

16 Francis Street, Annapolis, MD 21401

**Barack Hussein Obama**

1600 Pennsylvania Ave. NW, Washington, DC 20500

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Now come the complainants, registered Maryland voters, Tracy Fair and Mary Miltenberger (hereinafter collectively the "plaintiffs or appellants"), representing themselves in their individual capacities, pursuant to Maryland Rule 8-605 and Fed. R. Civ. P. 59(e) and respectfully submit this motion for reconsideration of the Court's previous order of April 7, 2014, dismissing their complaint as being barred by laches.

**MARYLAND RULES**

**TITLE 8. APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS**  
**CHAPTER 600. DISPOSITION**

**Rule 8-605. Reconsideration**

*(a) Motion; response; no oral argument. Except as otherwise provided in Rule 8-602 (c), a party may file pursuant to this Rule a motion for reconsideration of a decision by the Court that disposes of the appeal. The motion shall be filed (1) before issuance of the mandate or (2) within 30 days after the filing of the opinion of the Court, whichever is earlier. A response to a motion for reconsideration may not be filed unless requested on behalf of the Court by at least one judge who concurred in the opinion or order. Except to make changes in the opinion that do not change the decision in the case, the Court ordinarily will not grant a motion for reconsideration unless it has requested a response. There shall be no oral argument on the motion.*

Appellants respectfully ask the court to reverse their decision and set aside their previous dismissal for laches and grant appellants their 14th amendment right to

equal protection under the law by hearing this case on the merits as other challenges on candidate eligibility were heard on the merits, even though they were untimely. We urge the court to act now to revise its past decision while it still has the opportunity to correctly apply the law or facts and ask that the court restore the appeal to the calendar for a de novo appeal on the merits or in the alternative to have it remanded back down to the Circuit Court for a hearing on the merits. Plaintiff believe they can prevail on the merits once the evidence is brought to trial.

### **REASON FOR RECONSIDERATION**

A new trial may be granted where the trial was not fair; the verdict or finding was against the weight of the evidence; there exists newly discovered evidence that would probably have changed the result at trial; the amount of the verdict is either excessive or inadequate; irregularity in the proceedings precluded a fair trial; or the jury's consideration or deliberation was improper. Appellants believe that several of the reasons that follow should grant them a reconsideration and a trial on the merits which is explained more in depth below. (My reasons are highlighted)

***1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;***

*(2) Misconduct of prevailing party or jury;*

*(3) Accident or surprise which ordinary prudence could not have guarded against;*

***(4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;***

*(5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;*

*(6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;*

***(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;***

***(8) Error in law occurring at the trial and objected to at the time by the party making***

*the application; or*

***(9) That substantial justice has not been done.***

Appellants believe that the court, on the one hand, misapprehended their position on several key issues and, on the other hand, misapplied the law regarding the laches defense. Appellants also believe they are being unfairly treated, as compared to other Maryland citizens in the same situation and are not getting their equal treatment under the law. Reasons for requesting a motion to reconsider are listed below and starts with reason #8 in order to deal with the laches issue first.

### **Ground (1) ERROR IN LAW**

Plaintiffs tried for weeks before filing their claim to get a copy of Obama's certificate of candidacy to include as evidence, but were unsuccessful in doing so before time ran out to file their claim. Minus the certificate of candidacy, they filed their initial claim on January 26, 2014, within the 3 day time period of certification, that was required by Election Law 9-209(a). This date to file was also confirmed with the Board of Elections (hereinafter SBE) beforehand.

*EL 9-209 Judicial review*

*Timing*

*(a) Within 3 days after the content and arrangement of the ballots are placed on public display under § 9-207 of this subtitle, a registered voter may seek judicial review of the content and arrangement, or to correct any other error, by filing a sworn petition with the circuit court for the county.*

Plaintiffs original complaint was for fraud, forgery, malfeasance, and a couple other counts and was only against Obama, because we had not yet realized the omitted laws by the SBE regarding candidate qualifications.

Pursuant to EL 1-101(L)(1) (which gives the definition of a candidate) and EL 5-301(a)(1), all candidates are required to file a certificate of candidacy, with the exception of candidates that were nominated by a national party presidential nominating convention. This does not include Obama, because the convention was not scheduled for many months afterwards, so 5-301 looks to be geared towards

contestants who file claims after the convention, but before the general election and does not seem to pertain to the primary election.

***EL 1-101(L)(1) Definitions***

*(L) Candidate. --*

*(1) "Candidate" means an individual who files a certificate of candidacy for a public or party office.*

***EL 5-301(a) of the Election Law Article provides:***

*In general*

*(a) In general. An individual may become a candidate for a public or party office only if:*

*(1) the individual files a certificate of candidacy in accordance with this subtitle; and*

*(2) the individual does not file a certificate of withdrawal under Subtitle 5 of this title." (Emphasis added).*

*(g) Exception for candidates nominated by national party presidential nominating convention -*

*(1) A candidate for President or Vice President of the United States nominated by a national party convention is not required to file a certificate of candidacy under this section.*

Finding these laws and believing that Obama filed a certificate of candidacy, we had been trying to get a copy of Obama's certificate of candidacy from the SBE or the Secretary of State (hereinafter SOS), for proof that Obama lied under oath by signing his name and stating he was qualified for the position, when he was not a natural born citizen and therefore ineligible. The SBE and SOS strung us along for weeks and would not answer questions as to where I could get a copy of the certificate, they just kept telling us that they go by EL 8-502 (candidates certified by being known in the media) and they would not admit to me that there was no certificate of candidacy for Barack Obama. When I questioned them about the duties of the SBE, they would not answer my questions and kept reverting back to EL 8-502 and hung up on me several times.

I called the SBE and the SOS many times after filing my complaint and I believe they purposely strung me along and did this to run out the clock, knowing I was not an attorney and thinking that I would not being familiar with the law.

Because I was getting nowhere with the SBE or the SOS on getting a copy of the

certificate to amend my complaint, I contacted Judge Stansfield from the Circuit Court and explained the problem I was having and he told me that I could amend my complaint at any time, as long as I had not served the defendant with the original papers, which I had not. It was getting late and I needed to amend my complaint and get it in, so I decided to go down to the BOE to see about getting a copy of Obama's certificate of candidacy in person. When I got there, that is when I found out that Maryland no longer requires presidential candidates to swear under oath that they are qualified for the position.

Article 1, Section 7 of the Maryland Constitution states:

***SEC. 7. The General Assembly shall pass Laws necessary for the preservation of the purity of Elections.***

I do not understand how making a law where a candidate is no longer required to swear under oath that they are qualified, is preserving the purity of elections, it seems quite the contrary to me. When I returned home, after being told that Obama was not required to file a certificate of candidacy, I started researching the election laws in depth to see if I could locate a law that exempts certain people from filing a certificate of candidacy and I came across several other laws which clearly state that candidates must be qualified when running for office, which are listed below.

After finding these omitted laws regarding the BOE and the SOS's duties, I remembered EL 12-202, another law that grants judicial review for the omission of laws regarding elections. 12-202 states that we have 10 days to file a complaint from the day that we became aware of the omitted laws and that is exactly what we did. We immediately started amending the complaint in which several other defendants were added.

Defendants claimed in their appellee reply brief that we had removed Obama from the case when we amended it, but that is entirely untrue. Obama was served all papers throughout this whole case and was never removed, because he is also involved in the fraud that is taking place and whether he swore under oath or not, he still is not eligible for the position. Moreover, pursuant to Maryland Law, Obama can not legally

be removed from the case because the case must have an original plaintiff and an defendant for the case to move forward and plaintiffs were well aware of this at the time and had no intention of removing Obama from the case, whatsoever.

Appellants amended complaint was filed timely on March 19, 2012 which was exactly 10 days after we were made aware that the SBE had circumvented their duties. This 10 day time period can be proven, because I had defendant Jared DeMarinis write me a letter the day I was at the SBE which is dated March 9, 2012, exactly 10 days before I filed my amended complaint, so clearly, my complaint was filed timely and within the 10 days period required by law.

In a similar case on the same issue of laches and eligibility, Liddy v. Lamone (Case No. C2006 – 11729 ), the court states:

*“In conclusion, the Court finds Mr. Liddy’s testimony credible. He appeared to be an independent young thinker who makes decisions based on his own objective research. The Court has no reason to disbelieve his testimony that he recently came to the conclusion on October 16, 2006, while accessing the internet, that Mr. Gansler had only been practicing law in this State for eight years. Therefore, the Plaintiff’s claim is not barred by any applicable statute of limitation.”*

There is equally no reason to disbelieve plaintiff’s testimony of filing within the 10 day period required by EL 9-209, especially when plaintiffs have the evidence to prove the date they were at the SBE, in conjunction with the date that the amended complaint was filed, which was clearly within the 10 days of learning of the omitted law by the SBE..

Moreover, if there were any reason for a delay in plaintiffs filing of their amended complaint, it was due to defendants’ conduct for deliberately concealing facts or evidence relevant to appellant’s initial claim. Had the SBE or the SOS told me earlier that they no longer required a certificate of candidacy and that there was none on file, I would have researched the laws much sooner and my amended complaint would have been filed much earlier. The SBE is the reason, and the only reason that our complaint was not amended earlier.

Black's Law Dictionary defines laches as:

*The doctrine of laches is based on the maxim that "equity aids the vigilant and not those who slumber on their rights."*

Plaintiffs filed their initial complaint and amended complaint according to the law and within the time constraints required by both laws referring to judicial review and were in no way laxed or slumbering on their rights. It was actually the SBE and the SOS that caused any delay, not the plaintiffs. To me, that sounds more like obstructing justice on behalf of these Maryland officials.

On top of that, the defense of laches consists of more than just delay, they must have act acted "unreasonably" in that delay, which is clearly not the case. The delay must also act in prejudicing the opposing party as stated by the U.S. Court of Appeals in the case of *Hutchinson v. Pfeil* 105 F. 3d 562, where they stated:

*Whether a claim is barred by laches "must be determined by the facts and circumstances in each case and according to right and justice. Laches, in legal significance, is not mere delay, but delay that works a disadvantage to another."* *Preston v. Berry*, 205 Okla. 63, 234 P.2d 417, 422 (1951) (quoting *American-First Nat'l Bank of Okla. City v. Peterson*, 169 Okla. 588, 38 P.2d 957, 958 (1934)).  
The case of *Schaeffer v. Moore*, 262 S.W.2d 854 (Mo. 1953) states:

It is even more clearly stated in the case of *Polly v. Navarro* 457 So. 2d 1140 regarding the eligibility of the candidate for Sheriff, where the court stated:

*"If his candidacy is illegal now, it was never legal and he was never eligible to be elected sheriff. Accordingly, he stands in exactly the same shoes as if he had been declared ineligible on July 21, 1984.*

*Lastly, the doctrine of laches cannot be permitted to achieve an inequitable or illegal result. Navarro has violated a statute governing eligibility for public office. If he were to win the election, Broward County would have an unqualified sheriff. The application of the equitable doctrine of laches cannot countenance such a result. Nor can the defense of laches be used as a basis for giving legal effect to a void act. **Board of Public Instruction v. Little River Valley Drainage District**, 119 So.2d 323, 327 (Fla. 3d DCA 1960).*

*Most importantly, laches and prejudice can never be permitted to amend the Constitution. As noted by the in **Wilson et ux. v. Philadelphia School District, et al.**, 328 Pa. 225, 195 A. 90 (1937)"*



It is also explained in the case of *Melendez v. O'Connor*, 654 N.W.2d 114 (holding that laches did not apply where candidate did not satisfy residency requirement to hold office and therefore suffered no prejudice due to the delay);

*We conclude that we need not determine whether or when petitioners were put on notice of Samuels' residency defect because regardless of whether there has been an unreasonable delay by petitioners in filing their petition, there would be no prejudice to Samuels or others in granting the relief requested. The petition alleges that Samuels is not qualified to run for office in district 59B because he moved out of the district on June 1. If this move resulted in a change in Samuels' residence to a place outside district 59B, then he is not eligible to run for state legislative office in district 59B regardless of the timing of the challenge to his eligibility. There is nothing in the record indicating that Samuels was prejudiced by the timing of the filing of the petition. Therefore, the doctrine of laches does not require dismissal of the petition and we will consider the petition on its merits.*

*We did not appoint a referee to make findings of fact because we concluded that there were no facts in dispute. As a result, we will apply a standard of review similar to that applicable to motions for summary judgment. Under this standard, petitioners are entitled to the relief requested if, viewing the facts in the light most favorable to Samuels, Samuels has, as a matter of law, failed to satisfy the constitutional residency requirement. See, e.g., **Gradjelick v. Hance**, 646 N.W.2d 225, 234 (Minn.2002)*

The case of **Prutch v Town of Quartzsite** further elaborates on the issue of laches

*"We hold that the trial court erred as a matter of law in dismissing the complaint based on the defense of laches. That defense requires a trial court to find not only that a plaintiff caused prejudicial delay, but also that the plaintiff acted unreasonably in causing the delay. The trial court erred in applying laches because although it found that Prutch caused prejudicial delay in pursuing his complaint, it expressly declined to find that he acted unreasonably.*

*Equity, however, "does not encourage laches, and the doctrine may not be invoked to defeat justice but only to prevent injustice." Beltran v. Razo, [163 Ariz. 505](#), 507, [788 P.2d 1256](#), 1258 (App. 1990). Mere delay in pursuing a claim is not enough to establish laches. Mathieu, 174 Ariz. at 459, 851 P.2d at 84. A defendant must not only prove that a plaintiff's delay prejudiced the defendant, the court, or the public, but also that the plaintiff acted unreasonably. Id. at 459, 461, 851 P.2d at 84, 86.*

Plaintiffs believe defendants failed to meet their burden of proof on the defense

of laches because they have failed to show a lack of due diligence in the filing of this action and they have failed to demonstrate that the delay prejudiced them in any way.

Defendants could in no way be prejudiced if the candidate was not eligible to be on the ballot in the first place, as adjudicated in the very court that originally dismissed this case. Moreover laches cannot bar a claim that was filed within the applicable statute of limitations and if there were a reason for delay, it would be because the defendants withheld the evidence plaintiffs needed to amend their case.

As with in the case below of *Baltimore County v. Glendale Corp.*, 219 Md. 465, 468, 150 A.2d 433, 435 (1959) (noting that, although it is essential to raise the defense of laches in the pleadings, “equity may decline relief for a stale claim after the facts are fully developed”); plaintiffs believe that after the facts are allowed to be argued in court that they will prevail in proving that Barack Obama is not eligible to be President of the United States.

*See Ross, 387 Md. at 669, 876 A.2d at 704 (“[L]aches must include an unjustifiable delay and some amount of prejudice to the defendant”); **Simpers v. Clark**, 239 M d. 395, 403, 211 A.2d 753, 757 (1965) (“[F]or the doctrine [of laches] to be applicable, there must be a showing that the delay [in the assertion of a right] worked a disadvantage to another”); **Hungerford v. Hungerford**, 223 Md. 316, 320-21, 164 A.2 d 518, 52 1 (1960) (“Only two requisites are necessary in order to invoke the doctrine of laches. There must have been some lapse of time during which plaintiff failed to assert his rights, and the lapse must have caused some prejudice to the defendant”). Prejudice is “generally held to be anything that places [the defendant] in a less favorable position.” *Ross*, 387 Md. at 670, 876 A.2d at 704, quoting **Buxton**, 363 Md. at 646, 770 A.2d at 159; **Parker**, 230 Md. at 130, 186 A.2d at 197; **Roberto v. Catino**, 140 Md. 38, 43, 116 A. 873, 875 (1922).*

***And in the case of Baltimore County v. Glendale Corp.*, 219 Md. 465, 468, 150 A.2d 433, 435 (1959) (noting that, although it is essential to raise the defense of laches in the pleadings, “equity may decline relief for a stale claim after the facts are fully developed”);**

And finally in the case of *Kelley v. Boettche*, the court explains how cases of successfully concealed fraud, like our case, deserves ample relief from the court:

*“It is certainly true that length of time is no bar to a trust clearly established; and, in a case where fraud is imputed and proved, length of time ought not, upon principles of eternal justice, to be admitted to repel relief. On the contrary, it would seem that the length of time during which the fraud has been successfully concealed and practiced is*

*rather an aggravation of the offense, and calls more loudly upon a court of equity to grant ample and decisive relief.' Kelley v. Boettcher, 29 C. A. 22*

Additionally, 42 USC Sec. 1983 creates a federal civil cause of action against state officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution.” There is also a 2 year statute of limitations for fraud claims, meaning we filed on complaint way before the limitations were up and well within the timeline to avoid a dismissal for laches. Plaintiffs believe that their case should be heard on the merits, just as similar complainants cases were heard on the merits, which leads us to reason number two for requesting a motion for reconsideration.

### **Ground (2) UNFAIR TRIAL**

Section 1 of the 14th Amendment of the United States Constitution states that no state shall deny to any person within its jurisdiction the equal protection of the laws. The equal protection clause guarantees the right of "similarly situated" people to be treated the same by the law. For example, people who commit the same crimes should have similar punishments, and people who have the same qualifications should have an equal chance at government jobs. The equal protection clause also guarantees equal citizenship rights, such as equal treatment in voting, running for office, serving on juries, and **bringing cases to court**.

***14th Amendment, Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

Several prior cases on the issue of candidate eligibility have been brought to the Maryland courts including Liddy v. Lamone, Abrams v. Lamone, Ross v. Board of Elections, among others and all these cases were heard on the merits and laches were not applicable, where there was a chance the candidate was ineligible.

In the case of Liddy v. Lamone, the original complaint was was filed on October

20, 2006, 18 days before the November 7, 2006 general election, and was heard just 5 days later on October 25, 2006, Plaintiff's amended complaint was filed on March 19, 2012, which was also 18 days before the election, yet we were told that our complaint was barred by laches when Liddy's case was not and was heard on the merits.

In the case of *Ross v. Board of Elections*, Ross's complaint was filed on November 5, 2004, which was 3 days "after" the November 2nd election, which was clearly untimely as stated by the court itself, yet his case was heard as well on the merits. It seems that other judges on this issue have found it extremely important when it comes to the eligibility of candidates, yet appellants are not getting the same treatment under the law. Plaintiffs fully agree with the Courts stance in *Ross* regarding limited time for filing a complaint, when it stated:

*"Moreover, to hold that a registered voter must comply with such a limited time period to obtain judicial review of a candidate's qualifications, effectively would preclude a registered voter from seeking redress for conduct occurring after the three-day period contained in Section 9-209. We find this construction to be "unreasonable, illogical, unjust, [and] inconsistent with common sense," [Pelican Nat. Bank v. Provident Bank of Md.](#), 381 Md. 327, 336, 849 A.2d 475, 480 (2004), quoting [Pak v. Hoang](#), 378 Md. 315, 323, 835 A.2d 1185, 1189 (2003), because to bar judicial review of a candidate's qualifications for a failure to comply with such a restrictive window of time would curtail severely the ability to prevent potential wrongdoing from affecting the outcome of an election and undermines the confidence in the election process as a whole.*

As with the case of Liddy, Ross's petition was heard on the merits, even though his case was eventually dismissed on laches, because it was filed after the election and untimely. Nevertheless, it was heard, unlike the case at bar, which was filed before the election and was timely. The conclusion from *Ross v. Lamone* reads as follows:

*Conclusion in Ross v. Lamone:*

*Although the Circuit Court erroneously granted summary judgment based on its view that Ross's claim was untimely under Section 9-209 of the Election Law Article, we affirm the grant of summary judgment in favor of Branch and the State Board of Elections because Ross's action is barred as a matter of law by the closely related common law doctrine of laches, under the circumstances of this case, due to his failure to file his petition prior to the election.*

In the case of *Abrams v. Lamone* which was filed on July 13, 2006, which was also just 18 days before the primary election. In addition to his Complaint, Abrams filed, on the same date, a Motion for Temporary Restraining Order in an attempt, once again, to prohibit Lamone and the State Board from placing Perez's name on the ballot.

The Circuit Court for Anne Arundel County denied Abrams' Motion for a Temporary Restraining Order, but believing that the Complaint raised substantial and important issues on the merits, necessitating a full adversary hearing, entered an Order to Shorten Time to Respond, in which the defendants were given five 5 days to respond to Abrams' Complaint. If the court granted Abrams' complaint and gave the defendants only 5 days to respond, why was the same not offered in our case, when presidential elections are much more important than the office of the attorney general.

### **Ground (3) WEIGHT OF THE EVIDENCE**

A new trial may be granted where the verdict is against the evidence or the weight of the evidence. *Thodos v. Bland*, 75 Md.App. 700, 708, 542 A.2d 1307 (1988).

Most importantly of all, appellants believe that the Constitutional issue of candidate eligibility far outweighs the defense of laches, which is also the opinion of several other courts in this state including the Maryland Court of Appeals and it is ever more so true when we are talking about the eligibility of the Commander in Chief of the United States of America. The Circuit Court in the case of *Liddy v. Lamone* citing *Ross v. State Board of Elections* agreed when they said:

*To be sure, this Court has stated, see [Ross, 387 Md. at 671 n. 9, 876 A.2d at 705 n. 9](#), that there may be instances where laches would be inapplicable, and even further, that, perhaps, a dispute concerning the eligibility requirements of a candidate to run for office should not be given a laches analysis, id.,*

And the court further stated, again citing *Ross*:

*"Ross v. State Board of Elections, 387 Md. 649, 671, 876 A.2d 692, 705 (2005), held that application of laches was inappropriate in a situation such as the case sub judice. It determined that Liddy was "not responsible for any inexcusable delay in the processing of his complaint [and found] it inappropriate to allow the general election to go*

*forward without examining whether a candidate who may become this State's next Attorney General is constitutionally eligible to hold that office." The court further noted, on the issue of prejudice, that "Mr. Gansler cannot be prejudiced because if, in fact, he does not meet the eligibility requirements, he ought not to be on the ballot."*

The Court in Liddy v. Lamone also noted that:

*"Plaintiff [Liddy] and similarly situated voters would be prejudiced if an ineligible candidate were to remain on the ballot because of a delay in finding out about the lack of eligibility."*

One of the most precious freedoms Americans enjoy is the right to vote. Equally important is to have that vote counted, as the U. S. Supreme Court states in *Wesberry v. Sanders* - 376 U.S. 1 (1964)

*It is in the light of such history that we must construe Art. I, § 2, of the Constitution, which, carrying out the ideas of Madison and those of like views, provides that Representatives shall be chosen "by the People of the several States," and shall be "apportioned among the several States . . . according to their respective Numbers." It is not surprising that our Court has held that this Article gives persons qualified to vote a constitutional right to vote and to have their votes counted. **United States v. Mosley**, [238 U. S. 383](#); **Ex Parte Yarbrough**, [110 U. S. 651](#). Not only can this right to vote not be denied outright, it cannot, consistently with Article I, be destroyed by alteration of ballots, see **United States v. Classic**, [313 U. S. 299](#), or diluted by stuffing of the ballot box, see **United States v. Saylor**, [322 U. S. 385](#). No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.*

*The Court also has recognized that a State "indisputably has a compelling interest in preserving the integrity of its election process." Id., at 231. The Court thus has "upheld generally applicable and even handed restrictions that protect the integrity and reliability of the electoral process itself." **Anderson v. Celebrezze**, [460 U.S. 780](#), 788, n. 9(1983) (collecting cases). In other words, it has recognized that a State has a compelling interest in ensuring that an individual's right to vote is not undermined by fraud in the election process.*

*In conclusion, we reaffirm that it is the rare case in which we have held that a law survives strict scrutiny. This, however, is such a rare case. Here, the State, as recognized administrator of elections, has asserted that the exercise of free speech rights conflicts with another fundamental right, the right to cast a ballot in an election free from the taint of intimidation and fraud.*

Additionally EL 12-204 (below) states more on the purity of elections which is validated and backed up by the case of ***United States v. Mosley, 238 U.S. 383 , 35 S.Ct. 904, 905***, in which the court states:

*'We regard it as equally unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box.' The court then traced the history of 19 from its origin as one section of the Enforcement Act of May 31, 1870,3 which contained other sections more specifically aimed at election frauds, and the survival of 19 as a statute of the United States notwithstanding the repeal of those other sections. The conclusion was that 19 protected personal rights of a citizen including the right to cast his ballot, and held that to refuse to count and return the vote as cast was as much an infringement of that personal right as to exclude the voter from the polling place. The case affirms that the elector's right intended to be protected is not only that to cast his ballot but that to have it honestly counted.*

#### **12-204. Judgment.**

*(a) In general. — The court may provide a remedy as provided in subsection (b) or (c) of this section if the court determines that the alleged act or omission materially affected the rights of interested parties or **the purity of the elections process** and:*

- (1) may have changed the outcome of an election already held; or*
- (2) may change the outcome of a pending election.*

*(b) Act or omission that changed election outcome. — If the court makes an affirmative determination that an act or omission was committed that changed the outcome of an election already held, the court shall:*

- (1) declare void the election for the office or question involved and order that the election be held again at a date set by the court; or*
- (2) order any other relief that will provide an adequate remedy.*

*(c) Act or omission that may change outcome of pending election. — If the court makes an affirmative determination that an act or omission has been committed that may change the outcome of a pending election, the court may:*

- (1) order any relief it considers appropriate under the circumstances; and*
- (2) if the court determines that it is the only relief that will provide a remedy, direct that the election for the office or question involved be postponed and rescheduled on a date set by the court.*

*(d) Clear and convincing evidence. — A determination of the court under subsection (a) of this section shall be based on clear and convincing evidence*

#### **Ground (4) NEWLY DISCOVERED EVIDENCE**

Plaintiffs have a large amount of newly discovered evidence, that was found after filing their amended complaint, that will further prove their claims, but was not allowed to added in on appeal. With limited space allowed for this motion, portions of

this new evidence has been added to the attached Motion of Judicial Notice.

Ground (5) THAT SUBSTANTIAL JUSTICE HAS NOT BEEN DONE  
Plaintiffs believe that justice has clearly not been done considering their claims were dismissed after waiting 6 months for a hearing, while similar situated voters' claims were heard expeditiously and not dismissed for laches, even though theirs were untimely filed. Maryland's Election Laws (listed below) clearly state that individuals may become candidates if the individual "satisfies the qualifications for that office by law" to name one instance with others listed below and plaintiffs undoubtedly believe that if their case is allowed to be heard on the merits, that they can prove beyond doubt that their claims are just and prevail in their case.

*TITLE 5. CANDIDATES*

*SUBTITLE 2. QUALIFICATIONS*

*5-201. In general*

*An individual may become a candidate for a public or party office only if the individual satisfies the qualifications for that office established by law and, in the case of a party office, by party constitution or bylaws.*

5-302 of the Election Law Article states that all candidates must file a certificate of candidacy and there is no exception listed for any reason, like the exceptions listed in 5-301 and 5-601 that revert back to 8-502, which defendants claim exempts Obama from filing the certificate, therefore Obama should have been required to file a certificate of candidacy pursuant to 5-302, if we are actually following the law as it is written.

*TITLE 5. CANDIDATES*

*SUBTITLE 3. CERTIFICATE OF CANDIDACY*

*§ 5-302. Filing*

*(a) On form. A certificate of candidacy shall be filed under oath on the prescribed form.*

*(b) Filing with State Board. -- The certificate of candidacy shall be filed with the State Board if the candidacy is for:*

- (1) an office to be voted upon by the voters of the entire State;*
- (2) the General Assembly of Maryland;*
- (3) Representative in Congress;*
- (4) the office of judge of the circuit court for a county; or*
- (5) an office of elected delegate to a presidential national convention provided for under Title 8, Subtitle 5 of this article.*



*(c) Filing with local board. --*

*(1) If the candidacy is for an office other than an office described in subsection (b) of this section, the certificate of candidacy shall be filed with the local board of the applicable county.*

*(2) In accordance with regulations adopted by the State Board, each local board shall provide the name and other required information for each candidate to the State Board.*

## **TITLE 5. CANDIDATES**

### **SUBTITLE 6. QUALIFICATION FOR PRIMARY ELECTION BALLOT**

*5-601(a) of the Election Law Article provides:*

*The name of a candidate shall remain on the ballot and be submitted to the voters at a primary election if:*

*(1) the candidate has filed a certificate of candidacy in accordance with the requirements of § 5-301 of this title and has satisfied any other requirements of this article relating to the office which the individual is a candidate, provided the candidate:"*

*(i) has not withdrawn the candidacy in accordance with Subtitle 5 of this title;*

*(ii) **has not died or become disqualified**, and that fact is known to the applicable board by the deadline prescribed in § 5-504(b) of this title;*

*(iii) does not seek nomination by petition pursuant to the provisions of § 5-703 of this title; or*

*(iv) is not a write-in candidate."*

9-209 of the Election Law Article states that a registered voter may seek judicial review of the content and arrangement, "**or to correct any other error**", and considering that 9-210(2) states "Each candidate shall be listed on the ballot in the contest for which the candidate has qualified." and considering that Obama is not qualified, that is clearly an error, is it not? What else can it be if an ineligible candidate is on the ballot, but an error?

## **TITLE 9. VOTING**

### **SUBTITLE 2. BALLOTS**

*9-210. Arrangement of ballots -- Candidates and offices*

*(e) Names of candidates. --*

*(1) A ballot shall contain the name of every candidate who is authorized under the provisions of this article to appear on the ballot.*

***(2) Each candidate shall be listed on the ballot in the contest for which the candidate has qualified.***

Moreover, if you read the actual text of 8-502, it clearly states the the secretary must certify and be consistent with party rules and the Democratic Party rules state

that they are “bound by the Constitution”, which includes Article 2, Section 1 regarding presidential qualifications. So in all fairness, the Democratic Party were never allowed to nominate Obama place and his candidacy should never have reached the SBE or SOS for certification in the first place.

*8-502. Candidates for President -- Primary election*

*(2)The Secretary of State shall certify the name of a presidential candidate on the ballot when the Secretary has determined, in the Secretary's sole discretion **and consistent with party rules**, that the candidate's candidacy is generally advocated or recognized in the news media throughout the United States or in Maryland*

#### **MARYLAND RULES**

#### **TITLE 8. APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL APPEALS CHAPTER 100. GENERAL PROVISIONS**

##### **Rule 8-131. Scope of review**

*(c) Action tried without a jury. When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.*

Does this not mean that the appellate court should have reviewed the evidence and opined on it importance in comparison to laches, rather than just make a decision regarding laches and ignoring presidential eligibility?

#### **JUDICIAL EFFICIENCY FAVORS RECONSIDERATION**

Judicial efficiency favors reconsideration in that it will save the court's time of having to take this case up in further appeals. Moreover, with two republican candidates who are planning to run in the 2016 election, Ted Cruz and Marco Rubio, this case is ripe for the court to hear arguments on presidential eligibility to finally set the record straight on natural born citizen.

#### **CONCLUSION**

Considering all the precedent cases on the purity of elections and the fact that similar situated voters had their cases heard on the merits, plaintiffs believe that they have been prejudiced and think that the only fair relief is for them to be allowed to

proceed with their case on the merits and respectfully ask the courts to allow them their 14th amendment equal protection rights under the law. Anything less would be depriving them their rights under the Constitution and would result in no justice being served.

### **VERIFICATION**

We solemnly affirm under penalties of perjury that the contents of the foregoing motion of reconsideration, filed this 7th day of May, 2014, are true to the best of our knowledge, information and belief.

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Tracy A. Fair

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Mary C. Miltenberger

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7th day of May, 2014, two copies of the foregoing motion of Tracy Fair and Mary Miltenberger, the Appellants, were mailed, postage pre-paid to: Assistant Attorney General, Jeffrey Darsie (attorney for the MD defendants) Appellee, located at 200 Saint Paul Place, Baltimore, Maryland 21202 and to Eric Holder (U.S. Attorney General) located at U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001

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Tracy Fair, Appellant (Pro Se)