



2007

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Joseph Lane

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Recommended Citation

Lane, Joseph (2007) "Recent Developments: Lamone v. Capozzi: The Early Voting Statutes Passed by the General Assembly of Maryland Are Inconsistent with Maryland's Constitution and, as a Result, Must Be Declared Void," *University of Baltimore Law Forum*: Vol. 37 : No. 2 , Article 9.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol37/iss2/9>

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RECENT DEVELOPMENT

LAMONE V. CAPOZZI: THE EARLY VOTING STATUTES PASSED BY THE GENERAL ASSEMBLY OF MARYLAND ARE INCONSISTENT WITH MARYLAND'S CONSTITUTION AND, AS A RESULT, MUST BE DECLARED VOID.

By: Joseph Lane

The Court of Appeals of Maryland held that the early voting statutes passed by the General Assembly of Maryland are inconsistent with Maryland's Constitution and, as a result, must be declared void. *Lamone v. Capozzi*, 396 Md. 53, 912 A.2d 674 (2006). In so holding, the Court found that the acts were in derogation of the Maryland Constitution because they allowed voting on days other than the single day on which all general elections must be held and allowed voting in districts in which the voter does not reside. *Id.*

This case stems from the early voting statute ("act") passed during the 2006 session of the General Assembly as House Bill 1368 (2006), Chapter 61, Laws of Maryland 2006. The original bill, laying out the early voting plan, was passed on January 16, 2006. On April 10, 2006, both houses of the General Assembly overrode a veto by the Governor. The bill allowed early voting "eight hours each day for a five-day period beginning the Tuesday before a primary or general election through the Saturday before the election day, at [at least three] sites designated by the local board of elections as early voting sites." The bill was further amended to allow early voting for eleven, rather than eight, hours each day in every Maryland county and Baltimore City.

On July 16, 2006, three registered voters in Queen Anne's County, Marirose Joan Capozzi, Bettye B. Speed, and Charles W. Carter, brought suit in the Circuit Court for Queen Anne's County seeking declaratory and injunctive relief against the State, the State Board of Elections, and its administrator, Linda H. Lamone. Their claim alleged that the act conflicted with Article I, section 1; Article XV, section 7; and Article XVII, sections 1 and 2 of the Maryland Constitution. The case was subsequently transferred to the Circuit Court for Anne Arundel County where, after a denial of motions from

each party, the court issued its Memorandum Opinion on August 8, 2006, holding that the act was unconstitutional and void. The circuit court enjoined the State from utilizing the early voting scheme, at which time Lamone appealed the decision and petitioned for a writ of certiorari from the Court of Appeals of Maryland.

The Court applied a well settled principle of constitutional interpretation in coming to its conclusion. *Capozzi*, 396 Md. at 72, 912 A.2d at 685. In determining the meaning of the constitutional provision, the Court used a plain language interpretation. *Id.* In doing so, the Court assessed whether the statute passed by the General Assembly was in derogation of the Constitution. *Id.* Lamone argued that Article III, section 9 of the Maryland Constitution, which states that, “[t]he General Assembly shall have power to regulate by Law, *not inconsistent with this Constitution*, all matters which related to the Judges of election, time, place and manner of holding elections in this State” gives them the power to enforce this early voting scheme. *Capozzi*, 396 Md. at 73, 912 A.2d at 686 (quoting MD. CONST. art. III, § 9). The Court, however, found that the opposite was true and that the General Assembly was barred from creating any legislation that was not in keeping with the plain meaning of the Constitution. *Capozzi*, 396 Md. at 75-76, 912 A.2d at 687.

First, the Court found the early voting act unconstitutional because by allowing voting for five days before the designated election day, the act was “clearly inconsistent with the words of, and the plain meaning of Article XV, section 7 and the other constitutional provisions that designate the ‘Tuesday next after the first Monday of November’ as the date of the general election.” *Capozzi*, 396 Md. at 76, 912 A.2d at 687 (quoting MD. CONST. art. XV, § 7). Lamone argued that there was no inconsistency because the word “election” does not refer to the singular act of casting a ballot, but rather refers to the combined and drawn out actions of voters and officials to select an office holder over numerous days or weeks. *Id.* at 76-77, 912 A.2d at 687 (citing *Foster v. Love*, 522 U.S. 67 (1997)). The Court was not persuaded by this argument and held that despite Lamone’s argument, voting was prohibited on any day other than the one specified in the State Constitution. *Capozzi*, 396 Md. at 77-78, 912 A.2d at 688.

In support of her position, Lamone cited *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773 (5th Cir. 2000), and *Millsaps v. Thompson*, 259 F.3d 535 (6th Cir. 2001), in which the courts found that early voting schemes did not violate existing federal law.

Capozzi, 396 Md. at 78-84, 912 A.2d at 688-92. The Court, however, decided that neither holding favored appellant's argument distinguishing those cases as applying to federal laws rather than an analysis of state constitutionality. *Id.* at 82-83, 912 A.2d at 691.

Another reason why the Court invalidated the early voting act as unconstitutional was because it permitted people to vote outside of their residential wards, even going so far as to "provide for three different early voting polling places in some counties." *Id.* at 84, 912 A.2d at 692. Significantly, Article I, section 1 of the Maryland Constitution bars voting in an election district or ward in which one does not reside. *Capozzi*, 396 Md. at 84-85, 912 A.2d at 692. In support of its reasoning, the Court quotes the Maryland case of *Kemp v. Owens*, which held that one "cannot lawfully vote in a ward or election district in which he does not reside." *Capozzi*, 396 Md. at 67, 912 A.2d at 693 (quoting *Owens*, 76 Md. 235, 238, 24 A. 606, 607 (1982)). Thus, allowing voters to vote outside of their constitutionally demarcated ward or election district was clearly at odds with the Maryland Constitution and specifically barred by relevant case law. *Id.* at 87-88, 912 A.2d at 694.

The Court further rebutted the appellants' contention that Article 1, section 1 of the Maryland Constitution did not apply to primary elections. *Capozzi*, 396 Md. at 88, 912 A.2d at 694. Appellants contended that the holdings of two Maryland cases, *Hill v. Mayor & Town Council of Colmar Manor*, 210 Md. 46, 122 A.2d 462 (1956), and *Board of Supervisors of Elections v. Blunt*, 200 Md. 120, 88 A.2d 474 (1952) gave the General Assembly the complete right to control primary and municipal elections in Maryland. *Capozzi*, 396 Md. at 88, 912 A.2d at 694. This Court held that neither case resulted in such a holding, and quoted the circuit court's ruling that "such a reading could lead to an absurd result, as it would eliminate all Constitutional qualifications for primary elections." *Capozzi*, 396 Md. at 89, 912 A.2d at 695.

Finally, the Court held that early voting was not authorized under the in-person balloting provision in Article I, section 3 of the Maryland Constitution which provides an avenue for citizens who are "unable to vote personally" or are "absent" at the time of an election. *Capozzi*, 396 Md. at 90, 912 A.2d at 695. This provision applied only to those individuals who cannot vote due to unchangeable circumstances, not to those who merely find voting "inconvenient" on the allocated date. *Id.* at 90-91, 912 A.2d at 695-96. Thus, the

exception is wholly inapplicable to the early voting act. *Id.* at 91-92, 912 A.3d at 696.

In this case, the Court invalidated the early voting act as unconstitutional because it was in derogation of the clear meaning of the Maryland Constitution, and was not supported by Article I, section 3. This decision will undoubtedly have significant effects on Maryland politicians, practitioners, and voters. For politicians, the invalidation of the Act could work to the advantage of candidates whose constituents are employed at jobs from which they are able to go to the voting booths on Election Day. Those residents who work long, strict hours may be unable to vote. For practitioners, this case serves as an indicator of how the current Court will strictly construe any provisions of the Maryland Constitution.