
NO. _____

In The Court of Appeals of Maryland

LINDA SCHADE, ANDREW HARRIS, JUDITH BURNS, MARK ELRICH, KWAME
ABAYOMI, TERRENCE FITZGERALD, SHARON BEARD, and PAUL SUH,

Petitioners,

v.

MARYLAND STATE BOARD OF ELECTIONS, LINDA H. LAMONE (as Administrator of
Maryland's State Board of Elections),

Respondents.

PETITION FOR WRIT OF MANDAMUS

John B. Isbister
Daniel S. Katz
Richard D. Rosenthal
TYDINGS & ROSENBERG LLP
100 East Pratt Street, 26th Floor
Baltimore, Maryland 21202

Ryan P. Phair
Kathryn R. DeBord
KIRKLAND & ELLIS LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005

Counsel for Petitioners

August 9, 2004

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
BACKGROUND.....	2
I. Maryland Becomes One Of The First States To Fully Commit To The Statewide Implementation Of Electronic Voting Systems Over The Objections Of Its Own Procurement Review Committee.	2
II. The SBE Aggressively Moves Forward With Statewide Implementation Of The Diebold Machines For The March 2004 Primaries Despite Security And Reliability Concerns Raised By A Series Of Independent Expert Reports Commissioned By The State.....	8
III. The March 2004 Primaries And The Resulting Backlash Against Electronic Voting.	18
ARGUMENT	29
I. The SBE Has Failed to Comply with a Mandatory Duty Imposed Upon It By the Maryland General Assembly.	29
II. This Court Is The Only Court That Can Properly Issue A Writ Of Mandamus In Time For The November 2004 Elections.	35
A. The Public Interest Favors Issuance Of The Writ Of Mandamus.....	36
B. The Issuance Of A Writ Of Mandamus Would Protect The Integrity Of The Judicial System.	38
C. The Issuance Of A Writ Of Mandamus In The Present Circumstances Is Necessary In Aid Of The Court’s Appellate Jurisdiction.....	40
D. Failure To Grant The Requested Writ Will Inevitably Deprive Plaintiffs Of A Remedy For The November 2004 Elections Altogether.....	42
CONCLUSION	43

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bush v. Gore</i> , 531 U.S. 98 (2000)	37
<i>City of Oakland v. Superior Court</i> , 53 Cal. Rptr. 2d 120 (1996)	38
<i>Common Cause v. Jones</i> , 213 F. Supp. 2d 1110 (C.D. Cal. 2002)	37
<i>Duffy v. Conaway</i> , 295 Md. 242, 455 A.2d 955 (1983).....	34
<i>Dutton v. Tawes</i> , 225 Md. 484, 171 A.2d 688 (1961).....	29
<i>Hammond v. Love</i> , 187 Md. 138, 49 A.2d 75 (1946).....	34
<i>In re Writ of Prohibition</i> , 312 Md. 280, 539 A.2d 664 (1988).....	41
<i>Lucas v. Townsend</i> , 486 U.S. 1301 (1988)	42
<i>Mount Graham Red Squirrel v. Madigan</i> , 954 F.2d 1441 (9th Cir. 1992).....	40
<i>Philip Morris Inc. v. Angeletti</i> , 358 Md. 689, 752 A.2d 200 (2000).....	passim
<i>Pollock v. Patuxent Inst. Bd. of Review</i> , 146 Md. App. 54, 806 A.2d 388 (2002), <i>aff'd</i> , 374 Md. 463, 823 A.2d 626 (2003)	34
<i>Smith v. Hackett</i> , 129 Md. 73, 98 A. 140 (1916).....	29, 35
<i>Wilkinson v. McGill</i> , 192 Md. 387, 64 A.2d 266 (1949).....	29, 35

Willis v. Milling,
173 Md. 28, 194 A. 584 (1937)..... 34

Statutes

COMAR 33.09.02.07 30, 32, 33
MD Code, Election Law § 12-203 39, 40, 41
MD Code, Election Law § 9-102 passim
MD Code, Election Law § 9-103 10, 29, 30, 34

