

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MELVIN JOHNSON, *et al.*,

*

Plaintiffs,

*

v.

*

Civil Action No. 8:17-cv-02867-DKC

MARYLAND STATE BOARD OF
ELECTIONS, *et al.*,

*

Defendants.

*

* * * * *

**DEFENDANT LINDA LAMONE'S MOTION TO DISMISS
SECOND AMENDED COMPLAINT**

Defendant Linda Lamone, by her attorneys, pursuant to Fed.R.Civ.P. 12(b)(6), moves to dismiss the second amended complaint filed by plaintiffs Melvin Johnson and Qaaree Palmer on the grounds that it fails to state a claim upon which relief can be granted. The grounds for this motion are more fully stated in the accompanying Memorandum in support of the motion to dismiss and incorporated herein by reference.

WHEREFORE, for all of the reasons stated herein and her Memorandum in support thereof, Defendant Linda Lamone respectfully requests that her motion be granted and the Second Amended Complaint be dismissed with prejudice.

REQUEST FOR HEARING

Defendant Linda Lamone hereby requests a hearing on the foregoing Motion to Dismiss Second Amended Complaint, any response thereto, and all related papers.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ John J. Kuchno

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Attorneys for Defendant, Linda Lamone

CERTIFICATE OF SERVICE

I certify that on this 11th day of October, 2017, copies of the Defendant Linda Lamone's Motion to Dismiss Second Amended Complaint, Request for Hearing, and proposed order were served, through filing in the Court's ECF system, on:

J. Wyndal Gordon, Esquire
20 South Charles Street, Suite 400
Baltimore, Maryland 21201

Latoya Francis-Williams, Esquire
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/s/ John J. Kuchno

JOHN J. KUCHNO

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**MEMORANDUM IN SUPPORT OF DEFENDANT LINDA LAMONE’S
MOTION TO DISMISS SECOND AMENDED COMPLAINT**

Linda Lamone, Defendant, by her attorneys, submits this Memorandum in support of her Motion to Dismiss Plaintiffs’ Second Amended Complaint. For the reasons explained below, the Court should dismiss all claims brought against Defendants, Linda H. Lamone, State Administrator of Elections, and the Maryland State Board of Elections (“State Board”), by plaintiffs Melvin Johnson and Qaaree Palmer because the second amended complaint fails to state a claim upon which relief can be granted.

STATEMENT OF FACTS

Applicable Voter-Registration and Absentee-Ballot Application Deadlines

Voter-registration deadlines in Maryland are set by statute and vary according to the method of registration. The closing deadline for the 2016 Presidential Election was October 18, 2016, for applications by mail, at a local election board, or at one of the voter-registration agencies designated by statute. Md. Code Ann., Elec. Law § 3-302 (closing

registration “beginning at 9 p.m. on the 21st day preceding an election”). Effective January 1, 2016, the Maryland General Assembly also provided for in-person voter registration during the early voting period, but only at an early voting center in the individual’s county of residence. Elec. Law § 3-305(a). The General Assembly did not authorize the election boards to conduct voter registration activities elsewhere or by other methods during early voting, which ended on November 3, 2016. *Id.* Thus, after October 18, 2016, any unregistered individual who was unable to appear in person at an early voting center, for any reason, was not able to vote in the election. The voter registration deadlines are posted on the State Board’s website.¹

¹ The following question and answers appears on the State Board’s website (http://www.elections.state.md.us/voter_registration/index.html) (visited 08/17/17):

When may I apply to register to vote?

You can use Maryland’s Online Voter Registration System (OLVR) or submit a voter registration application to your local board of elections or the State Board of Elections at any time. However, an application must be postmarked by the voter registration deadline in order to vote in the next scheduled election. If you submit a voter registration application during the period that registration is closed, your application will be held at the local board of elections and processed when registration reopens. The close of voter registration is:

April 5, 2016, for the Presidential Primary Election. If using Maryland’s Online Voter Registration System (OLVR), you have until 9:00pm to submit your application; and

October 18, 2016, for the Presidential General Election. If using Maryland’s Online Voter Registration System (OLVR), you have until 9:00pm to submit your application.

You can also register to vote during early voting. To make the voting process quicker for you, we encourage you to register to vote by the close of voter registration. If you can’t register by that date, go to an early voting center in the county where you live and bring a document that proves where you live. This document can be your MVA-issued license, ID card, or change of

Once registered, a person may apply for, and then vote, an absentee ballot. The absentee-ballot-application deadlines are also set by statute, and they, too, vary according to the way in which the voter applies. Elec. Law §§ 9-301 through 9-312. A voter who applied by mail or facsimile had to apply by November 1, 2016; a voter could apply online by November 4; and an individual could personally, or by an authorized agent, apply at the local board of elections until the close of the polls on election day itself. Elec. Law § 9-305(b), (c). Absentee-ballot provisions do not differentiate between pretrial detainees and any other voter who, for whatever reason, will wish or need to vote by absentee ballot.

The duties of the State Board and local boards of elections are set forth in the Election Law Article. Section 2-102(b)(2) provides that the State Board should “direct, support, monitor, and evaluate the activities of each local board.” Section 2-202(b)(11) requires a local board to “administer voter registration and absentee voting for nursing homes and assisted living facilities in accordance with procedures established by the State Administrator, subject to the approval of the State Board.” Notably, § 2-202 does not require or authorize local boards to administer a similar program for detention facilities, which do not serve as the permanent residence for the inmates temporarily incarcerated in such facilities. Rather, pretrial detainees may be registered anywhere, including out-of-state, and it is unknown how many reside in the very same precinct where the detention facility is located. Indeed, establishing a process for out-of-precinct voting by detainees at

address card, or your paycheck, bank statement, utility bill, or other government document with your name and new address.

a polling place located in their detention facility would require legislation by the General Assembly. *See* Md. Const. art. I, § 3(b) (granting power to General Assembly to create a process for voting at a polling place outside voter’s election district or ward).

Factual Background and Procedural History

On November 21, 2016, Plaintiffs filed this action against the State Board and the Prince George’s County Board of Elections. (State Ct. Dkt. No. 1.) On December 9, 2016, Plaintiffs filed an amended complaint against the State and Prince George’s County Boards. (State Ct. Dkt. No. 7.) On December 14, 2016, Plaintiffs filed a second amended complaint and demand for jury trial. (State Ct. Dkt. No. 8, attached hereto as Exh. 1.) The second amended complaint added the State Administrator, Linda H. Lamone, as a defendant. Ms. Lamone is sued “in her official capacity.” (Exh. 1, 2d Am. Compl. at 2.) On August 24, 2017, claims against the Prince George’s County Board of Elections were dismissed. (State Ct. Dkt. 33.) After service of the summons and second amended complaint upon her, Ms. Lamone removed the case to this Court on September 26, 2017. (ECF No. 1.)

Plaintiff Melvin Johnson is a resident of Prince George’s County “who is currently being detained in the Prince George’s County Department of Corrections . . . “ (Exh. 1, 2d Am. Compl. at 3 ¶ 2.) He claims to have standing based on allegations that “he is an eligible but unregistered voter who was denied the right to register, access to the ballot and the right to vote in the November General Election by the City and State Board of Elections.” (Exh. 1, 2d Am. Compl. at 5 ¶ 7.) Plaintiff Qaaree Palmer is a resident of Prince

George’s County “who is currently detained in the Prince George’s County Department of Corrections . . .” (Exh. 1, 2d Am. Compl. at 3 ¶ 3.) He likewise claims to have standing based on allegations that “he is an eligible but unregistered voter who was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections.” (Exh.1, 2d Am. Compl. at 5 ¶ 8.)

The second amended complaint alleges a “lack of a State strategy governing inmate voter registration” (Exh. 1, 2d Am. Compl. at 7 ¶ 15) and that there is no “official local or statewide policy, procedure, or plan to register eligible voters by the October 18, 2016 deadline, or distribute ballots, absentee or otherwise, to pre-trial detainees or convicted misdemeanants who are registered voters and wish [to] exercise the right to vote . . .” (Exh. 1, 2d Am. Compl. at 7-8 ¶ 17). The complaint further alleges that there was no plan to permit eligible pretrial detainees to register and vote; permit incarcerated eligible misdemeanants to register and vote, and “confirm the number of inmates who are eligible and wish to register and vote in upcoming elections.” (Exh.1, 2d Am. Compl. at 7 ¶ 16.) Plaintiffs allege that the State’s correctional facilities, county detention centers, and State and local boards of elections do not provide information to inmates about voting, voter eligibility, or voter registration or “access to the ballot.” (Exh.1, 2d Am. Compl. at 8-9 ¶ 21.) With respect to plaintiffs Johnson and Palmer, in particular, the complaint alleges only that

[w]ithout timely access to State and local election information, authorized volunteers, and election judges, to assist with registering voters, and issuing and collecting ballots, pre-trial detainees, such as **Johnson and Palmer**, and those who are serving court-ordered sentences of imprisonment for

misdemeanor violations, and who were held in custody and control of city/county detention centers, intake and correctional facilities throughout Maryland during the General Election were denied their right to vote in violation of Maryland Election Law, the Maryland Constitution and Declaration of Rights, the U.S. Constitution, and applicable constitutional law . . . as a direct and proximate cause of Defendants [sic] failure to exercise its [sic] power and/or satisfy its [sic] duties by a stream of acts and omissions . . .

(Exh. 1, 2d Am. Compl. at 14 ¶ 40) (emphasis in original).

Count I of the second amended complaint first incorporates therein four distinct and separately labelled sections, each alleging violations of different sections of the Election Law Article. Those allegations assert violations of: §§ 3-102 (Exh. 1, 2d Am. Compl. at 10, ¶¶ 24-26); 2-202 (Exh. 1, 2d Am. Compl. at 10-11, ¶¶ 27-28); 2-102 (Exh. 1, 2d Am. Compl. at 11-13, ¶¶ 29-34); and 3-201 (Exh. 1, 2d Am. Compl. at 13-14, ¶¶ 35-40). Each of these distinct sections seemingly attempts to incorporate the allegations contained in previous paragraphs but does so in an unnumbered paragraph not tied to a particular cause of action. (Exh. 1, 2d Am. Compl. at 10, 11, 12, 13.)

Next, what is apparently Count I purports to bring claims for violations of 42 U.S.C. § 1983 (Count I), then sets forth what appear to be other causes of actions identified as Article I, §§ 1 and 2 of the Maryland Constitution (Count I(a)), Articles 7 and 24 of the Maryland Declaration of Rights (Count I(b)), and the First and Fourteenth Amendments of the United States Constitution (Count I(c)). (Exh. 1, 2d Am. Compl. at 14-15.) Plaintiffs allege generally that, by

violating the laws identified and described in paragraphs 1 – 49, Defendants . . . violated Plaintiffs [sic] clearly established rights under the State and Federal Constitutions identified in Counts I – I(c) above by *inter alia*

engaging in a custom, policy and practice of unlawfully denying Plaintiffs their [] right to register, vote, and their right to access to the ballot, and flat-out denying Plaintiffs [sic] aforementioned rights, simply because they are pretrial detainees and/or misdemeanants serving time; as a result of said denials, Plaintiffs have been deprived of their State and constitutional rights . . .

(Exh. 1, 2d Am. Compl. at 17 ¶ 50.) Plaintiffs seek damages for their alleged “serious and substantial constitutional injuries.” (Exh. 1, 2d Am. Compl. at 18 ¶ 53.)

Count II of the second amended complaint is framed as seeking declaratory relief. (Exh. 1, 2d Am. Compl. at 18.) In addition to demanding compensatory and punitive damages, as well as attorney’s fees, Plaintiffs request that the Court declare that

- a. all pre-trial detainees and individuals serving a court-ordered period of imprisonment for misdemeanor offenses who are eligible to vote, shall receive an official ballot and the opportunity to cast a vote in all upcoming elections at all times afforded to citizens who are not detained;
- b. voting and election information including the opportunity to register shall be provided within a reasonable time upon booking into each facility throughout the State of Maryland within the jurisdiction of this court;
- c. all pre-trial detainees and individuals serving a court-ordered sentence of imprisonment for misdemeanor offenses at a facility owned by the State of Maryland shall be provided with accurate information and education on their right to vote and the process for exercising that right;
- d. all pre-trial detainees and individuals serving a court-ordered period of imprisonment for misdemeanor offenses, who are duly registered to vote, shall be provided with a copy of the official general election ballot to review ballot questions, candidates and proposed funding questions relevant to their jurisdiction;
- e. the State and local board cover the cost of providing ballots to all eligible persons in a timely fashion that are clear and legible;
- f. that the State and local board account for and maintain control over the ballots from the beginning of production to post-election storage and disposition in accordance with Elec. Code § 9-216;
- g. that each ballot cast by all eligible persons in their institutions be counted;

- h. that the State and local boards provide a polling place in each facility to allow an efficient voting process and reduce the possibility of missing ballots, irregularities or allegations of disenfranchisement.

(Exh.1, 2d Am. Compl. at 19-21.)

ARGUMENT

I. STANDARD AND SCOPE OF REVIEW.

The second amended complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. In measuring a pleading under this standard, the Court looks to the pleading requirements of Rule 8(a)(2), requiring that a complaint contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” That rule aims to provide the defendant with “fair notice” of the claim and the “grounds” for entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 n.3 (2007); *see Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

Rule 8(a)(2) compels claimants to advance more than bald accusations or mere speculation. *Twombly*, 550 U.S. at 555; *Painter’s Mill Grille, LLC v. Brown*, 716 F.3d 342, 350 (4th Cir. 2013). The complaint must contain facts sufficient to “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570; *see Iqbal*, 556 U.S. at 684. Advancing nothing more than “labels and conclusions” or “a formulaic recitation of the elements of a cause of action” is insufficient. *Twombly*, 550 U.S. at 555. And the Court is not required to accept legal conclusions drawn from the facts. *See Papasan v. Allain*, 478 U.S. 265, 286 (1986); *Monroe v. City of Charlottesville*, 579 F.3d 380, 385-86 (4th Cir. 2009), *cert. denied*, 559 U.S. 991 (2010). A Rule 12(b)(6) motion should be granted if the

“well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” *Iqbal*, 556 U.S. at 679 (citation omitted).

II. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Plaintiffs contend that “[t]heir claims are constitutional in nature and ripe under [42 U.S.C.] § 1983 and the State Constitution.”² Opposition to Motion to Dismiss Second Amended Complaint and to Motion for More Definite Statement, at 12 (attached hereto as Exh. 3); see *Henson v. CSC Credit Servs.*, 29 F.3d 280, 284 (7th Cir. 2000) (upholding judicial notice of public court records). Their “overarching and primary claim” of a § 1983 violation, *id.* at 6, and “‘underarching’ and secondary claim” of violations of “Plaintiffs’ parallel State protected Constitutional rights under Article I §§ 1 & 2 and Declaration of Rights Article §§ 7 & 24 . . . share[] [a] nucleus of operative facts,” *id.* at 7 (emphasis in original) (citations omitted). The entire complaint thus rests on a unique theory: that “the general powers and duties conferred on the election board[] by the State Election Law require the election board[] to create a special system for ‘inmate voting’ beyond what is available on election day and [that] the failure to do so is equivalent to a denial of the right to register and vote.” *Voters Organized for the Integrity of City Elections v. Baltimore City Elections Bd.*, 451 Md. 377, 399 (2017). For several reasons, this claim fails to state a

² The causes of action in the Second Amended Complaint are unclear and combined in single count in that pleading, contrary to the dictates of Fed.R.Civ.P. 8 (a)(2), which requires a short and plain statement of the claim. See Maryland State Board of Elections’ Motion to Dismiss Second Amended Complaint or, in the Alternative, for a More Definite Statement and Request for Hearing, and Memorandum in Support thereof (attached hereto as Exh. 2 and incorporated in its entirety by reference herein).

claim upon which relief can be granted under the U.S. Constitution and the corresponding Maryland constitutional and statutory provisions.

First, the operative complaint is deficient in containing insufficient factual allegations in support of its claims. Both plaintiffs allege that they are not registered voters, although they were eligible to register while they were detained in the Prince George's County Department of Corrections at the time of the November 2016 general election. (Exh. 1, 2d Am. Compl. at 2 ¶ 2, 3.) Each claims to have standing based on allegations that "he is an eligible but unregistered voter who was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections." (Exh. 1, 2d Am. Compl. at 4-5 ¶¶ 7, 8.) Neither offers any factual support for that allegation nor explains how any particular policy of a defendant "denied access to the ballot and the right to vote." Nor does the complaint identify any illegal act by the defendants nor any omission of an act required by law, generally, or with respect to the plaintiffs. The complaint does not contain sufficient and plausible factual allegations in support of Plaintiffs' claims. The generalized, conclusory allegations in the complaint are insufficient to survive a motion to dismiss. *See Twombly*, 550 U.S. at 555-56 n.3.

Second, Plaintiffs make no allegations that they even attempted to register to vote nor explain how a particular action by Ms. Lamone or the State Board prevented them from doing so. No specific action taken by Ms. Lamone or the State Board is identified as *denying* Plaintiffs the opportunity to register. There is no allegation, for instance, that they attempted to use Maryland's Online Voter Registration System or that any act by Ms.

Lamone or the State Board prevented them from doing so. Likewise, the complaint is devoid of any allegations that the defendants prevented them from contacting the State Board or their local election board by telephone, via email, via facsimile, through the U.S. Postal Service or other delivery service, or by sending a request through an agent, friend, colleague, acquaintance or other person with whom they were in contact, to request voter registration, just as any other voter could. *See Elder v. Cook Cnty. Dep't of Corr.*, No. 1-15-3428, 2016 WL 5846688, at *8 (Ill. App. Sept. 30, 2016) (“Where plaintiff does not allege that he even attempted to mail an application for an absentee ballot, plaintiff’s complaint contains no facts that allege or from which it may reasonably be inferred that defendants denied plaintiff the exercise of the franchise; therefore, no constitutional violation occurred.”)

Next, Plaintiffs fail to allege that Ms. Lamone’s or the State Board’s authority extended over the Prince George’s County Detention Center and their conditions of confinement, such that these defendants could restrict the rights to register and vote. The authority conferred by Maryland’s Election Law Article on the State Board and Ms. Lamone does not empower them to regulate state and local detention facilities and dictate policies regarding inmates to those institutions. To the extent that courts have entertained denial-of-voting-rights claims on behalf of pretrial detainees based on specific actions of defendants, those claims have been generally asserted against corrections facilities and officials—not elections boards and administrators. *See, e.g., Hall v. Stamm*, No. 3:17-cv-00787 (JAM), 2017 WL 3401253 (D. Conn. Aug. 8, 2017); *Long v. Pierce*, No. 2:14-cv-

00244-LJM-MJD, 2016 WL 912685 (S.D. Ind. March 10, 2016); *Whitaker v. Gusman*, No. 09-3710, 2010 WL 3528618 (E.D. La. Aug. 10, 2010).

Moreover, the complaint fails to state a claim upon which relief can be granted because it does not establish an act or omission by Ms. Lamone or the election board that is inconsistent with Maryland's election laws. Instead, Plaintiffs protest the *lack* of a law or regulation that would require the State Board to provide outreach services targeted to the needs of pretrial detainees. (Exh. 1, 2d Am. Compl. at 7 ¶¶ 15, 17.) The alleged failure to set up a policy regarding detainee voter registration does not equate to a denial of First and Fourteenth Amendment rights. Indeed, one court recently dismissed a voting rights claim on the grounds of qualified immunity, stating that plaintiff there “points to no United States Supreme Court, Seventh Circuit, or other circuit court cases that have held that it is unconstitutional to fail to provide a means to detainees to vote in an election other than an absentee ballot, which the detainee may acquire for himself.” *Long v. Pierce*, 2016 WL 912685, at *5.

With regard to Plaintiffs' claim that the voter registration application and absentee ballot registration deadlines are inconsistent with the voting rights of pretrial detainees and those imprisoned for misdemeanor convictions, neither that law nor any other permits Ms. Lamone or the State Board to extend the voter registration and absentee ballot deadlines for that sub-set of detainees and create a polling place before an election. *See Martin v. Haggerty*, 548 A.2d 371, 376 (Pa. Cmwlth. Ct. 1988) (holding that prisoners, including pretrial detainees and convicted misdemeanants, “do not have a right to be transported to

their regular polling places to register and vote, nor do they have a right to compel the State to provide them with registration and polling places within the confines of their respective state correctional institutions”). The Election Law Article regulates the conduct, location, and dates of voter registration, voting, and absentee voting, and the election boards’ authority to act derives from that Article. As explained by the Court of Appeals of Maryland, “[a]n agency’s authority extends only as far as the General Assembly prescribes.” *Thanner Enters., LLC v. Baltimore County*, 414 Md. 265, 276 (2010). The General Assembly has not prescribed the measures sought by Plaintiffs; any recourse is legislative, not judicial. Accordingly, for example, Plaintiffs’ proposal of “a voting kiosk/machine, or . . . access to duly authorized volunteers with a hand-held devices [sic],” Ex. 1, 2d Am. Compl. at 14 ¶ 39, does not establish a violation of the election laws that Defendants administer.

Expressing only formulaic expressions of a cause of action, the complaint also neglects to set forth facts in support another critical element of a § 1983 claim. “[T]he alleged disenfranchisement of a pre-trial detainee must be based upon deliberate indifference on the part of prison officials, rather than mere negligence.” *Whitaker*, 2010 WL 3528618, at*3 (citing *Lewis v. San Mateo County*, No. C 96-4168 FMS, 1996 WL 708594 (N.D. Cal. Dec. 5, 1996); *Redman v. County of San Diego*, 942 F.2d 1435, 1443 (9th Cir. 1991) (*en banc*), *cert. denied*, 502 U.S. 1074 (1992)). No facts are asserted which would establish deliberate indifference on the part of Ms. Lamone and the State Board.

To the extent that Plaintiffs assert a § 1983 violation through Ms. Lamone's and the State Board's alleged failures to abide by Maryland's election laws, such claims similarly fail to state a claim upon which relief can be granted. *See* Ex. 1, 2d Am. Compl. at 18 ¶ 53 (“That as a direct and proximate cause of Defendants failure to exercise its power and/or satisfy its duties by a series of acts and omissions in violations of the laws identified in paragraphs 1-40, Plaintiffs suffered . . . injuries, and damages . . .”). Plaintiffs cannot state a claim for violations of these election statutes.

Section 12-202 of the Election Law Article allows a “registered voter” to seek judicial relief from any act or omission relating to an election *if* the act or omission is inconsistent with the election laws, *if* the act or omission “may change the outcome of the election,” and *if* the voter does so within 10 days after the act or omission became known to the voter. *Id.* Neither Mr. Johnson nor Mr. Palmer is a “registered voter,” so their § 12-202 claims and their causes of action founded on those claims should be dismissed. Plaintiffs lack standing to bring any claim, including one under § 12-202, because that statute provides a remedy, and standing, only to a registered voter. *Suessmann v. Lamone*, 383 Md. 697, 712 (2004). Even were Plaintiffs registered voters, their complaint does not satisfy any of those three conditions that a registered voter must meet in order to sue under § 12-202.

As set forth above, the complaint does not state properly allege violations of the elections laws administered by Ms. Malone or the State Board. Thus, Plaintiffs cannot

state a claim under the first element required to assert a violation because there is no act or omission by the Defendants that is inconsistent with Maryland's election laws.

Second, the complaint advances no allegation that any act or omission by Defendants would have changed the outcome of the 2016 election. Plaintiffs therefore fail to assert the requisite allegations to make a claim.

Third, as to the timeliness condition, Plaintiffs make no allegation that they did not know about Maryland's longstanding absentee voting laws in time to sue within the 10-day deadline imposed by § 12-202(b)(1) of the Election Law Article. But neither the fact of pretrial detention nor the absentee ballot and voter registration application procedures and deadlines sprang into existence on October 18, 2016, the registration deadline for the 2016 election. Regardless of Plaintiffs' actual knowledge of these voting procedures, ignorance is no excuse where the relevant facts are readily discoverable. *See Abrams v. Lamone*, 398 Md. 146, 159 n.18 (2007) (under Elec. Law § 12-202, plaintiffs could not avoid triggering limitations period by failing to inform themselves of relevant facts). Plaintiffs cite no barrier to their own ability to ascertain the statutory deadlines and procedures applicable to the voter registration and absentee ballot process. As recognized in *Baker v. O'Malley*, the "very short time limits for filing a suit challenging an aspect of an election pursuant to [Elec. Law] § 12-202(b)" reflect a public policy "that all such claims must be presented on an urgent basis." *Baker v. O'Malley*, 217 Md. App. 288, 296, *cert. denied*, 440 Md. 115 (2014). This public policy is based on "the urgency of resolving uncertainties about elections expeditiously." *Id.* Because Plaintiffs filed suit on November

21, 2016, more than ten days after the alleged violations were or should have been known to them, their election law claims are barred. Therefore, to the extent that Plaintiffs assert violations of Maryland election laws as foundations for their constitutional claims, those causes of action should be dismissed.

CONCLUSION

For the reasons stated, the second amended complaint should be dismissed with prejudice.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ John J. Kuchno

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Attorneys for Defendant, Linda Lamone

CERTIFICATE OF SERVICE

I certify that on this 11th day of October, 2017, a copy of the foregoing was served, through filing via the Court's ECF system, on:

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Baltimore, Maryland 21215

Raouf M. Abdullah, Esquire
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Upper Marlboro, Maryland 20772

Lanet Scott, Esquire
P.O. Box 471323
District Heights, Maryland 20753

/s/ John J. Kuchno

JOHN J. KUCHNO

EXHIBIT 1

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY 4 P1 1:43

MELVIN JOHNSON
14610 Man-O-War Drive,
Bowie, Maryland 20721

QAAREE PALMER
6212 Ferore Way
Baltimore, Maryland 21224

CASE#:

CAL 16.42799

V.

**PRINCE GEORGE'S COUNTY
BOARD OF ELECTIONS**
1100 Mercantile Lane
Suite 115A
Largo, Maryland 20774

Defendant

Serve on: *
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PRINCE GEORGE'S COUNTY OFFICE OF LAW
County Administration Building, Room 5121
14741 Governor Oden Bowie Drive,
Upper Marlboro, MD 20772 - 3050 *

**MARYLAND STATE BOARD
OF ELECTIONS**
151 West Street, Suite 200
Annapolis, Maryland 21401

Co-Defendant

Serve on:
Nancy K. Kopp

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MARYLAND STATE TREASURER *
80 Calvert Street, *
Annapolis, Maryland 21401 *

LINDA H. LAMONE *
In her official capacity as State Administrator *
of Maryland State Board of Elections *
151 West Street, Suite 200 *
Annapolis, Maryland 21401 *

Co-Defendant *

SECOND AMENDED COMPLAINT FOR CIVIL RIGHTS VIOLATIONS
AND DEMAND FOR JURY TRIAL
(Redline Copy)

NOW COMES, Plaintiffs Melvin Johnson and Qaaree Palmer, jointly and severally, by and through their attorneys, J. Wyndal Gordon of **THE LAW OFFICE OF J. WYNDAL GORDON, P.A.**, Latoya Francis-Williams of Counsel to **THE LAW OFFICE OF A. DWIGHT PETTIT, P.A.**, Raouf M. Abdullah, of **RMA & ASSOCIATES, LLC**, and Lanet Scott of **THE LAW OFFICE OF LANET SCOTT, ESQ.**, to submit this Amended Complaint pursuant to the State Constitution, Maryland Declaration of Rights, U.S. Constitution, 42 U.S.C. §§ 1983, 1988, and CJP § 3-409 alleging as true the following:

I. JURISDICTION AND VENUE

1. The Court has jurisdiction over this action and venue is proper in this circuit court pursuant to the concurrent and pendant jurisdiction of the court over State and federal constitutional questions. CJP § 1-501, *see also R.A. Ponte Architects, Ltd. v. Investors' Alert, Inc.*, 382 Md. 689, 696-97 (2004), *Felder v. Casey*, 487 U.S. 131 (1988), *see also* 42 U.S.C. §§ 1983, 1988, Md. Const. art. 1 §§ 1 (Elective Franchise [Qualifications]) and 2 (Voter Registration), Md. Decl. of Rights arts. 7 (Right to Vote) and 24 (Equal Protection), First Amendment (Right to Vote), Fourteenth

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Amendment (Equal Portection). Notice of Intent was duly served upon the proper officials via *hand delivery* under CJP § 5-304, and SG §§ 12-106 and 12-108.

II. PARTIES

Plaintiffs incorporate by reference the allegations contained in paragraph one as if fully set forth herein:

2. Plaintiff Melvin Johnson, and others similarly situated, is an unregistered but eligible voter and resident of the County of Prince George's, State of Maryland, and citizen of the United States who is currently being detained in the Prince George's County Department of Corrections under ID#: 212197.

3. Plaintiff, Qaaree Palmer, and others similarly situated, is an unregistered but eligible voter and resident of the County of Prince George's, State of Maryland, and citizen of the United States who is currently being detained in the Prince George's County Department of Corrections under ID#: 034059.

4. That Defendant, Prince George's County Board of Elections ("County Board" or "local board"), is authorized by State Election laws to make rules consistent with State laws to ensure the proper and efficient registration of voters and conduct of elections; it is, *inter alia*, statutorily mandated to: (a) oversee the conduct of all elections held in [Prince George's County] and ensure that the elections process is conducted in an open, convenient, and impartial manner; (b) serve as the local board of canvassers and certify the results of each election conducted by the local board; (c) provide to the general public timely information and notice, by publication or mail, concerning voter registration and elections; and (d) maintain records in accordance with the plan

adopted by the State Board under § 2-106 of the Election Article. *See* Elect. Code §2-202, et seq.

5. The Maryland State Board of Elections (State Board) is a state agency organized under the laws of Maryland and is charged with managing and supervising elections in the State and ensuring compliance with the requirements of the Election Law Article and any applicable federal law by all persons involved in the elections process; the State Board's duties are *inter alia* to: (a) supervise the conduct of elections in the State; (b) direct, support, monitor, and evaluate the activities of each local board; (c) maximize the use of technology in election administration, including the development of a plan for a comprehensive computerized elections management system; (d) canvass and certify the results of elections as prescribed by law; (e) make available to the general public, in a timely and efficient manner, information on the electoral process, and information gathered and maintained regarding elections; (f) receive, maintain, and serve as a depository for elections documents, materials, records, statistics, reports, certificates, proclamations, and other information prescribed by law or regulation. Elect. Code §2-102, et seq.

6. Linda Lamone is the State Administrator of Elections statutorily charged with managing and supervising elections in the State and ensuring compliance with the requirements of the state code and any applicable federal law by all persons involved in the elections process, see Elect. Code §2-102; she is further charged with supervising *inter alia* the operations of the City/County Boards of Elections, see Elect. Code 2-103(4).

III. STANDING

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 6 as if fully set forth herein:

7. Melvin Johnson has standing because he is an eligible but unregistered voter who

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was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections.

8. Qaaree Palmer has standing because he is an eligible but unregistered voter who was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections.

IV. STATEMENT OF FACTS

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 8 as if fully set forth herein:

9. In February, 2016, after Governor Larry Hogan (R)'s veto, and a General Assembly override, Maryland enacted Election law 3-102(a) and (b), et seq., to restore voting rights to all ex-offenders upon re-entry into the community after serving a court-ordered sentence for the felony conviction—even if they are on active parole or probation.

10. Under this new law, an individual may register to vote if he/she:

- (i) is a citizen of the United States;
- (ii) is at least 16 years old;
- (iii) is a resident of the State as of the day the individual seeks to register; and
- (iv) registers pursuant to this title.

11. The General Assembly however carved out exceptions to this rule that actually restored the voting rights of over 40,000 Maryland residents; the exceptions state the following:

- (1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction;
- (2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual

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cannot communicate, with or without accommodations, a desire to participate in the voting process; or

- (3) has been convicted of buying or selling votes. *See* Cox, Erin, "Released felons gain right to vote in Maryland after veto override" *Baltimore Sun*, February 9, 2016 ("*More than 40,000 recently released Maryland felons will regain the right to vote in time for this year's election.*") <http://www.baltimoresun.com/news/maryland/politics/bs-md-felons-voting-20160209-story.html>

12. This law coupled with other Maryland election laws and regulations give not only ex-felony offenders who served-out their time, the right to register and vote, but it also gives pre-trial detainees who have not been convicted of the charged crime(s) resulting in their pre-trial detention, the right to vote –so long as they are not serving a court-ordered sentence of imprisonment for a felony conviction or fall within one of the other exceptions noted above.

13. Further, individuals who have been duly convicted, served their term of court-ordered sentence of imprisonment, are on probation/parole, but have been since accused of violating their terms of parole/probation and are currently incarcerated awaiting a parole/probation hearing to determine whether said parole/probation has in fact been violated, are too, eligible to register and vote.

14. Furthermore, individuals who have been duly convicted of a misdemeanor (ex. 2nd degree assault, some traffic offenses, etc.) are eligible to register and vote whether or not they are currently serving a court-ordered term of incarceration. *See, e.g., United States v. Hassan El*, 5 F.3d 726 (4th Cir. 1993), *cert denied*, 511 U.S. 1006 (1994) (holding that common law simple assault is

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neither a felony or an "infamous crime" under Maryland law, the defendant did not lose his right to vote as a result of his assault conviction).

15. State of Maryland Department of Corrections, houses and has in its custody hundreds of individuals who are eligible to register and vote pursuant to Maryland state law as above mentioned within Prince George's County alone; the lack of a State strategy governing inmate voter registration and voting during the November 8, 2016 General Election infringed upon the fundamental right to vote of these affected individuals; Maryland owes duty to the affected individuals who are eligible to vote and housed in State owned facilities to implement the statutory and/or regulatory plan or procedure for ensuring that inmate voting rights are not infringed upon solely because they are in custody awaiting trial or serving time on a misdemeanor conviction(s).

16. Neither the City of Baltimore, the 23 other counties, nor the State of Maryland, had an official local or statewide policy, procedure or plan, for their detention centers (including juvenile centers for 16+ y.o.), intake and correctional facilities owned, supervised, operated and or managed by the State (or local government if applicable), to:

- a. permit pre-trial detainees who are eligible and wish to register and vote the opportunity to do so,
- b. permit convicted misdemeanants serving a court ordered sentence of imprisonment, who are eligible and wish to register and vote the opportunity to do so, and
- c. confirm the number of inmates who are eligible and wish to register and vote in upcoming elections.

17. Nor did Baltimore City, the 23 other counties, nor the State of Maryland, have an official local or statewide policy, procedure, or plan to register eligible voters desiring to do so by the October 18, 2016 deadline, or distribute ballots, absentee or otherwise, to pre-trial detainees or

convicted misdemeanants who are registered voters wanting to exercise their right to vote during the early voting period, October 27, 2016 - November 3, 2016, or Election Day, November 8, 2016.

18. Because of an eligible registrant's/voter's usually unforeseen or untimely arrest and pre-trial detention (where a person is held despite lawful presumption of innocence until proven guilty), it is unlikely, and unreasonable, to expect a pre-trial detainee to mail in a timely request to the State or local boards (in advance of, or during his/her period of detention) for a voter registration application to complete and return to the State and/or local board before Election Day, --unless he/she, at the very least, has been notified and informed of his/her right to do so by the local and State Boards of Elections and has been provided the physical wherewithal, financial means, and lack of impediments to exercise that right.

19. It is even more unlikely, and unreasonable, to expect that without a local or statewide plan to enfranchise these affected individuals short of court intervention, the detention center(s) in Baltimore City, the 23 other counties, or the correctional facilities within the State of Maryland, will not, and in fact, *did not*, provide their inmates with an actual ballot to cast at anytime during early voting or election day.

20. As it stands now, individuals who were being held on pre-trial detention and unable to make bail on or after October 27, 2016, early voting, and before the November 8, 2016, general election, were denied the right to register and/or vote; and individuals who are serving a court-ordered sentence of imprisonment for misdemeanor violations were also denied the right to register and/or vote.

21. Neither through the intake process at the county detention centers and State intake and correctional institutions, nor through the State and local boards of elections, are any inquiries

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made or information given to inmates about voting, voter eligibility, or voter registration (which may occur through the early voting period in Maryland), and neither one of the aforementioned agencies are providing information or access to the ballot for persons eligible to register and/or vote; the duty to do so falls on the State and local board of elections; the failure of the State and local boards to do the aforementioned for the November general election violated the State Constitution and Declaration of Rights, as well as the U.S. Constitution under the First and Fourteenth Amendment by, among other things, thereby undermining the purpose of State Election law which is to inspire public confidence and trust by assuring that: (1) *all persons* served by the election system are *treated fairly and equitably*; (2) *all qualified persons* may *register and vote* and that those who are not qualified do not vote; (3) those who administer elections *are well-trained*, that they serve both those *who vote and those who seek votes*, and that they put the public interest ahead of partisan interests; (4) *full information on elections is provided to the public*, including disclosure of campaign receipts and expenditures; (5) citizen convenience is emphasized in all aspects of the election process; (6) security and integrity are maintained in the casting of ballots, canvass of votes, and reporting of election results; (7) the prevention of fraud and corruption is diligently pursued; and (8) any offenses that occur are prosecuted.

22. The State and local board of elections have further and most grievously violated the State and Federal Equal Protection and voting rights laws by denying eligible voters the right to register and vote despite their incarceration or detention as voting rights are not illusory but actually guaranteed by the clearly established laws of the State and U.S.

23. Eligible voters are and will continue to be greatly injured and irreparably harmed by

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the acts and omissions of State and local boards of elections by perpetually denying their right to register and vote in the all elections held within the State, solely and exclusively because they are being involuntarily detained pretrial in a State detention center or serving time on a misdemeanor offense in a State correctional institution.

Violation of Elect. Code 3-102

Ex-offender Restoration of Voting Rights

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 23 as if fully set forth herein:

24. Maryland Election Article § 3-102 guarantees the right to register and to vote to any individual who is a citizen of the United States; is at least 16 years old; is a resident of the State as of the day the individual seeks to register; and registers pursuant to the Article. *See also* Md. Const. Art. I §§ 1 and 2, Decl. of Rights Art. 7 & 24.

25. Plaintiffs collectively, submit that they and similarly situated individuals held in pre-trial detention or serving a court-ordered sentence of imprisonment for misdemeanor offenses, who meet the above described qualifications, are being denied the right to register and vote, even though they do not fall within the narrow exception to this statute.

26. The State's denial of the affected individuals rights to register and vote in the general election held on November 8th, 2016, is inconsistent with the Election Law Article, the State Constitution and Declaration of Rights, and the U.S. Constitution, as well as other laws governing the elections process as more fully explained below.

Violation of Elect. Code § 2-202

Powers and Duties of Local Board

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Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 28 as if fully set forth herein:

29. The State board is charged with, *inter alia*, (a) managing and supervising elections in the State and *ensuring compliance* with the requirements State election law and *any applicable federal law* by all persons involved in the elections process; (b) directing, supporting, monitoring, and evaluating the activities of each local board; and (c) maximizing the use of technology in election administration, including the development of a plan for a comprehensive computerized elections management system.

30. COMAR 33.19.01.01 (Applicability to Elections) provides that "[s]ame day registration and address changes are available during *early voting* for Presidential primary and general elections."

31. COMAR 33.19.04.01 (Same Day Registration) provides that "[a]n election judge shall issue an individual a regular ballot if the individual (a) is a pre-qualified voter; and (b) provides proof of residency in the county where the individual is attempting to register and vote.

32. COMAR 33.19.04.03 (Responsibility of Election Judges) provides that election judges assigned to same day registration and address changes shall (a) ensure that all individuals who are not eligible to vote a regular ballot are offered a provisional ballot; and (b) ensure that each individual is issued the appropriate ballot.

33. COMAR 33.19.04.01 also provides that "[a]n election judge shall issue an individual a provisional ballot if the individual (1) is not a pre-qualified voter; or (2) cannot provide proof of residency in the county where the individual is attempting to register and vote.

34. The State board violated its powers and duties by failing to follow the

aforementioned laws, and refusing to establish any statewide plan or make any arrangements to ensure compliance with the Election law in order to protect the right to vote guaranteed to pre-trial detainees, and individuals serving court-ordered sentences of imprisonment for misdemeanor violations who are being held within the custody of city/county detention centers, and/or intake and correctional facilities throughout Maryland. And as a direct and proximate cause of Defendants failure to exercise its power and/or satisfy its duties by a stream of acts and omissions, Plaintiffs suffered serious and substantial constitutional injuries, and damages.

Violation of Elect. Code § 3-201

Applying to Register to Vote

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 34 as if fully set forth herein:

35. Election Law § 3-201 "[a]n individual may apply to become a registered voter with the assistance of a volunteer authorized by the State or local board."

36. The State and local board of elections refused to allocate any resources to provide authorized volunteers to assist pre-trial detainees and individuals serving a court ordered period of imprisonment for misdemeanor violations with voter registration.

37. That authorized volunteers are the only means by which these affected individuals would have been able to gain or maintain the right to vote in the past General election because (a) time was of the essence, and (b) their physical detention behind steel doors, iron gates, reinforced bullet proof glass, cinder-blocks, and cement slabs, created an impenetrable barrier to these rights.

38. Consequently, pretrial detainees (guilty only of not being out on bail), and/or

misdemeanants serving time alleged herein, were denied *timely* information and access to (a) the local or State election board offices; (b) a registration site administered by a local board; (c) a mail carrier; (d) the Motor Vehicle Administration; (e) a voter registration agency; and (f) the State Board's online voter registration system in order to timely exercise these rights.

39. Something as simple as providing registration and voter information upon entry into the facility, use of a voting kiosk/machine, or a access to duly authorized volunteers with a hand-held devices is all that was needed to alleviate at least some part of the problem because one can register to vote via internet access –which, unfortunately, is not provided to inmates but readily available to the State and local boards; the State and local boards refused to even do that. *See* Elect. Code § 3-204.1, et seq., (Online voter registration system).

40. Without timely access to State and local board election information, authorized volunteers, and election judges, to assist with registering voters, and issuing and collecting ballots, pre-trial detainees, such as Johnson and Palmer, and those who are serving court-ordered sentences of imprisonment for misdemeanor violations, and who were held in the custody and control of city/county detention centers, intake and correctional facilities throughout Maryland during the General Election were denied their right to vote in violation of Maryland Election law, the Maryland Constitution and Declaration of Rights, the U.S. Constitution, and applicable constitutional law as further described below; as a direct and proximate cause of Defendants failure to exercise its power and/or satisfy its duties by a stream of acts and omissions, Plaintiffs suffered serious and substantial constitutional injuries, and damages.

COUNT I:

42 U.S.C. 1983 CIVIL RIGHTS

COUNT I(a):

State Constitution Violations, Article I §§ 1 & 2,

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COUNT I(b): Declaration of Rights Violations, Article 7 & 24

**COUNT I(c): U.S. Constitutional Rights Violations, First &
Fourteenth Amendment**

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 40 as if fully set forth herein:

41. That 42 U.S.C. 1983 entitled Civil action for deprivation of rights provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42. Maryland Constitution, Article I, § 1 entitled *Elections to be by ballot; qualifications of voters; election districts* provides:

All elections shall be by ballot. Except as provided in Section 3 of this article, every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until the person shall have acquired a residence in another election district or ward in this State.

43. Maryland Constitution, Article I, § 2 entitled *Registration of voters* provides:

The General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State, who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence

to the Judges of Election of the right of every person, thus registered, to vote at any election thereafter held in this State; but no person shall vote, at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof.

44. Maryland Constitution, Declaration of Rights Article 7 entitled *Free and frequent elections; right of suffrage* provides:

That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

45. Maryland Constitution, Declaration of Rights Article 24 entitled *Due Process [Equal Protection]* provides:

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

46. Article 24 embodies the concept of Equal Protection of the laws to the same extent as the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Murphy v. Edmonds*, 325 Md. 342, 353 (1992).

47. That the First Amendment to the U.S. Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

48. The rights guaranteed by the First Amendment also includes the fundamental right

Case 8:17-cv-02867-DKC

to vote. *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 641 (1983).

49. That the Fourteenth Amendment to the U.S. Constitution provides:

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.

50. By violating the laws identified and explained in paragraphs 1 - 49, Defendants (collectively, including Linda Lamone in her capacity as compliance officer, manager, and supervisor over State elections and local boards, *see* paragraph 6) violated Plaintiffs clearly established rights under the State and Federal Constitutions identified in Counts I - I(c) above by *inter alia* engaging in a custom, policy and practice of unlawfully denying Plaintiffs their the right to register, vote, and their right to access the ballot, and flat-out denying Plaintiffs aforementioned rights, simply because they are pretrial detainees and/or misdemeanants serving time; as a result of said denials, Plaintiffs have been deprived of their State and constitutional rights as described throughout this complaint; that Plaintiffs have suffered extreme hardship and damages as pretrial detainees and/or individuals serving time on misdemeanor offenses.

51. That the State and local board cannot guarantee a fundamental right to participate in the electoral process as herein alleged, then take it away at the same time simply because it may be only slightly inconvenienced; and they cannot establish classes of voters to discriminate against and, again, by doing so they violate Plaintiffs rights in Counts I - I(c).

52. That the State and local boards have no compelling reason/interest for denying

Plaintiffs their fundamental right to register, vote or access to the ballot, that passes constitutional muster.

53. That as a direct and proximate cause of Defendants failure to exercise its power and/or satisfy its duties by a series of acts and omissions in violations of the laws identified in paragraphs 1 - 40, Plaintiffs suffered serious and substantial constitutional injuries, and damages, and is seeking any and all applicable relief available under 42 U.S.C. 1988 and other relief as further described in the below *ad damnum* clause.

COUNT II

Declaratory Relief

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 53 as if fully set forth herein:

54. That based upon all of the above, Plaintiffs submit that they are entitled to declaratory relief because they can prove by clear and convincing evidence that substantial irreparable harm will result if city and state pre-trial detainees, such as themselves, and individuals serving court-ordered sentences of imprisonment for misdemeanor violations, are impeded from exercising their fundamental right to vote granted by the State and guaranteed by constitution as identified above in paragraphs 1 - 53, by reason of their detention in a City/State owned facility.

55. That accordingly, an actual controversy exists between the instant contending parties; that antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; and Plaintiffs are asserting a legal relation, status, right, or

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privilege that is being denied by an adversary party, who also has or asserts a concrete interest in it.

56. The issues raised by Plaintiffs are not been rendered moot by the election, because they are "capable of repetition, yet evading review." *Storer v. Brown*, 415 U.S. 724, 737 n. 8 (1974), quoting *Rosario v. Rockefeller*, 410 U.S. 752, 756 n. 5 (1973).

57. That all of the local/municipal, State government and public official action alleged in paragraphs 1-56 was performed with actual and/or constructive knowledge that the right to vote (and otherwise participate in the electoral process) is a clearly established constitutional right as alleged above, and those rights are/were being denied to Plaintiffs and others, and it was done, is being done, and will continue to be done, with deliberate indifference until they are stopped by some form of court intervention; the legislature has already prescribed their duties and responsibilities by the above enactments but the local/municipal, State government and public officials charged with carrying out the legislative purpose, intent, and ensuring compliance have refused to obey and execute their legislative mandates.

WHEREFORE, Plaintiffs severally requests that this court GRANT a judgement against Defendants jointly and/or severally in an amount that exceeds \$75,000, *see* Md. Rule 2-305(b), GRANT an award of attorney's fees and punitive damages if they become applicable; Plaintiffs further request that this court GRANT an Order declaring that all City and State detention centers, intake and correctional facilities under its jurisdiction shall not impede the rights of Plaintiffs are entitled to the right to information about registering, accessing the ballot and voting while incarcerated; Plaintiff further requests that this court issue and order declaring that:

- a. all pre-trial detainees and individuals serving a court-ordered period of

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- imprisonment for misdemeanor offenses who are eligible to vote, shall receive an official ballot and the opportunity to cast a vote in all upcoming elections at all times afforded to citizens who are not detained;
- b. voting and election information including the opportunity to register shall be provided within a reasonable time upon booking into each facility throughout the State of Maryland within the jurisdiction of this court;
 - c. all pre-trial detainees and individuals serving a court-ordered sentence of imprisonment for misdemeanor offenses at a facility owned by the State of Maryland shall be provided with accurate information and education on their right to vote and the process for exercising that right;
 - d. all pre-trial detainees and individuals serving a court-ordered period of imprisonment for misdemeanor offenses, who are duly registered to vote, shall be provided with a copy of the official general election ballot to review ballot questions, candidates and proposed funding questions relevant to their jurisdiction;
 - e. the State and local board cover the cost of providing ballots to all eligible persons in a timely fashion that are clear and legible;
 - f. that the State and local board account for and maintain control over the ballots from the beginning of production to post-election storage and disposition in accordance with Elec. Code § 9-216;
 - g. that each ballot cast by all eligible persons in their institutions be counted;

Plaintiffs also request that this court GRANT such other and further relief in law or equity deemed fair and just.

J. Wyndal Gordon

Latoya Francis-Williams
Of Counsel to **THE LAW OFFICE OF**
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202.526.4808
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23

05/04/18

MARYLAND STATE TREASURER

80 Calvert Street,
Annapolis, Maryland 21401

LINDA H. LAMONE

*In her official capacity as State Administrator
of Maryland State Board of Elections*

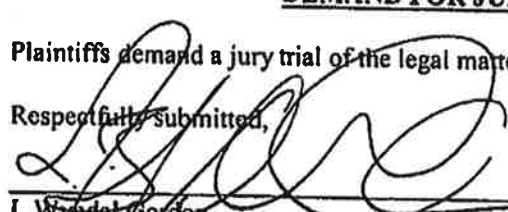
151 West Street, Suite 200
Annapolis, Maryland 21401

Co-Defendant

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial of the legal matters contained herein.

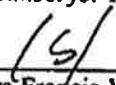
Respectfully submitted,


J. Wyndal Gordon

THE LAW OFFICE OF J. WYNDAL GORDON, P.A.

20 South Charles Street, Suite 400
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410.332.4121

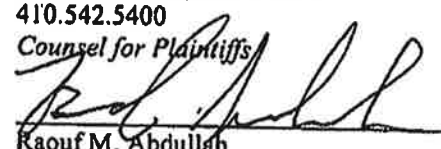
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LS/
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P.O. Box 471323,

District Heights, Maryland 20753

202.526.4808

Co-Counsel for Plaintiffs

EXHIBIT 2

MELVIN JOHNSON, *et al.*,

Plaintiffs,

v.

MARYLAND STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

* IN THE

* CIRCUIT COURT

* FOR

* PRINCE GEORGE'S COUNTY

* Case No. CAL16-42799

*

* * * * *

**MARYLAND STATE BOARD OF ELECTIONS' MOTION TO DISMISS
SECOND AMENDED COMPLAINT OR, IN THE ALTERNATIVE, FOR A MORE
DEFINITE STATEMENT AND REQUEST FOR HEARING**

Defendant the Maryland State Board of Elections ("State Board"), through counsel, and pursuant to Maryland Rules 2-311 and 2-322, moves to dismiss the second amended complaint filed by plaintiffs Melvin Johnson and Qaaree Palmer or, in the alternative, for a more definite statement. For reasons more fully stated in the accompanying memorandum in support of the motion to dismiss or, in the alternative, for a more definite statement, the second amended complaint should be dismissed because:

1. Plaintiffs fail to comply with the Maryland Tort Claims Act and their claims are barred by sovereign immunity;
2. The second amended complaint improperly sets forth multiple causes of action in single counts;
3. The second amended complaint improperly does not contain separate *ad damnum* clauses for each separate cause of action;
4. The second amended complaint was improperly amended;

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Clerk of the
Circuit Court
PR GEO CO MD # 94

5. Plaintiffs fail to state a claim upon which relief may be granted; and
6. In the alternative, to the extent that any claim is not dismissed with prejudice, the second amended complaint is so vague or ambiguous that the State Board cannot reasonably frame an answer, so Plaintiffs should be required to provide a more definite statement of their claims.

A memorandum of law, which is incorporated by reference within this motion, and proposed order are attached.

WHEREFORE, all of the reasons stated herein, Defendant, the Maryland State Board of Elections respectfully requests that its motion be granted and the second amended complaint be dismissed, or, in the alternative, that Plaintiffs be ordered to file a more definite statement of their claims.

REQUEST FOR HEARING

Defendant the Maryland State Board of Elections, by and through its undersigned counsel and pursuant to Maryland Rule 2-311(f), hereby requests a hearing in open court on the foregoing Motion to Dismiss Second Amended Complaint, or, in the Alternative, for a More Definite Statement and any response thereto.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland



JOHN J. KUCHNO
Assistant Attorney General
200 Saint Paul Place, 20th Floor
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jkuchno@oag.state.md.us
(410) 576-6441

Attorneys for Defendant, Maryland State
Board of Elections

CERTIFICATE OF SERVICE

I certify that on this 31st day of August, 2017, copies of the defendant Maryland State Board of Elections' Motion to Dismiss or, in the Alternative, for a More Definite Statement and Request for Hearing, proposed order, and supporting memorandum were served by first-class mail, postage prepaid, on:

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Latoya Francis-Williams, Esquire
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District Heights, Maryland 20753



JOHN J. KUCHNO

MELVIN JOHNSON, *et al.*,

Plaintiffs,

v.

MARYLAND STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

* IN THE

* CIRCUIT COURT

* FOR

* PRINCE GEORGE'S COUNTY

* Case No. CAL16-42799

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* * * * *

ORDER

Upon consideration of the defendant Maryland State Board of Elections' Motion to Dismiss the Second Amended Complaint or, in the Alternative, for a More Definite Statement, as well as any opposition thereto and a hearing in open court, it is this _____ day of _____ 2017, by the Circuit Court for Prince George's County,

ORDERED that said Motion is hereby GRANTED; and it is further

ORDERED that the Second Amended Complaint is DISMISSED.

Judge

MELVIN JOHNSON, *et al.*,

Plaintiffs,

v.

MARYLAND STATE BOARD OF
ELECTIONS, *et al.*,

Defendants.

* IN THE

* CIRCUIT COURT

* FOR

* PRINCE GEORGE'S COUNTY

* Case No. CAL16-42799

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* * * * *

**MEMORANDUM IN SUPPORT OF MARYLAND STATE BOARD OF
ELECTIONS' MOTION TO DISMISS SECOND AMENDED COMPLAINT OR,
IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT**

For the reasons explained below, the Court should dismiss all claims brought against Defendants, the Maryland State Board of Elections ("State Board") and Linda H. Lamone, State Administrator of Elections,¹ by plaintiffs Melvin Johnson and Qaaree Palmer or, in the alternative, order that Plaintiffs file a more definite statement of their claims. The second amended complaint, filed in contravention of the Maryland Rules, fails to comply with the Maryland Tort Claims Act, improperly contains multiple causes of action within single counts, neglects to assert an *ad damnum* clause for each cause of action, and fails to state a claim upon which relief can be granted, including as to punitive damages. To the extent the entire complaint is not dismissed with prejudice, Plaintiffs should be ordered to provide a more definite statement.

¹ Ms. Lamone has not been served with a summons and complaint.

STATEMENT OF FACTS

Applicable Voter-Registration and Absentee-Ballot Application Deadlines

Voter-registration deadlines are set by statute and vary according to the method of registration. The closing deadline for the 2016 Presidential Election was October 18, 2016, for applications by mail, at a local election board, or at one of the voter-registration agencies designated by statute. Md. Code Ann., Elec. Law § 3-302 (closing registration “beginning at 9 p.m. on the 21st day preceding an election”). Effective January 1, 2016, the General Assembly also provided for in-person voter registration during the early voting period, but only at an early voting center in the individual’s county of residence. Elec. Law § 3-305(a). The General Assembly did not authorize the election boards to conduct voter registration activities elsewhere or by other methods during early voting, which ended on November 3, 2016. *Id.* Thus, after October 18, 2016, any unregistered individual who was unable to appear in person at an early voting center, for any reason, was not able to vote in the election. The voter registration deadlines are posted on the State Board’s website.²

² The following question and answers appears on the State Board’s website (http://www.elections.state.md.us/voter_registration/index.html) (last visited 08/17/17):

When may I apply to register to vote?

You can use Maryland’s Online Voter Registration System (OLVR) or submit a voter registration application to your local board of elections or the State Board of Elections at any time. However, an application must be postmarked by the voter registration deadline in order to vote in the next scheduled election. If you submit a voter registration application during the period that registration is closed, your application will be held at the local board of elections and processed when registration reopens. The close of voter registration is:

Once registered, a person may apply for, and then vote, an absentee ballot. The absentee-ballot-application deadlines are also set by statute, and they, too, vary according to the way in which the voter applies. Elec. Law §§ 9-301 through 9-312. A voter who applied by mail or facsimile had to apply by November 1, 2016; a voter could apply online by November 4; and an individual could personally, or by an authorized agent, apply at the local board of elections until the close of the polls on election day itself. Elec. Law § 9-305(b), (c). Absentee-ballot provisions do not differentiate between pretrial detainees and any other voter who, for whatever reason, will wish or need to vote by absentee ballot.

The duties of the State Board and local boards of elections are set forth in the Election Law Article. Section 2-102(b)(2) provides that the State Board should “direct, support, monitor, and evaluate the activities of each local board.” Section 2-202(b)(11) requires a local board to “administer voter registration and absentee voting for nursing homes and assisted living facilities in accordance with procedures established by the State Administrator, subject to the approval of the State Board.” Notably, § 2-202 does not

April 5, 2016, for the Presidential Primary Election. If using Maryland’s Online Voter Registration System (OLVR), you have until 9:00pm to submit your application; and

October 18, 2016, for the Presidential General Election. If using Maryland’s Online Voter Registration System (OLVR), you have until 9:00pm to submit your application.

You can also register to vote during early voting. To make the voting process quicker for you, we encourage you to register to vote by the close of voter registration. If you can’t register by that date, go to an early voting center in the county where you live and bring a document that proves where you live. This document can be your MVA-issued license, ID card, or change of address card, or your paycheck, bank statement, utility bill, or other government document with your name and new address.

require or authorize local boards to administer a similar program for detention facilities, which do not serve as the permanent residence for the inmates temporarily incarcerated in such facilities. Rather, pretrial detainees may be registered anywhere, including out-of-state, and it is unknown how many reside in the very same precinct where the detention facility is located. Indeed, establishing a process for out-of-precinct voting by detainees at a polling place located in their detention facility would require legislation by the General Assembly. *See* Md. Const. art. I, § 3(b) (granting power to General Assembly to create a process for voting at a polling place outside voter's election district or ward).

Factual Background and Procedural History

On November 21, 2016, Plaintiffs filed this action against the State Board and the Prince George's County Board of Elections. (Dkt. No. 1.) On December 9, 2016, Plaintiffs filed an amended complaint against the State and Prince George's County Boards. (Dkt. No. 7.) On December 14, 2016, Plaintiffs filed a second amended complaint and demand for jury trial. (Dkt. No. 8.) The second amended complaint added the State Administrator, Linda H. Lamone, as a defendant. Ms. Lamone is sued "in her official capacity." (2d Am. Compl. 2.) She has not been served with a summons and complaint in this action. On August 24, 2017, claims against the Prince George's County Board of Elections were dismissed. (Dkt. 33.)

Plaintiff Melvin Johnson is a resident of Prince George's County "who is currently being detained in the Prince George's County Department of Corrections . . . " (2d Am. Compl. 3 ¶ 2.) He claims to have standing based on allegations that "he is an eligible but unregistered voter who was denied the right to register, access to the ballot and the right to

vote in the November General Election by the City and State Board of Elections.” (2d Am. Compl. 5 ¶ 7.) Plaintiff Qaaree Palmer is a resident of Prince George’s County “who is currently detained in the Prince George’s County Department of Corrections . . .” (2d Am. Compl. 3 ¶ 3.) He likewise claims to have standing based on allegations that “he is an eligible but unregistered voter who was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections.” (2d Am. Compl. 5 ¶ 8.)

The second amended complaint alleges a “lack of a State strategy governing inmate voter registration” (2d Am. Compl. 7 ¶ 15) and that there is no “official local or statewide policy, procedure, or plan to register eligible voters by the October 18, 2016 deadline, or distribute ballots, absentee or otherwise, to pre-trial detainees or convicted misdemeanants who are registered voters and wish [to] exercise the right to vote . . .” (2d Am. Compl. 7-8 ¶ 17). The complaint further alleges that there was no plan to permit eligible pretrial detainees to register and vote; permit incarcerated eligible misdemeanants to register and vote, and “confirm the number of inmates who are eligible and wish to register and vote in upcoming elections.” (2d Am. Compl. 7 ¶ 16.) Plaintiffs allege that the State’s correctional facilities, county detention centers, and State and local boards of elections do not provide information to inmates about voting, voter eligibility, or voter registration or “access to the ballot.” (2d Am. Compl. 8-9 ¶ 21.) With respect to plaintiffs Johnson and Palmer, in particular, the complaint alleges only that

[w]ithout timely access to State and local election information, authorized volunteers, and election judges, to assist with registering voters, and issuing

and collecting ballots, pre-trial detainees, such as **Johnson and Palmer**, and those who are serving court-ordered sentences of imprisonment for misdemeanor violations, and who were held in custody and control of city/county detention centers, intake and correctional facilities throughout Maryland during the General Election were denied their right to vote in violation of Maryland Election Law, the Maryland Constitution and Declaration of Rights, the U.S. Constitution, and applicable constitutional law . . . as a direct and proximate cause of Defendants [sic] failure to exercise its [sic] power and/or satisfy its [sic] duties by a stream of acts and omissions . . .

(2d Am. Compl. 14 ¶ 40) (emphasis in original).

Count I of the second amended complaint first incorporates therein four distinct and separately labelled sections, each alleging violations of different sections of the Election Law Article. Those allegations assert violations of: §§ 3-102 (2d Am. Compl. 10, ¶¶ 24-26); 2-202 (2d Am. Compl. 10-11, ¶¶ 27-28); 2-102 (2d Am. Compl. 11-13, ¶¶ 29-34); and 3-201 (2d Am. Compl. 13-14, ¶¶ 35-40). Compounding the confusion, each of these distinct sections apparently attempts to incorporate the allegations contained in previous paragraphs but does so in an unnumbered paragraph not tied to a particular cause of action. (2d Am. Compl. 10, 11, 12, 13.)

Next, what is apparently Count I purports to bring claims for violations of 42 U.S.C. § 1983 (Count I), then sets forth what appear to be other causes of actions identified as Article I, §§ 1 and 2 of the Maryland Constitution (Count I(a)), Articles 7 and 24 of the Maryland Declaration of Rights (Count I(b)), and the First and Fourteenth Amendments of the United States Constitution (Count I(c)). (2d Am. Compl. 14-15.) Plaintiffs allege generally that, by

violating the laws identified and described in paragraphs 1 – 49, Defendants . . . violated Plaintiffs [sic] clearly established rights under the State and

Federal Constitutions identified in Counts I – I(c) above by *inter alia* engaging in a custom, policy and practice of unlawfully denying Plaintiffs their [] right to register, vote, and their right to access to the ballot, and flat-out denying Plaintiffs [sic] aforementioned rights, simply because they are pretrial detainees and/or misdemeanants serving time; as a result of said denials, Plaintiffs have been deprived of their State and constitutional rights . . .

(2d Am. Compl. 17 ¶ 50.) Plaintiffs seek damages for their alleged “serious and substantial constitutional injuries.” (2d Am. Compl. 18 ¶ 53.)

Count II of the second amended complaint is framed as seeking declaratory relief.

(2d Am. Compl. 18.) In addition to demanding compensatory and punitive damages, as well as attorney’s fees, Plaintiffs request that the Court declare that

- a. all pre-trial detainees and individuals serving a court-ordered period of imprisonment for misdemeanor offenses who are eligible to vote, shall receive an official ballot and the opportunity to cast a vote in all upcoming elections at all times afforded to citizens who are not detained;
- b. voting and election information including the opportunity to register shall be provided within a reasonable time upon booking into each facility throughout the State of Maryland within the jurisdiction of this court;
- c. all pre-trial detainees and individuals serving a court-ordered sentence of imprisonment for misdemeanor offenses at a facility owned by the State of Maryland shall be provided with accurate information and education on their right to vote and the process for exercising that right;
- d. all pre-trial detainees and individuals serving a court-ordered period of imprisonment for misdemeanor offenses, who are duly registered to vote, shall be provided with a copy of the official general election ballot to review ballot questions, candidates and proposed funding questions relevant to their jurisdiction;
- e. the State and local board cover the cost of providing ballots to all eligible persons in a timely fashion that are clear and legible;
- f. that the State and local board account for and maintain control over the ballots from the beginning of production to post-election storage and disposition in accordance with Elec. Code § 9-216;
- g. that each ballot cast by all eligible persons in their institutions be counted;

- h. that the State and local boards provide a polling place in each facility to allow an efficient voting process and reduce the possibility of missing ballots, irregularities or allegations of disenfranchisement.

(2d Am. Compl. 19-21.)

ARGUMENT

I. STANDARD AND SCOPE OF REVIEW.

The Court properly grants a motion to dismiss pursuant to Rule 2-322(b) if “the allegations [in the complaint] and permissible inferences, if true, would not afford relief to the plaintiff, *i.e.*, the allegations do not state a cause of action for which relief may be granted.” *State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 496-97 (2014) (citation omitted). “In Maryland, . . . dismissals for failure to state a claim are *not* limited to those cases in which ‘it appears beyond doubt that the plaintiff can prove no state of facts in support of his claim which would entitle him to relief.’” *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 343 (2000) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957), *abrogated by Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 561-63 (2007) (other citations omitted)); *see Twombly*, 550 U.S. at 554-61 (adopting “plausibility” as minimum requirement for factual allegations in a complaint). Instead, Maryland’s pleading standard requires, at a minimum, “a concise statement of facts that will identify for the professional reader, be it adverse counsel or the court, the cause of action that is being asserted.” *Manikhi*, 360 Md. at 343. On the other hand, “[t]he well-pleaded facts setting forth the

cause of action must be pleaded with sufficient specificity; bald assertions and conclusory statements by the pleader will not suffice.” *State Ctr., LLC*, 438 Md. at 497.

“[T]he court’s analysis of the motion [to dismiss is] limited generally to the four corners of the complaint and its incorporated supporting exhibits, if any.” *Id.* Although “a court must assume the truth of, and view in a light most favorable to the non-moving party, all well-pleaded facts and allegations contained in the complaint, as well as all inferences that may reasonably be drawn from them,” *id.* at 496, “any ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader.” *Sharrow v. State Farm Mut. Auto. Ins. Co.*, 306 Md. 754, 768 (1986).

II. PLAINTIFFS FAIL TO COMPLY WITH THE MARYLAND TORT CLAIMS ACT AND THEIR CLAIMS ARE BARRED BY SOVEREIGN IMMUNITY.

The defendants are a State agency and the State Administrator of Elections, in her official capacity. As a general matter, the State of Maryland, its agencies and instrumentalities, are immune from tort suits in the absence of a legislative waiver of that immunity. *Mitchell v. Housing Auth. of Baltimore City*, 200 Md. App. 176, 185 (2011) (citing *Katz v. Washington Suburban Sanitary Comm’n*, 284 Md. 503, 507-08 (1979)).

The Maryland Tort Claims Act (“MTCA”) effects a limited waiver of the State’s sovereign immunity and applies to all torts, including those based on constitutional violations. *Lee v. Cline*, 384 Md. 245, 256 (2004) (“The current language of the Maryland Tort Claims Act plainly appears to cover intentional torts and constitutional torts”). Under the MTCA, the sovereign immunity of the State is not waived unless a litigant complies with the conditions precedent of the MTCA, notably filing a notice of claim with the State

Treasurer and denial of that claim by the Treasurer. *See* Md. Code Ann., State Gov't §§ 12-106(b), 12-108 (2014 Repl. Vol.). Satisfaction of this notice requirement is a condition precedent to a waiver of the State's sovereign immunity. *Higginbotham v. Pub. Serv. Comm'n*, 412 Md. 112, 137 (2009). "[C]ompliance with the notice statute should be alleged in the [complaint] as a substantive element of the cause of action." *Medore v. Baltimore County*, 34 Md. App. 340, 346 (1976) (citations omitted).

Plaintiffs' operative complaint does not properly allege satisfaction of this condition precedent to suit. It fails to allege specific facts regarding notice to the Treasurer, nor make any allegations concerning disposition of the claim by the Treasurer. The conclusory allegation that a "Notice of Intent was duly served upon the proper officials," 2d Am. Compl. 3 ¶ 1, is inadequate. *See Lloyd v. General Motors Corp.*, 397 Md. 108, 121 (2007) ("Mere conclusory charges that are not factual allegations may not be considered" when determining whether a complaint has alleged facts sufficient to state a claim). Plaintiffs' failures to plead satisfaction of the conditions precedent to filing suit subjects the second amended complaint to dismissal.³ *Hansen v. City of Laurel*, 420 Md. 670, 684 (2011) (stating that a plaintiff must affirmatively plead, in the complaint, satisfaction of a condition precedent, including compliance with notice provision of a tort claims act).

³ Because what is labelled as Count II, purportedly seeking declaratory relief, incorporates all claims in preceding paragraphs and requests compensatory damages, 2d Am. Compl. 18, 19, the entire second amended complaint is subject to the dictates of the MTCA and should be dismissed.

III. THE COMPLAINT IMPROPERLY SETS FORTH MULTIPLE CAUSES OF ACTION IN SINGLE COUNTS.

The complaint should be dismissed for its failure to meet a fundamental rule of pleading: each cause of action must be asserted in a separately numbered count. Md. Rule 2-303(a). Where a complaint alleges more than one cause of action, each cause of action must be pleaded in a separately numbered count. *Kee v. State Highway Admin.*, 313 Md. 445 (1988). Plaintiffs did not do so, rendering the second amended complaint fatally deficient, and it should be dismissed. *Hines v. French*, 157 Md. App. 536 (2004); *Tavakoli-Nouri v. State*, 139 Md. App. 716 (2001).

A jumbled conglomeration of disconnected claims, the pleading here attempts to combine multiple causes of action into single counts. It incorporates claims for violations of various sections of the Election Law Article: §§ 3-102 (2d Am. Compl. 10); 2-202 (2d Am. Compl. 10); 2-102 (2d Am. Compl. 11); and 3-201 (2d Am. Compl. 13) within “Count I.” That “count” purportedly asserts that the defendants violated not only 42 U.S.C. § 1983, but also includes a hodgepodge of “State Constitution Violations, Article I §§ 1 & 2,” “Declaration of Rights Violations, Article 7 & 24,” and U.S Constitutional Violations, First & Fourteenth Amendment.” (2d Am. Compl. 14-18.) Given its disregard of basic pleading requirements, the second amended complaint should be dismissed.

IV. THE COMPLAINT IMPROPERLY DOES NOT CONTAIN SEPARATE AD DAMNUM CLAUSES FOR EACH SEPARATE CAUSE OF ACTION.

The deficiencies and uncertainty created in Plaintiffs’ apparent attempts to plead multiple causes of action compel dismissal for another reason: the complaint improperly contains a single prayer for relief. Rule 2-305 requires that “[a] pleading that sets forth a

claim for relief . . . shall contain a clear statement of the facts necessary to constitute a cause of action and a demand for judgment for relief sought.” The complaint must make “a demand for judgment for relief sought.” *Bijou v. Young-Battle*, 185 Md. App. 268, 287-88 (2009) (quoting Md. Rule 2-305). The Court of Appeals endorses the view that “if the pleader seeks different relief based upon the nature of the legal theory alleged to support it, the claim for relief is included at the conclusion of each count of the pleading.” *Scott v. Jenkins*, 345 Md. 21, 37 (1997) (quoting Paul V. Niemeyer & Linda M. Schuett, MARYLAND RULES COMMENTARY, at 179 (3d ed. 2003)).

Here, the second amended complaint contains a single *ad damnum* clause, at the end of the pleading and within a count which purports to seek a declaratory judgment. (2d Am. Comp. 19-21.) That prayer for relief seeks not only equitable remedies through the imposition of various directives, but also compensatory *and* punitive damages. The request for punitive damages stands as especially problematical because it violates the standard requiring that a plaintiff make a specific demand for punitive damages. *Scott*, 345 Md. at 37. For its failure to meet the fundamental pleading rule requiring separate *ad damnum* clauses for each cause of action, the complaint should be dismissed.

V. THE COMPLAINT WAS IMPROPERLY AMENDED AND SHOULD BE DISMISSED.

Plaintiffs failed to comply with dictates of the Maryland Rules in filing the second amended complaint. Rule 2-341(d) provides that “[i]f a new party is added by amendment, the amending party shall cause a summons and complaint, together with a copy of all pleadings, scheduling notices, court orders, and other papers previously filed in the action,

to be served on the new party.” Rule 2-341(e) states that “[u]nless the court orders otherwise, a party filing an amended pleading shall file at the same time a comparison copy of the amended pleading showing by lining through or enclosing in brackets material that has been stricken and by underlining or setting forth in bold-faced type new material.”

Neither of these requirements has been satisfied. The second amended complaint added State Administrator Linda Lamone as a defendant. She has not been served with a summons or complaint, much less any other paper filed in this action. No affidavit of service on her appears in the docket. And while a second amended complaint called a “Redline Copy” was sent out, that version contains no mark-up distinguishing it as a comparison copy. (See Exh. A attached hereto.) Because Plaintiffs neglected to comply with these basis rules provisions, their second amended complaint should be dismissed.

VI. THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

The second amended complaint should be dismissed for failure to state a claim upon which relief may be granted because it fails to state those facts “necessary to show an entitlement to relief.” *B & P Enters. v. Overland Equip. Co.*, 133 Md. App. 583, 621 (2000) (citation omitted). “Mere conclusory charges that are not factual allegations may not be considered” when determining whether a complaint has alleged facts sufficient to state a claim. *Lloyd v. General Motors Corp.*, 397 Md. 108, 121 (2007).

Both plaintiffs allege that they are not registered voters, although they were eligible to register while they were detained in the Prince George’s County Department of Corrections at the time of the November 2016 general election. (2d Am. Compl. 2 ¶ 2, 3.)

Each claims to have standing based on allegations that “he is an eligible but unregistered voter who was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections.” (2d Am. Compl. 4-5 ¶¶ 7, 8.) Neither offers any factual support for that allegation nor explains how any particular policy of a defendant “denied access to the ballot and the right to vote.” Nor does the complaint identify any illegal act by the defendants nor any omission of an act required by law, generally, or with respect to the individual plaintiffs. The complaint does not contain any factual allegations in support of Plaintiffs’ claims. The generalized, conclusory allegations in the complaint are insufficient to survive a motion to dismiss. *State Ctr., LLC*, 438 Md. at 497 (stating that “well-pleaded facts setting forth the cause of action must be pleaded with sufficient specificity” and that “bald assertions and conclusory statements by the pleader will not suffice”).

A. Plaintiffs Have Not Stated A Claim Under § 12-202 of the Election Law Article.

The foundation of Plaintiffs’ claims lies in their allegations that Defendants violated Maryland’s election laws. (2d Am. Compl. 18 ¶ 53) (“That as a direct and proximate cause of Defendants failure to exercise its power and/or satisfy its duties by a series of acts and omissions in violations of the laws identified in paragraphs 1-40, Plaintiffs suffered . . . injuries, and damages . . .”). That foundation crumbles, however, and, with it, the second amended complaint, because Plaintiffs cannot state a claim upon which relief can be granted for violations of these statutes.

Section 12-202 of the Election Law Article allows a “registered voter” to seek judicial relief from any act or omission relating to an election *if* the act or omission is inconsistent with the election laws, *if* the act or omission “may change the outcome of the election,” and *if* the voter does so within 10 days after the act or omission became known to the voter. *Id.* As explained below, neither Mr. Johnson nor Mr. Palmer is a “registered voter,” so their § 12-202 claims and their causes of action founded on those claims should be dismissed. Even were Plaintiffs registered voters, their complaint does not satisfy any of those three conditions that a registered voter must meet in order to sue under § 12-202.

First, the complaint does not establish an act or omission by the election board that is inconsistent with Maryland’s election laws. Instead, Plaintiffs protest the *lack* of a law or regulation that would require the election board to provide outreach services targeted to the needs of pretrial detainees. (2d Am. Compl. 7 ¶¶ 15, 17.) With regard to Plaintiffs’ claim that the voter registration application and absentee ballot registration deadlines are inconsistent with the voting rights of pretrial detainees and those imprisoned for misdemeanor convictions, neither that law nor any other permits the election board to extend the voter registration and absentee ballot deadlines for that sub-set of detainees and create a polling place before an election. The Election Law Article regulates the conduct, location, and dates of voter registration, voting, and absentee voting, and the election boards’ authority to act derives from that Article. As explained by the Court of Appeals, “[a]n agency’s authority extends only as far as the General Assembly prescribes.” *Thanner Enters., LLC v. Baltimore County*, 414 Md. 265, 276 (2010). The General Assembly has not prescribed the measures sought by Plaintiffs; any recourse is legislative, not judicial.

For example, Plaintiffs' proposal of "a voting kiosk/machine, or . . . access to duly authorized volunteers with a hand-held devices [sic]," 2d Am. Compl. 14 ¶ 39, does not establish a violation of the election laws that the defendants administer.

Second, the complaint advances no allegation that any act or omission by Defendants would have changed the outcome of the 2016 election. Plaintiffs therefore fail to assert the requisite allegations to make a claim.

Third, as to the timeliness condition, Plaintiffs make no allegation that they did not know about Maryland's longstanding absentee voting laws in time to sue within the 10-day deadline imposed by § 12-202(b)(1) of the Election Law Article. But neither the fact of pretrial detention nor the absentee ballot and voter registration application procedures and deadlines sprang into existence on October 18, 2016, the registration deadline for the 2016 election. Regardless of Plaintiffs' actual knowledge of these voting procedures, ignorance is no excuse where the relevant facts are readily discoverable. *See Abrams v. Lamone*, 398 Md. 146, 159 n.18 (2007) (under Elec. Law § 12-202, plaintiffs could not avoid triggering limitations period by failing to inform themselves of relevant facts). Plaintiffs cite no barrier to their own ability to ascertain the statutory deadlines and procedures applicable to the voter registration and absentee ballot process. As recognized in *Baker v. O'Malley*, the "very short time limits for filing a suit challenging an aspect of an election pursuant to [Elec. Law] § 12-202(b)" reflect a public policy "that all such claims must be presented on an urgent basis." *Baker v. O'Malley*, 217 Md. App. 288, 296, *cert. denied*, 440 Md. 115 (2014). This public policy is based on "the urgency of resolving uncertainties about elections expeditiously." *Id.* Because Plaintiffs filed suit on November

21, 2016, more than ten days after the alleged violations were or should have been known to them, their election law claims are barred.

B. An Unregistered Voter Has No Statutory Standing to Bring a Claim Under § 12-202.

To have standing to sue, a plaintiff must have “suffered an injury in fact that is fairly traceable to the defendant’s conduct and that is likely to be redressed by a decision in the plaintiff’s favor.” *State Ctr., LLC*, 438 Md. at 491 (internal quotation marks and citations omitted). “[T]he claimant alone is responsible for raising the grounds for which his right to access to the judiciary system exists.” *State Ctr., LLC*, 438 Md. at 517. *See, e.g., Kendall v. Howard County*, 431 Md. 590, 607–08 (refusing to address taxpayer standing because petitioners did not assert it).

The complaint alleges no facts supporting Plaintiffs’ statutory standing to assert a claim under § 12-202 of the Election Law Article. Plaintiffs lack standing to bring any claim, including one under § 12-202, because that statute provides a remedy, and standing, only to a registered voter. *Suessmann v. Lamone*, 383 Md. 697, 712 (2004). They are admittedly unregistered. Therefore, to the extent that Plaintiffs assert claims for violations of Maryland election laws, such claims should be dismissed.

C. The Complaint Fails to State a Claim for Punitive Damages.

Although demanding punitive damages, the second amended complaint lacks any of the necessary factual allegations to support that claim. Any such claims should be dismissed. The admonitions of *Scott v. Jenkins* equally apply here:

In sum, in order to properly plead a claim for punitive damages, a plaintiff must make a specific demand for that relief in addition to a claim for damages

generally, as well as allege, in detail, facts that, if proven true, would support the conclusion that the act complained of was done with 'actual malice.' Nothing less will suffice.

Scott, 345 Md. at 37. "Actual malice" means "conscious and deliberate wrongdoing, evil or wrongful motive, intent to injure, ill will or fraud." *Owens-Illinois, Inc. v. Zenobia*, 325 Md. 420, 460 (1992). No such factual allegations are asserted. Because the second amended complaint lacks any of the factual allegations supporting the claim for punitive damages, such claims should be dismissed for failure to state a claim upon which relief can be granted.

VII. IN THE ALTERNATIVE, PLAINTIFFS SHOULD RE-PLEAD WHATEVER CLAIMS IN THE COMPLAINT SURVIVE.

Should the Court not dismiss the entire Complaint with prejudice due to the aforementioned deficiencies, it should order that Plaintiffs submit a more definite statement for any surviving portion. In its current form, the second amended complaint is so vague and ambiguous in its allegations that Defendants cannot reasonably be required to frame their responsive pleading.

Rule 2-322(d) accurately describes the complaint as it relates to the State Board: "If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering." See *G & H Clearing & Landscaping v. Whitworth*, 66 Md. App. 348, 354 (1986) ("the proper method of complaining about vagueness is a motion for more definite statement"). As stated above, the second amended complaint abounds in its lack of clarity. Most fundamentally, the defendants cannot assess whether they would answer four or more

distinct claims under the Election Law Article, as well as separate and multiple causes of action under the Maryland Constitution or Declaration of Rights, several causes of action under the U.S. Constitution, and multiple claims under 42 U.S.C. § 1983. *See Albright v. Oliver*, 510 U.S. 266, 271 (1994) (“Section 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’” The first step in any such claim is to identify the specific constitutional right allegedly infringed.”) (Citations omitted).

The conduct constituting the basis for each of these alleged causes of action stands equally murky: Plaintiffs should be required to set forth the facts which they allege support each respective cause of action. Thus, for example, they should specify which of their claims are founded on federal law and which purported rest of violations of state law. The complaint now exists as a bollix of multiple assertions contained in what appears to be a single count, but fails to tie specific causes of action to specific allegedly improper and/or illegal conduct by the defendants. Emblematic of its errors, the complaint attempts to pin liability on an unnamed and unspecified “City” Board of Elections. (2d Am. Compl. 4, 5 ¶¶ 6, 8) (“[Plaintiff] was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections.”).

As set forth above, the complaint improperly does not seek specific relief as to each cause of action, forcing Defendants to guess which remedy is sought for each action, inaction or conduct. The cause of action for a declaratory judgment, for example, incorrectly seeks monetary damages, including punitive damages. Before pleading,

Defendants are “certainly entitled to know” what is at stake in this action. *See G & H Clearing & Landscaping*, 66 Md. App. at 357.

Plaintiffs need to set forth each of their claims clearly, supported by factual assertions, in distinct causes of action. They should specify the damages sought for each such claim. Any allegations concerning compliance with requirements under the MTCA need to be specifically spelled out in factual assertions, rather than broad generalities. And they should not include extraneous allegations and claims which are barred as a matter of law. These are all matters as to which Plaintiffs should be ordered to provide a more definite statement. *Id.* (“A defendant reading this Declaration would really have no way of knowing how properly to answer it.”). For these reasons, any part of the second amended complaint which the Court does not dismiss should be subject to re-pleading.

CONCLUSION

The second amended complaint should be dismissed. In the alternative, the Court should order that Plaintiffs provide a more definite statement as to any claims not dismissed.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

A handwritten signature in black ink, appearing to read "John J. Kuchno", is written over a horizontal line.

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Attorneys for Defendant, Maryland State
Board of Elections

Exhibit

A

02867 33

Clerk of the
Circuit Court

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY 4 PI 1:13

PR GEO CO MD # 94

MELVIN JOHNSON
14610 Man-O-War Drive,
Bowie, Maryland 20721

Plaintiff

QAAREE PALMER
6212 Ferore Way
Baltimore, Maryland 21224

Plaintiff

v.

CASE#: CAL 16 42799

PRINCE GEORGE'S COUNTY
BOARD OF ELECTIONS
1100 Mercantile Lane
Suite 115A
Largo, Maryland 20774

Defendant

Serve on:
Andree Green, County Attorney
PRINCE GEORGE'S COUNTY OFFICE OF LAW
County Administration Building, Room 5121
14741 Governor Oden Bowie Drive,
Upper Marlboro, MD 20772 - 3050

MARYLAND STATE BOARD
OF ELECTIONS
151 West Street, Suite 200
Annapolis, Maryland 21401

Co-Defendant

Serve on:
Nancy K. Kopp

17-1067-100
NOT RECORDED

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[illegible]

I. JURISDICTION AND VENUE

Gr

Amendment (Equal Portection). Notice of Intent was duly served upon the proper officials via *hand delivery* under CJP § 5-304, and SG §§ 12-106 and 12-108.

II. PARTIES

Plaintiffs incorporate by reference the allegations contained in paragraph one as if fully set forth herein:

2. Plaintiff Melvin Johnson, and others similarly situated, is an unregistered but eligible voter and resident of the County of Prince George's, State of Maryland, and citizen of the United States who is currently being detained in the Prince George's County Department of Corrections under ID#: 212197.

3. Plaintiff, Qaaree Palmer, and others similarly situated, is an unregistered but eligible voter and resident of the County of Prince George's, State of Maryland, and citizen of the United States who is currently being detained in the Prince George's County Department of Corrections under ID#: 034059.

4. That Defendant, Prince George's County Board of Elections ("County Board" or "local board"), is authorized by State Election laws to make rules consistent with State laws to ensure the proper and efficient registration of voters and conduct of elections; it is, *inter alia*, statutorily mandated to: (a) oversee the conduct of all elections held in [Prince George's County] and ensure that the elections process is conducted in an open, convenient, and impartial manner; (b) serve as the local board of canvassers and certify the results of each election conducted by the local board; (c) provide to the general public timely information and notice, by publication or mail, concerning voter registration and elections; and (d) maintain records in accordance with the plan

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adopted by the State Board under § 2-106 of the Election Article. *See* Elect. Code §2-202, et seq.

5. The Maryland State Board of Elections (State Board) is a state agency organized under the laws of Maryland and is charged with managing and supervising elections in the State and ensuring compliance with the requirements of the Election Law Article and any applicable federal law by all persons involved in the elections process; the State Board's duties are *inter alia* to: (a) supervise the conduct of elections in the State; (b) direct, support, monitor, and evaluate the activities of each local board; (c) maximize the use of technology in election administration, including the development of a plan for a comprehensive computerized elections management system; (d) canvass and certify the results of elections as prescribed by law; (e) make available to the general public, in a timely and efficient manner, information on the electoral process, and information gathered and maintained regarding elections; (f) receive, maintain, and serve as a depository for elections documents, materials, records, statistics, reports, certificates, proclamations, and other information prescribed by law or regulation. Elect. Code §2-102, et seq.

6. Linda Lamone is the State Administrator of Elections statutorily charged with managing and supervising elections in the State and ensuring compliance with the requirements of the state code and any applicable federal law by all persons involved in the elections process, see Elect. Code §2-102; she is further charged with supervising *inter alia* the operations of the City/County Boards of Elections, see Elect. Code 2-103(4).

III. STANDING

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 6 as if fully set forth herein:

7. Melvin Johnson has standing because he is an eligible but unregistered voter who

00000000

was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections.

8. Qaarec Palmer has standing because he is an eligible but unregistered voter who was denied the right to register, access to the ballot, and the right to vote in the November General Election by the City and State Board of Elections.

IV. STATEMENT OF FACTS

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 8 as if fully set forth herein:

9. In February, 2016, after Governor Larry Hogan (R)'s veto, and a General Assembly override, Maryland enacted Election law 3-102(a) and (b), et seq., to restore voting rights to all ex-offenders upon re-entry into the community after serving a court-ordered sentence for the felony conviction—even if they are on active parole or probation.

10. Under this new law, an individual may register to vote if he/she:

- (i) is a citizen of the United States;
- (ii) is at least 16 years old;
- (iii) is a resident of the State as of the day the individual seeks to register; and
- (iv) registers pursuant to this title.

11. The General Assembly however carved out exceptions to this rule that actually restored the voting rights of over 40,000 Maryland residents; the exceptions state the following:

- (1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction;
- (2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual

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cannot communicate, with or without accommodations, a desire to participate in the voting process; or

- (3) has been convicted of buying or selling votes. See Cox, Erin, "Released felons gain right to vote in Maryland after veto override" *Baltimore Sun*, February 9, 2016 ("*More than 40,000 recently released Maryland felons will regain the right to vote in time for this year's election.*") <http://www.baltimoresun.com/news/maryland/politics/bs-md-felons-voting-20160209-story.html>

12. This law coupled with other Maryland election laws and regulations give not only ex-felony offenders who served-out their time, the right to register and vote, but it also gives pre-trial detainees who have not been convicted of the charged crime(s) resulting in their pre-trial detention, the right to vote —so long as they are not serving a court-ordered sentence of imprisonment for a felony conviction or fall within one of the other exceptions noted above.

13. Further, individuals who have been duly convicted, served their term of court-ordered sentence of imprisonment, are on probation/parole, but have been since accused of violating their terms of parole/probation and are currently incarcerated awaiting a parole/probation hearing to determine whether said parole/probation has in fact been violated, are too, eligible to register and vote.

14. Furthermore, individuals who have been duly convicted of a misdemeanor (ex. 2nd degree assault, some traffic offenses, etc.) are eligible to register and vote whether or not they are currently serving a court-ordered term of incarceration. See, e.g., *United States v. Hassan El*, 5 F.3d 726 (4th Cir. 1993), *cert denied*, 511 U.S. 1006 (1994) (holding that common law simple assault is

EXHIBIT 53

neither a felony or an "infamous crime" under Maryland law, the defendant did not lose his right to vote as a result of his assault conviction).

15. State of Maryland Department of Corrections, houses and has in its custody hundreds of individuals who are eligible to register and vote pursuant to Maryland state law as above mentioned within Prince George's County alone; the lack of a State strategy governing inmate voter registration and voting during the November 8, 2016 General Election infringed upon the fundamental right to vote of these affected individuals; Maryland owes duty to the affected individuals who are eligible to vote and housed in State owned facilities to implement the statutory and/or regulatory plan or procedure for ensuring that inmate voting rights are not infringed upon solely because they are in custody awaiting trial or serving time on a misdemeanor conviction(s).

16. Neither the City of Baltimore, the 23 other counties, nor the State of Maryland, had an official local or statewide policy, procedure or plan, for their detention centers (including juvenile centers for 16+ y.o.), intake and correctional facilities owned, supervised, operated and or managed by the State (or local government if applicable), to:

- a. permit pre-trial detainees who are eligible and wish to register and vote the opportunity to do so,
- b. permit convicted misdemeanants serving a court ordered sentence of imprisonment, who are eligible and wish to register and vote the opportunity to do so, and
- c. confirm the number of inmates who are eligible and wish to register and vote in upcoming elections.

17. Nor did Baltimore City, the 23 other counties, nor the State of Maryland, have an official local or statewide policy, procedure, or plan to register eligible voters desiring to do so by the October 18, 2016 deadline, or distribute ballots, absentee or otherwise, to pre-trial detainees or

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convicted misdemeanants who are registered voters wanting to exercise their right to vote during the early voting period, October 27, 2016 - November 3, 2016, or Election Day, November 8, 2016.

18. Because of an eligible registrant's/voter's usually unforeseen or untimely arrest and pre-trial detention (where a person is held despite lawful presumption of innocence until proven guilty), it is unlikely, and unreasonable, to expect a pre-trial detainee to mail in a timely request to the State or local boards (in advance of, or during his/her period of detention) for a voter registration application to complete and return to the State and/or local board before Election Day, --unless he/she, at the very least, has been notified and informed of his/her right to do so by the local and State Boards of Elections and has been provided the physical wherewithal, financial means, and lack of impediments to exercise that right.

19. It is even more unlikely, and unreasonable, to expect that without a local or statewide plan to enfranchise these affected individuals short of court intervention, the detention center(s) in Baltimore City, the 23 other counties, or the correctional facilities within the State of Maryland, will not, and in fact, *did not*, provide their inmates with an actual ballot to cast at anytime during early voting or election day.

20. As it stands now, individuals who were being held on pre-trial detention and unable to make bail on or after October 27, 2016, early voting, and before the November 8, 2016, general election, were denied the right to register and/or vote; and individuals who are serving a court-ordered sentence of imprisonment for misdemeanor violations were also denied the right to register and/or vote.

21. Neither through the intake process at the county detention centers and State intake and correctional institutions, nor through the State and local boards of elections, are any inquiries

22. The State and local board of elections have further and most grievously violated the State and Federal Equal Protection and voting rights laws by denying eligible voters the right to register and vote despite their incarceration or detention as voting rights are not illusory but actually guaranteed by the clearly established laws of the State and U.S.

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the acts and omissions of State and local boards of elections by perpetually denying their right to register and vote in the all elections held within the State, solely and exclusively because they are being involuntarily detained pretrial in a State detention center or serving time on a misdemeanor offense in a State correctional institution.

Violation of Elect. Code 3-102

Ex-offender Restoration of Voting Rights

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 23 as if fully set forth herein:

24. Maryland Election Article § 3-102 guarantees the right to register and to vote to any individual who is a citizen of the United States; is at least 16 years old; is a resident of the State as of the day the individual seeks to register; and registers pursuant to the Article. *See also* Md. Const. Art. I §§ 1 and 2, Decl. of Rights Art. 7 & 24.

25. Plaintiffs collectively, submit that they and similarly situated individuals held in pre-trial detention or serving a court-ordered sentence of imprisonment for misdemeanor offenses, who meet the above described qualifications, are being denied the right to register and vote, even though they do not fall within the narrow exception to this statute.

26. The State's denial of the affected individuals rights to register and vote in the general election held on November 8th, 2016, is inconsistent with the Election Law Article, the State Constitution and Declaration of Rights, and the U.S. Constitution, as well as other laws governing the elections process as more fully explained below.

Violation of Elect. Code § 2-202

Powers and Duties of Local Board

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Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 26 as if fully set forth herein:

27. The local board of election is charged with, inter alia: (1) overseeing the conduct of all elections held in its jurisdiction and ensuring that the elections process is conducted in an open, convenient, and impartial manner, (2) providing the supplies and equipment necessary for the proper and efficient conduct of voter registration and election; (3) providing to the general public timely information and notice, by publication or mail, concerning voter registration and elections, and (4) establishing and altering the boundaries and number of precincts in accordance with § 2-303 of this title, and providing a suitable polling place for each precinct, and assigning voters to precincts.

28. The local board violated its powers and duties by: (1) not following the law as aforementioned, (2) not establishing a regulatory plan or making any arrangements in accordance with the Election law to ensure the enfranchisement of pre-trial detainees and individuals serving court-ordered sentences of imprisonment for misdemeanor violations in city/county and State detention centers, intake and correctional facilities under its jurisdiction; and (3) denying Plaintiffs the right to:

- a. information concerning voter registration and elections,
- b. register,
- c. access to the [regular] ballot, absentee, provisional or otherwise, and
- d. vote.

And as a direct and proximate cause of Defendants failure to satisfy its duties by a series of acts and/or omissions, Plaintiffs suffered serious and substantial constitutional injuries, and damages.

Violation of Elect. Code § 2-102

Powers and Duties of State Board

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 28 as if fully set forth herein:

29. The State board is charged with, *inter alia*, (a) managing and supervising elections in the State and *ensuring compliance* with the requirements State election law and *any applicable federal law* by all persons involved in the elections process; (b) directing, supporting, monitoring, and evaluating the activities of each local board; and (c) maximizing the use of technology in election administration, including the development of a plan for a comprehensive computerized elections management system.

30. COMAR 33.19.01.01 (Applicability to Elections) provides that "[s]ame day registration and address changes are available during *early voting* for Presidential primary and general elections."

31. COMAR 33.19.04.01 (Same Day Registration) provides that "[a]n election judge shall issue an individual a regular ballot if the individual (a) is a pre-qualified voter, and (b) provides proof of residency in the county where the individual is attempting to register and vote.

32. COMAR 33.19.04.03 (Responsibility of Election Judges) provides that election judges assigned to same day registration and address changes shall (a) ensure that all individuals who are not eligible to vote a regular ballot are offered a provisional ballot; and (b) ensure that each individual is issued the appropriate ballot.

33. COMAR 33.19.04.01 also provides that "[a]n election judge shall issue an individual a provisional ballot if the individual (1) is not a pre-qualified voter; or (2) cannot provide proof of residency in the county where the individual is attempting to register and vote.

34. The State board violated its powers and duties by failing to follow the

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aforementioned laws, and refusing to establish any statewide plan or make any arrangements to ensure compliance with the Election law in order to protect the right to vote guaranteed to pre-trial detainees, and individuals serving court-ordered sentences of imprisonment for misdemeanor violations who are being held within the custody of city/county detention centers, and/or intake and correctional facilities throughout Maryland. And as a direct and proximate cause of Defendants failure to exercise its power and/or satisfy its duties by a stream of acts and omissions, Plaintiffs suffered serious and substantial constitutional injuries, and damages.

Violation of Elect. Code § 3-201

Applying to Register to Vote

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 34 as if fully set forth herein:

35. Election Law § 3-201 "[a]n individual may apply to become a registered voter with the assistance of a volunteer authorized by the State or local board."

36. The State and local board of elections refused to allocate any resources to provide authorized volunteers to assist pre-trial detainees and individuals serving a court ordered period of imprisonment for misdemeanor violations with voter registration.

37. That authorized volunteers are the only means by which these affected individuals would have been able to gain or maintain the right to vote in the past General election because (a) time was of the essence, and (b) their physical detention behind steel doors, iron gates, reinforced bullet proof glass, cinder-blocks, and cement slabs, created an impenetrable barrier to these rights.

38. Consequently, pretrial detainees (guilty only of not being out on bail), and/or

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misdemeanants serving time alleged herein, were denied *timely* information and access to (a) the local or State election board offices; (b) a registration site administered by a local board; (c) a mail carrier; (d) the Motor Vehicle Administration; (e) a voter registration agency; and (f) the State Board's online voter registration system in order to timely exercise these rights.

39. Something as simple as providing registration and voter information upon entry into the facility, use of a voting kiosk/machine, or a access to duly authorized volunteers with a hand-held devices is all that was needed to alleviate at least some part of the problem because one can register to vote via internet access –which, unfortunately, is not provided to inmates but readily available to the State and local boards; the State and local boards refused to even do that. *See* Elect. Code § 3-204.1, et seq., (Online voter registration system).

40. Without timely access to State and local board election information, authorized volunteers, and election judges, to assist with registering voters, and issuing and collecting ballots, pre-trial detainees, such as Johnson and Palmer, and those who are serving court-ordered sentences of imprisonment for misdemeanor violations, and who were held in the custody and control of city/county detention centers, intake and correctional facilities throughout Maryland during the General Election were denied their right to vote in violation of Maryland Election law, the Maryland Constitution and Declaration of Rights, the U.S. Constitution, and applicable constitutional law as further described below; as a direct and proximate cause of Defendants failure to exercise its power and/or satisfy its duties by a stream of acts and omissions, Plaintiffs suffered serious and substantial constitutional injuries, and damages.

COUNT I:

42 U.S.C. 1983 CIVIL RIGHTS

COUNT I(a):

State Constitution Violations, Article I §§ 1 & 2,

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COUNT I(b): Declaration of Rights Violations, Article 7 & 24

COUNT I(c): U.S. Constitutional Rights Violations, First &
Fourteenth Amendment

Plaintiffs incorporate by reference the allegations contained in paragraphs 1 - 40 as if fully set forth herein:

41. That 42 U.S.C. 1983 entitled Civil action for deprivation of rights provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42. Maryland Constitution, Article 1, § 1 entitled *Elections to be by ballot; qualifications of voters; election districts* provides:

All elections shall be by ballot. Except as provided in Section 3 of this article, every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until the person shall have acquired a residence in another election district or ward in this State.

43. Maryland Constitution, Article 1, § 2 entitled *Registration of voters* provides:

The General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State, who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence

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to the Judges of Election of the right of every person, thus registered, to vote at any election thereafter held in this State; but no person shall vote, at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof.

44. Maryland Constitution, Declaration of Rights Article 7 entitled *Free and frequent elections; right of suffrage* provides:

That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

45. Maryland Constitution, Declaration of Rights Article 24 entitled *Due Process [Equal Protection]* provides:

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

46. Article 24 embodies the concept of Equal Protection of the laws to the same extent as the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *Murphy v. Edmonds*, 325 Md. 342, 353 (1992).

47. That the First Amendment to the U.S. Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

48. The rights guaranteed by the First Amendment also includes the fundamental right

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to vote. *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 641 (1983).

49. That the Fourteenth Amendment to the U.S. Constitution provides:

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.

50. By violating the laws identified and explained in paragraphs 1 - 49, Defendants (collectively, including Linda Lamone in her capacity as compliance officer, manager, and supervisor over State elections and local boards, see paragraph 6) violated Plaintiffs clearly established rights under the State and Federal Constitutions identified in Counts I - I(c) above by *inter alia* engaging in a custom, policy and practice of unlawfully denying Plaintiffs their the right to register, vote, and their right to access the ballot, and flat-out denying Plaintiffs aforementioned rights, simply because they are pretrial detainees and/or misdemeanants serving time; as a result of said denials, Plaintiffs have been deprived of their State and constitutional rights as described throughout this complaint; that Plaintiffs have suffered extreme hardship and damages as pretrial detainees and/or individuals serving time on misdemeanor offenses.

51. That the State and local board cannot guarantee a fundamental right to participate in the electoral process as herein alleged, then take it away at the same time simply because it may be only slightly inconvenienced; and they cannot establish classes of voters to discriminate against and, again, by doing so they violate Plaintiffs rights in Counts I - I(c).

52. That the State and local boards have no compelling reason/interest for denying

53. That as a direct and proximate cause of Defendants failure to exercise its power and/or satisfy its duties by a series of acts and omissions in violations of the laws identified in paragraphs 1 - 40, Plaintiffs suffered serious and substantial constitutional injuries, and damages, and is seeking any and all applicable relief available under 42 U.S.C. 1988 and other relief as further described in the below *ad damnum* clause.

Declaratory Relief

54. That based upon all of the above, Plaintiffs submit that they are entitled to declaratory relief because they can prove by clear and convincing evidence that substantial irreparable harm will result if city and state pre-trial detainees, such as themselves, and individuals serving court-ordered sentences of imprisonment for misdemeanor violations, are impeded from exercising their fundamental right to vote granted by the State and guaranteed by constitution as identified above in paragraphs 1 - 53, by reason of their detention in a City/State owned facility.

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privilege that is being denied by an adversary party, who also has or asserts a concrete interest in it.

56. The issues raised by Plaintiffs are not been rendered moot by the election, because they are "capable of repetition, yet evading review." *Storer v. Brown*, 415 U.S. 724, 737 n. 8 (1974), quoting *Rosario v. Rockefeller*, 410 U.S. 752, 756 n. 5 (1973).

57. That all of the local/municipal, State government and public official action alleged in paragraphs 1-56 was performed with actual and/or constructive knowledge that the right to vote (and otherwise participate in the electoral process) is a clearly established constitutional right as alleged above, and those rights are/were being denied to Plaintiffs and others, and it was done, is being done, and will continue to be done, with deliberate indifference until they are stopped by some form of court intervention; the legislature has already prescribed their duties and responsibilities by the above enactments but the local/municipal, State government and public officials charged with carrying out the legislative purpose, intent, and ensuring compliance have refused to obey and execute their legislative mandates.

WHEREFORE, Plaintiffs severally requests that this court GRANT a judgement against Defendants jointly and/or severally in an amount that exceeds \$75,000, see Md. Rule 2-305(b), GRANT an award of attorney's fees and punitive damages if they become applicable; Plaintiffs further request that this court GRANT an Order declaring that all City and State detention centers, intake and correctional facilities under its jurisdiction shall not impede the rights of Plaintiffs are entitled to the right to information about registering, accessing the ballot and voting while incarcerated; Plaintiff further requests that this court issue and order declaring that:

- a. all pre-trial detainees and individuals serving a court-ordered period of

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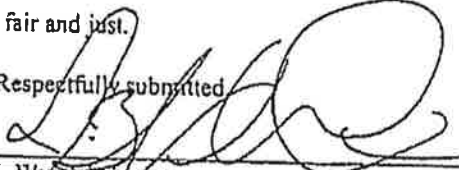
- imprisonment for misdemeanor offenses who are eligible to vote, shall receive an official ballot and the opportunity to cast a vote in all upcoming elections at all times afforded to citizens who are not detained;
- b. voting and election information including the opportunity to register shall be provided within a reasonable time upon booking into each facility throughout the State of Maryland within the jurisdiction of this court;
 - c. all pre-trial detainees and individuals serving a court-ordered sentence of imprisonment for misdemeanor offenses at a facility owned by the State of Maryland shall be provided with accurate information and education on their right to vote and the process for exercising that right;
 - d. all pre-trial detainees and individuals serving a court-ordered period of imprisonment for misdemeanor offenses, who are duly registered to vote, shall be provided with a copy of the official general election ballot to review ballot questions, candidates and proposed funding questions relevant to their jurisdiction;
 - e. the State and local board cover the cost of providing ballots to all eligible persons in a timely fashion that are clear and legible;
 - f. that the State and local board account for and maintain control over the ballots from the beginning of production to post-election storage and disposition in accordance with Elec. Code § 9-216;
 - g. that each ballot cast by all eligible persons in their institutions be counted;

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- h. that the State and local boards provide a polling place in each facility to allow an efficient voting process and reduce the possibility of missing ballots, irregularities or allegations of disenfranchisement.

Plaintiffs also request that this court GRANT such other and further relief in law or equity deemed fair and just.

Respectfully submitted,


J. Wyndal Gordon

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IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

MELVIN JOHNSON
14610 Man-O-War Drive,
Bowie, Maryland 20721

Plaintiff

QAAREE PALMER
6212 Ferore Way
Baltimore, Maryland 21224

Plaintiff

v.

CASE#: CAL-16-42799

PRINCE GEORGE'S COUNTY
BOARD OF ELECTIONS
1100 Mercantile Lane
Suite 115A
Largo, Maryland 20774

Defendant

Serve on:
Andree Green, County Attorney
PRINCE GEORGE'S COUNTY OFFICE OF LAW
County Administration Building, Room 5121
14741 Governor Oden Bowie Drive,
Upper Marlboro, MD 20772 - 3050

MARYLAND STATE BOARD
OF ELECTIONS
151 West Street, Suite 200
Annapolis, Maryland 21401

Co-Defendant

Serve on:
Nancy K. Kopp

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PRINCE GEORGE'S COUNTY
DIVISION

5-11-17

MARYLAND STATE TREASURER *
80 Calvert Street, *
Annapolis, Maryland 21401 *

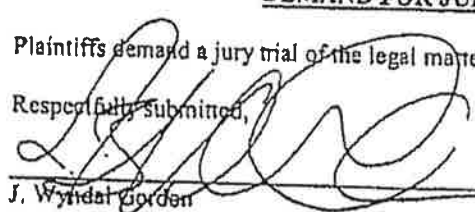
LINDA H. LAMONE *
In her official capacity as State Administrator *
of Maryland State Board of Elections *
151 West Street, Suite 200 *
Annapolis, Maryland 21401 *

Co-Defendant *

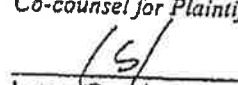
DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial of the legal matters contained herein.

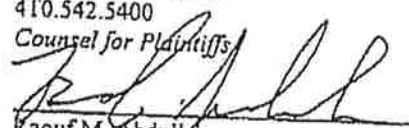
Respectfully Submitted,


J. Wyndal Gordon

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Lanet Scott
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EXHIBIT 3



MELVIN JOHNSON, et al.

Plaintiffs

v.

MARYLAND STATE
BOARD OF ELECTIONS, et al.

Defendant

* IN THE
* CIRCUIT COURT
* FOR
* PRINCE GEORGE'S
* COUNTY

* Case#: CAL-16-42799

OPPOSITION TO MOTION TO DISMISS SECOND AMENDED
COMPLAINT AND TO MOTION FOR MORE DEFINITE STATEMENT
Request for Hearing

NOW COMES, Plaintiffs Melvin Johnson, et al., by and through their attorney, J. Wyndal Gordon, of **THE LAW OFFICE OF J. WYNDAL GORDON, P.A.**, to submit this Opposition to Motion to Dismiss alleging as true the following:

I. STATEMENT OF FACTS

Plaintiffs, all pretrial detainees and eligible to register to vote during the November 6, 2016 General Election, brought suit against Defendant State Board of Elections, and State Board of Election Secretary, Linda Lamone, because each Defendant was respectively denied and refused their right to information concerning voter registration and elections, their right to register to vote, their right to access to the ballot, and their fundamental right as Maryland/US citizens,

to vote. Plaintiffs have alleged that Defendants' respective denials and refusals violated their State and Federal Constitutional voting rights. Defendant, Maryland State Board of Elections (MSBE) has identified a few easily cured, persnickety, hyper-technically *alleged* defects in Plaintiffs pleading and are now requesting that Plaintiffs claim raising several fundamental constitutional violations be dismissed with *prejudice* so that Plaintiffs, and this issue, can be silenced and go away; or at the very least re-pled. In defense to MSBE's motion, Plaintiffs state the following:

II. STANDARD OF REVIEW

a. Motion to Dismiss

"In considering a motion to dismiss for failure to state a claim under Maryland Rule 2-322(b)(2), a court must assume the truth of all well-pleaded material facts and all inferences that can be drawn from them." *Rossaki v. NUS Corp.*, 116 Md. App. 11, 18 (1997). The material facts setting forth the cause of action " 'must be pleaded with sufficient specificity. Bald assertions and conclusory statements by the pleader will not suffice.' " *Adamson v. Correctional Med. Servs., Inc.*, 359 Md. 238, 246 (2000) *quoting* *Bobo v. State*, 346 Md. 706, 708-09 (1997). "The grant of a motion to dismiss is proper [*only*] if the complaint does not disclose, on its face, a legally sufficient cause of action." *Rossaki*, 116

Md. App. at 18 (citation omitted). Thus, “[i]t is, appropriately, not hard to withstand a motion to dismiss.” *Conwell Law LLC v. Tung*, 221 Md. App. 481, 513 (2015). Plaintiffs’ complaint clearly discloses on its face a legally sufficient cause of action, and Defendants advanced little to no argument to the contrary.

b. More Definite Statement

Maryland Rule 2-322(d) provides: If a pleading to which an answer is permitted is so vague or ambiguous that a party cannot reasonably frame an answer, the party may move for a more definite statement before answering. The motion shall point out the defects complained of and the details desired. Plaintiffs complaint is neither vague nor ambiguous, thus, Defendants request for more definite statement should be respectfully denied. The defects that Defendants point out were basically a typographical error or two (actual e.g., [Prince George’s] City v. County) which were easily identified and understood to be typographical errors.

III. LEGAL ANALYSIS

a. Plaintiffs complaint complies with MTCA

Defendants initially contend that Plaintiffs complaint alleging constitutional violations should be dismissed *with prejudice* because it did not expressly allege in the pleading portion that the State Treasurer “denied” their claim –which is not

a pleading requirement under the law anyway. *See Barbre v. Pope*, 402 Md. 157, 176 (2007) (“In order to comply with the MTCA, a plaintiff must serve written notice upon the State Treasurer, or a designee of the State Treasurer, within one year following the injury.”). Plaintiffs have complied with all pleading requirements by simply alleging that notice was properly served under the MTCA—nothing more is legally required to either comply or substantially comply. *See Medore v. Baltimore County*, 34 Md. App. 340, 346 (1976) (“[C]ompliance with notice statute should be alleged in the [complaint] as a substantial element of the cause of action.”), *see also Ferguson v. Loder*, 186 Md. App. 707, 728-29 (2009) (“We acknowledged the existence of a substantial compliance argument under the MTCA.”).

State Government Article §12-106 provides that “a claimant may not institute an action under this subtitle unless (1) the claimant submits a written claim to the Treasurer or a designee of the Treasurer within 1 year after the injury to person or property that is the basis of the claim; (2) the Treasurer or designee denies the claim finally; and (3) the action is filed within 3 years after the cause of action arises. All of the prerequisites for instituting an action were satisfied here.

First, Plaintiffs submitted a written claim via Notice of Intent. Second, there is no requirement that Plaintiffs’ complaint specifically allege that their

claim was “denied” by the State Treasurer or his designee before an action may be properly filed with the court, --the statute only requires the claim be denied, and Defendants do not argue it was not. *See e.g.*, SG §12-106(b). Third, the same general law cited by Defendants in their attempt to upend Plaintiffs’ claim, offers Plaintiffs claims additional vitality. *See* SG §12-106(c)(2). State Government Article 12-106 (c)(2) states the following:

Subsection (b)(1) and (2) of this section [i.e., notice requirement] does not apply if, within 1 year after the injury to person or property that is the basis of the claim, the State has actual or constructive notice of (i) the claimant's injury; or (ii) the defect or circumstances giving rise to the claimant’s injury.

Plaintiffs filed suit on November 21, 2016, --13 days after their injury (denied right to register and vote in 2016 General Election). *See* (Df. Mot. To Dismiss. 4). The State was served with notice within a year thereby providing both actual and constructive notice of Plaintiffs claim. Fourth, Plaintiffs *expressly* alleged in their second Amended Complaint that “Notice of Intent was duly served upon the proper officials via hand delivery under CJP §5-304, and SG §12-106 and 12-108.” (Pl. 2d Am. Compl. ¶3), *see also Babre, supra*. This allegation alone satisfies the common law pleading requirement when it wasn’t even necessary because suit was filed and served within the one year time limit to

trigger the subsection (c)(2). *See* SG §12-106(c)(2). And even if was, Plaintiffs substantially complied with both the notice and pleading requirements. *See Medore*, 34 Md. App. at 346; *Ferguson*, 186 Md. App. at 728-29; *Condon v. State of Maryland-University of Maryland*, 332 Md. 481, 498 (1993) (“[t]he intent of the legislature to construe the MTCA broadly so that injured parties will be ensured a remedy.”); *Conaway v. State*, 290 Md. App. 234, 242 & 246 (1992) (“[w]e hold that substantial compliance with the requirements of the MTCA is sufficient to satisfy the condition precedent to the State's waiver of sovereign immunity” . . . particularly when the State has ‘requisite and timely notice of the facts and circumstances’ of the incident giving rise to the claim.”). Therefore, Defendants contention that Plaintiffs failed to comply with the Notice Requirement is a non-starter. Accordingly, Defendants motion to dismiss for failure to comply with the MTCA should be respectfully DENIED.

b. Plaintiffs sufficiently divided claims into separate counts

Defendants next contention is that Plaintiffs complaint sets fourth multiple causes of action in a single count. Plaintiffs disagree. Plaintiffs overarching and primary claim in their complaint alleged a violation of 42 U.S.C. §1983 because Linda Lamone and MSBE violated their federally protected Constitutional voting rights under the First and Fourteenth Amendment. (Pl. 2d Am. Compl. ¶¶14-21).

Plaintiffs “underarching” and secondary claim alleged that Lamone and MSBE violated Plaintiffs’ parallel State protected Constitutional rights under Article I §§1 & 2 and Declaration of Rights Article §§7 & 24, for all of the same reasons.

Id. In other words, all of the alleged violations come from a *shared* nucleus of operative facts. *See Okwa v. Harper*, 360 Md. 161, 203 (2000) *citing Hargrove v. Maryland Retirement System*, 310 Md. 406, 416 (1987) (“Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment’s Equal Protection Clause generally mean the same and apply in like manner”); *DeBleecker v. Montgomery County*, 292 Md. 498, 500, (1982) (Court of Appeals recognized § 1983 claims may be litigated in courts of Maryland.).

Defendants, collectively, violated both the Federal and State constitutional provisions above-mentioned by (a) failing and/or refusing to inform them of their right to register to vote; (b) denying them the right to register to vote, (c) denying them access to the ballot, and (d) “most grievously” denying them the right to vote altogether (Pl. Am Compl. ¶¶22-23), –all because of Plaintiffs’ temporary statuses as pretrial detainees. *Id.* One would be hard pressed to perceive anything confusing about that. Plaintiff brought a claim under 42 U.S.C. § 1983 to address violations of clearly established statutory and/or constitutional rights and they have expressly identified the various statutes, policies, and customs, that were

violated in support of their claims for relief. *Ashton v. Brown*, 339 Md. 70, 111-12 (1995) (“the constitutional deprivation that underlies the § 1983 official capacity suit must be caused by a statute, regulation, policy or custom of the governmental entity.”); *see also Hafer v. Melo*, 502 U.S. 21, 29 (1991) (State executive officials are not entitled to absolute immunity for their official actions.). For the same reasons, Plaintiffs brought their State constitutional claims for redress of the same issues under the State common law. *Ashton*, 339 Md. at 99 (“A federal statute, 42 U.S.C. § 1983, permits citizens to recover damages when state or local officials violate rights guaranteed by the federal constitution; by contrast, a violation of the Maryland Declaration of Rights may be redressed through a common law action for damages.”), *see also Wyatt v. Cole*, 504 U.S. 158, 161-63 (1992), *Ritchie v. Donnelly*, 324 Md. 344, 369-73 (1991). The claims are pled the same just analyzed differently because of the different principles involved, *see Ashton*, at 99; but the pleading format does not affect the sufficiency of the complaint, nor does it render it vague or ambiguous.

Plaintiffs have properly alleged through facts and reasonable inferences drawn therefrom that Defendants have failed or refused to perform their statutory duties and have thereby denied their constitutional rights (under Equal Protection, Freedom of Speech) to: (1) information concerning voter registration and

elections, (2) register, (3) access to the ballot, and (4) vote, –because they are pretrial detainees. (Pl. Am. Compl. 15-16, 21-22); *Hornbeck v. Somerset Co. Bd. Of Educ.*, 295 Md. 597, 641 (1983) (rights guaranteed by the First Amendment also includes the fundamental right to vote).

Plaintiffs have further properly alleged that Defendants have maintained a policy [procedure, plan] or custom of denying pretrial detainees the above described rights despite their Federal and State constitutional duties, and statutory and regulatory obligations, to honor them. *Id.*, *see also* ¶50. Moreover, Plaintiffs have identified the claims in their pleading in Roman numerical fashion, and have pled facts in support of each one, and have properly made a “demand for judgment for relief.” *See* Md. Rule 2-305. It is for these reasons, Plaintiffs complaint complies with the requirement that a pleading sets forth a claim for relief, contain a clear statement of facts necessary to constitute a cause of action and a demand for judgment for the relief sought. *Id.* Based upon the foregoing, Defendants motion to dismiss should be respectfully DENIED.

c. Punitive damages sufficiently pled

Defendants contend that Plaintiffs have not properly made out a claim for punitive damages because the term “*actual malice*” does not appear in their complaint. Defendants seemed to have overlooked the fact that the standard for

punitive damages for a § 1983 claim is different from Maryland's. *See French v. Hines*, 182 Md.App. 201, 251 (2008). Punitive damages are both readily available and adequately pled in the Plaintiffs § 1983 claims. The Supreme Court announced the punitive damage standard for § 1983 actions in *Smith v. Wade*, 461 U.S. 30 (1983). It is not the same as Maryland's "actual malice" standard. *Hines*, at 251 (the punitive damage standard for § 1983 actions . . . is not the same as Maryland's "actual malice" standard."). In *Smith*, the Court held that "a jury may be permitted to assess punitive damages in an action under § 1983 when the defendant's conduct is shown to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." *Id.* at 56 (emphasis added). We have both here, however, and Plaintiffs have shown both standards (Maryland and federal) through their factual allegations and reasonable inferences drawn therefrom without the need to utter the term "actual malice." A State official charged with managing and supervising Maryland elections, who arbitrarily and unconstitutionally, refuses someone access to information about registration and elections, refuses someone's right to register to vote, right to access the ballot, and fundamental right to vote, is a serious and shameful offense for which malice can certainly be inferred; and to do so merely because Plaintiffs are being held in pretrial detention, without any

compelling government reason, unquestionably constitutes actual malice. *See, e.g., Okwa*, 360 Md. at 181 *citing Sawyer v. Humphries*, 322 Md. 247, 261 (1991) (“[w]hen someone, without provocation or cause, throws rocks at two other persons, he is obviously demonstrating ill will towards those persons. Wrestling another to the ground, pulling his hair, and hitting him on the face, again without cause or provocation, is certainly malicious conduct.”). Plaintiffs have not been found guilty of any crime that would disqualify them from enfranchisement.

Instead, without provocation, Defendants have “throw[n] [proverbial] rocks” at Plaintiffs voting rights, --wrestled them down, and assailed them. Defendants conduct in the denial and refusal of Plaintiffs right to participate in the 2016 General Election because they were pretrial detainees demonstrated conscious and deliberate wrongdoing, a wrongful motive, and ill will, among other things. *See Owens-Illinois, Inc. V. Zenobia*, 325 Md. 420, 460 (1992). Based upon the foregoing, Plaintiffs have sufficiently pled a claim for punitive damages; accordingly, Defendants motion to dismiss or for more definite statement should be respectfully DENIED.

d. Demand for relief

Defendants contend that Plaintiffs have failed to set forth a clear demand for relief sought. Plaintiffs disagree. Plaintiffs complaint clearly shows that their §

1983 and State constitutional claims for relief demand a judgment for \$75,000 and “an award of attorney’s fees and punitive damages if they become applicable.”

Both claims further demand declaratory relief so that Plaintiffs, and other eligible pretrial detainees, will have the unabridged right to participate in the election process without State imposed impediments or encumbrances. For these and other reasons, Defendants request that Plaintiffs complaint be dismissed or re-pled as a result of the second Amended Complaint’s *ad damnum* clause should be respectfully DENIED.

e. Plaintiffs have standing

Defendants contend that Plaintiffs have no standing and are thus statutorily restrained from filing suit to redress Defendants denial of their voting rights simply because they are not “registered voters.” See SG § 12-202.

First, Plaintiffs have not made any claims under SG §12-202 for that very reason, nor were they required to. *Ashton*, at 99, *supra*. Their claims are constitutional in nature and ripe under § 1983 and the State Constitution. *Id.* at 105 (Under Article 19 of the Maryland Declaration of Rights “a plaintiff injured by unconstitutional state action should have a remedy to redress the wrong.”); *Rios v. Montgomery County*, 386 Md. 104, 137 (2005) (“Article 19 does guarantee access to the courts; a ‘statutory restriction upon access to the courts violates

Article 19 . . . if the restriction is unreasonable.’’). Under, Defendants’ theory, Maryland plaintiffs aggrieved by the State’s unlawful refusal/denial of their voting rights would never be allowed access to the courts to redress the unconstitutional deprivations solely because they are not registered to vote –which, incidentally, is one of the main rights they are attempting to aggrieve. The ‘lack of standing’ argument does not make much sense –nor is it supported by the law. It is unreasonable to deny Plaintiffs access to the courts to address their injuries resulting from the denial of their fundamental right to vote and otherwise participate in the election process, --and its unconstitutional.

Second, State Government Article § 12-202 does not provide an exclusive basis for challenging the State’s election laws when violations are constitutionally proscribed and have caused compensable injury to Plaintiffs; in fact it provides no basis at all. “[W]here a state court action is brought to enforce “asserted rights granted by federal law,” the state court “is required to give to [the plaintiff] the full benefit of federal law.” *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 243, 245 (1942). The “state court [is] bound to proceed in such a manner that all the substantial rights of the parties under controlling federal law would be protected.” *Id.* Based upon the foregoing, Defendants Motion to Dismiss based upon the above stated reasons should be respectfully DENIED.

f. Motion for more definite statement should be denied

Defendants motion for more definite statement should be respectfully DENIED as well for all of the reasons stated above, and for the reasons that follow. For one, Plaintiffs complaint is neither vague nor ambiguous. Indeed its quite simple and concise; Plaintiffs brought parallel federal and State constitutional claims against Defendants seeking monetary damages and declaratory relief because they were denied the right as Maryland citizens who reside in Prince George's County, to participate in the 2016 General Election. Specifically, they were refused and denied information concerning voter registration and elections, refused and denied the right to register to vote despite satisfying the eligibility requirements, they were refused and denied the right to access to the ballot, and refused and denied the right to vote --despite demanding to exercise all of the aforementioned rights. All of the refusals and denials Plaintiffs suffered by Lamone and MSBE were based solely upon their status as pretrial detainees in pretrial detention --having never been convicted of any disqualifying crime, or made ineligible in any way to register and vote. Based upon the foregoing, Defendants motion for more definite statement should be respectfully DENIED.

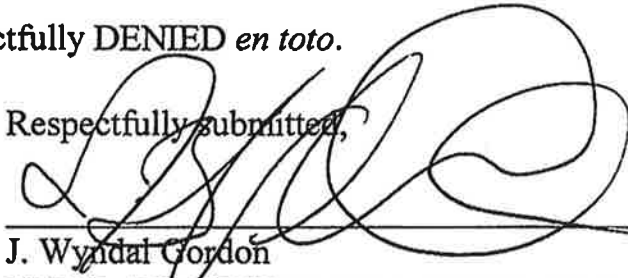
g. Linda Lamone has been served with the 2d. Amended Complaint

Linda Lamone was personally served with 2d Amended Complaint on September 18, 2017 @ 2:40p.m. by R. Bashir Abdullah. *See* (Return of Service).

IV. CONCLUSION

For all the foregoing reasons, Defendants Motion to Dismiss should be respectfully DENIED *en toto*.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Wyndal Gordon', is written over a horizontal line.

J. Wyndal Gordon

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CERTIFICATE OF SERVICE

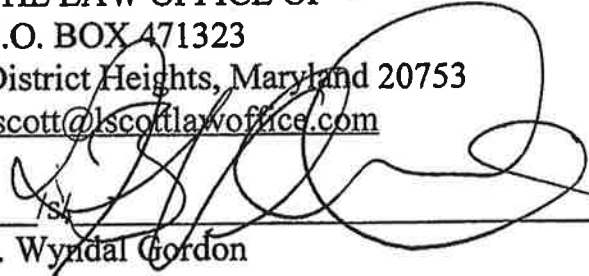
I HEREBY CERTIFY, this 18th day of Sep., 2017, that the foregoing Opposition to Motion to Dismiss and Request for Hearing was served upon Defendants Counsel:

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J. Wyndal Gordon

**IN UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MELVIN JOHNSON, *et al.*,

*

Plaintiffs,

*

v.

*

Civil Action No. 8:17-cv-02867-DKC

MARYLAND STATE BOARD OF
ELECTIONS, *et al.*,

*

Defendants.

*

* * * * *

ORDER

Upon consideration of the Defendant Linda Lamone's Motion to Dismiss Second Amended Complaint and any opposition thereto, it is this _____ day of _____ 2017, hereby,

ORDERED, that said Motion is GRANTED; and it is further

ORDERED that the Second Amended Complaint is DISMISSED, with prejudice.

United States District Judge