International Municipal Lawyers Association 89th Annual Conference

Election Law in the Era of Hyperpartisanship:

Fundamentals, Recent Developments and Best Practices

Bonnet Creek IV-VI 10:45 am – 12:15 pm

Saturday, September 28, 2024

Moderator: Chris Balch,
Balch Law Group, Brookhaven, GA

Panel:
Ben Griffith, Griffith Law Firm,
Oxford, MS
James Benjamin, Jr., Baltimore County Attorney,
Baltimore, MD
Andy Gaona, Coppersmith Brockelman PLC,
Phoenix, AZ

Use of Secure Drop boxes for return of absentee ballots

Priorities USA

Address of Absentee Ballot witness

Rise

Private Right of Action to enforce Section 2 of the VRA

Arkansas NAACP

Factfinding in racial gerrymandering decisions *Alexander*

State legislative redistricting: Creation of majority-minority districts

- *MS NAACP*

ISLT: The Independent State Legislature Theory

Moore

Election-related Disinformation
Murthy

Content Moderation

Moody

Death Threats and Extremist Attacks on Election officials

Prosecuting Political Leaders During Election

What's Going On?

Legal Issues in Legislation – Baltimore County

REDISTRICTING

Baltimore County NAACP v Baltimore County – U.S. District Court of Maryland

Challenge to Baltimore County's 2021 redistricting plan brought by Black citizens of Baltimore County ("the County") and several civil rights organizations, pursuant to Section 2 of the Voting Rights Act.

Baltimore County NAACP v Baltimore County – U.S. District Court of Maryland

GRANTS Plaintiffs' motion for a preliminary injunction.

PRELIMINARILY ENJOINS defendants from conducting future elections in the County under the County's 2021 redistricting plan.

DIRECTS the County to adopt a redistricting map that either includes two reasonably compact majority-Black Districts for the election of County councilmembers, OR an additional County District in which Black voters otherwise have an opportunity to elect a representative of their choice and that comports with the requirements of the Voting Rights Act, 52 U.S.C. § 10301, and any other relevant constitutional and statutory requirements, by **March 8, 2022**.

ORDERS County to **FILE** the new redistricting map, on or before **March 8, 2022.**

Baltimore County NAACP v Baltimore County – U.S. District Court of Maryland

On March 25, 2022, the Court is satisfied that the County's proposed revised redistricting map meets the relevant standards and complies with Section 2 of the Voting Rights Act.

The Court: (1) **APPROVES** the County Map and (2) **GRANTS** the County's motion for approval of its proposed redistricting map and to modify the preliminary injunction to allow (1) the Council to pass a redistricting bill to enact the proposed redistricting map, including the invocation of Section 208(e) of the Baltimore County Charter to call an emergency legislative session and excusing the publication period set forth in Section 308(e) of the Charter, thus allowing the new proposed redistricting map to be enacted into law as soon as practicable, and (2) the County to conduct the 2022 election cycle and those following it pursuant to the passed redistricting bill

Baltimore County NAACP v Baltimore County – U.S. District Court of Maryland

Remaining Issue – Can Plaintiffs Be Considered A Prevailing Party and Are They Entitled to Fees?

Matter currently stayed, pending outcome in *Stinnie*, which is a 4th Circuit case pending before U.S. Supreme Court.

What else is going on?

LEGAL CHALLENGES ARISING WITH CREATION OF MAJORITY-MINORITY DISTRICTS AND COMPLIANCE WITH SECTION 2 OF THE VOTING RIGHTS ACT.

VOTE4MORE!

Public petition effort led by County residents to place a question on the 2024 General Election ballot in Baltimore County.

This ballot question would give citizens an opportunity to vote to amend the County Charter by enlarging the size of the County Council from 7 to 11 districts.

VOTE4MORE!

Charter Amendment Petition submitted is not legally sufficient and did not satisfied the requirements for the question to be placed on the November 2024 General Election ballot.

The total number of accepted signatures did not meet the requirement (10,000 Baltimore County registered voters) outlined in the Baltimore County Charter, Section 1202.

VOTE4MORE!

Plaintiff has, *pro se*, filed a Complaint in Circuit Court against Local Board of Elections Director and State Administrator for State Board of Elections seeking judicial review.

Asks for injunctive relief and determination that signatures were properly certified.

Council Bill 47-24

AN ACT concerning the Baltimore County Charter – the County Council – Composition of the Council – Number of Councilmembers

FOR the purpose of increasing the number of Councilmembers from seven to nine, beginning with the 2026 election cycle, among other things…

Council Bill 47-24

Current Legal Challenges

Fails to adhere to the single subject rule for ballot measures – takes the separate, additional step of changing the position of Council member from a part time to full time position.

Usurps the authority of the state legislature by purporting to alter the election system and structure of the Baltimore County Board of Education in violation of Maryland statutory law.

Creates, without proper public evaluation and process, an unlawful redistricting plan and map for the expanded nine-member council that would illegally dilute the voting power of Black/Persons of Color residents by limiting their election opportunities in violation of the federal Voting Rights Act – and apply the plan to the School Board.

Council Bill 47-24 – Single Subject Issue

Section 308(c) of the County Charter:

…Each law enacted by the county council shall embrace but one subject, which shall be described in its title; and no law, or section of law, shall be revived or amended by reference to its title or section only.

Council Bill 47-24 – Question of Usurping Authority

SECTION 5. AND BE IT FURTHER ENACTED, that the thirtieth day following the general election on November 5, 2024, the County Executive and County Council shall send written notification to the Baltimore County delegation to the Maryland General Assembly that § 3-2B-01 of the Education Article of the Annotated Code of Maryland relating to the composition and method of election of the Baltimore County Board of Education is to be amended in accordance with this Act to consist of: nine nonpartisan elected members, elected from the nine councilmanic districts of Baltimore County, as set forth in this Act, by the voters of that councilmanic district; two appointed members; and one student member.

Council Bill 47-24 – Redistricting Issue

Section 206. Council Districts.

(A) Baltimore County is divided into [seven] NINE council districts.

(B) FOLLOWING THE 2026 GENERAL ELECTION, REVISIONS OF COUNCIL DISTRICTS MAY ONLY BE enacted in accordance with Section 207 of this Charter AND MAY ONLY OCCUR: (1) BEFORE OCTOBER 1, 2025 OR AFTER EACH DECENNIAL CENSUS OF THE UNITED STATES; OR (2) UPON RATIFICATION OF AMENDMENTS TO THIS CHARTER BY THE VOTERS OF BALTIMORE COUNTY TO INCREASE OR DECREASE THE NUMBER OF COUNCIL DISTRICTS.

Council Bill 47-24 – Redistricting Issue

Section 207. Revision of Councilmanic Districts. (a) Not later than March 1 of the year after each decennial census of the United States, OR THE YEAR AFTER RATIFICATION OF AMENDMENTS TO THIS CHARTER TO INCREASE OR DECREASE THE NUMBER OF COUNCIL DISTRICTS, the County Council shall establish, by resolution, a councilmanic redistricting commission. The commission shall be composed of [five members appointed by the County Council] AN EQUAL NUMBER OF MEMBERS AS THE NUMBER OF COUNTY COUNCILMEMBERS ESTABLISHED BY THIS CHARTER, WITH ONE MEMBER NOMINATED BY EACH COUNCILMEMBER AND CONFIRMED BY THE COUNTY COUNCIL. A person who holds elective office is not eligible for appointment to the commission.

(b) The commission shall hold at least three public hearings, and, by October 15 of the 1 year in which the commission is appointed, the commission shall recommend to the county council legislation to revise, amend, or reconstitute[, but not to increase or decrease the number of,] councilmanic districts in effect at such time. THE COMMISSION MAY ONLY RECOMMEND TO THE COUNTY COUNCIL LEGISLATION TO INCREASE OR DECREASE THE NUMBER OF COUNCILMANIC DISTRICTS IF THE COMMISSION WAS CONSTITUTED PURSUANT TO SECTION 206(B)(2) OF THIS CHARTER. The legislation shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard is given to current natural, geographic, and community boundaries.

Additional Issues Worth Watching in the Baltimore Region

Baltimore City Board of Elections and Maryland Child Alliance, et al., v. Mayor and City Council of Baltimore, et al.

Baltimore Baby Bonus campaign wanted the City to provide a one-time, $1,000 payment to new parents, whether through adoption or birth, in order to provide children and families with needed resources.

The campaign collected more than the 10,000 signatures required to put the "baby bonus" on the ballot.

The City opposed the initiative, saying it violates state and local laws by circumventing legislators, and that the City did not have the funds to sustain such payments.

In August, the Baltimore City Circuit Court deemed this was illegal.

Baltimore City Board of Elections and Maryland Child Alliance, et al., v. Mayor and City Council of Baltimore, et al.

Maryland Supreme Court determined that the Circuit Court correctly determined that the Baby Bonus Amendment violates Article XI-A, § 3, of the Constitution of Maryland because it is not proper "charter material." *See Cheeks v. Cedlair Corp.*, 287 Md. 595, 608 (1980).

Benedict J. Frederick, III, et al. v. Baltimore City Board of Elections, et al.

Renew Baltimore submitted a petition to amend the Baltimore City Charter to include a cap on the City's real property tax rate beginning in fiscal year 2026.

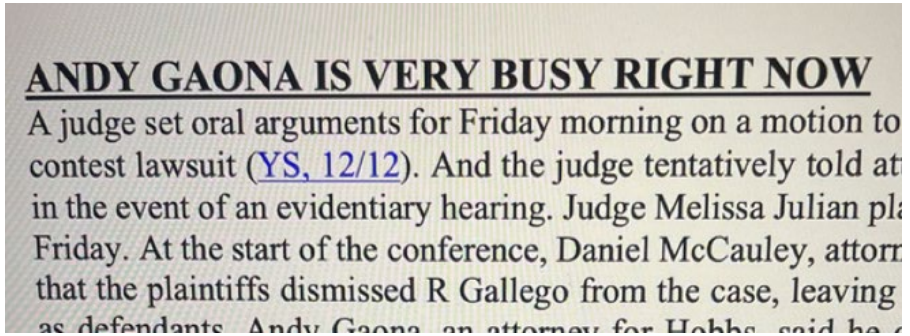
The Election Director of the Baltimore City Board of Elections denied certification of the petition as he determined that the petition would lead to a result prohibited by law.

Benedict J. Frederick, III, et al. v. Baltimore City Board of Elections, et al.

Maryland Supreme Court agreed. The circuit court correctly determined that the proposed charter amendment impermissibly sets the property tax rate in a manner inconsistent with § 6-302(a) of the Tax Property Article and, therefore, cannot be presented on the November 2024 general election ballot.

2022 – The Year of the Election Contest in Arizona

- *Fillmore v. Pinal County* (Legislative primary)
- *Townsend v. Pinal County* (Legislative primary)
- *Lake v. Hobbs* (Gubernatorial race)
- *Hamadeh v. Mayes* (Attorney General race that also went to a recount)
- *Borrelli v. Hobbs* (Gubernatorial race)
- *Finchem v. Fontes* (Secretary of State race)
- *Barnett v. Hobbs* (Generic challenge to the election results)
- *Golec v. Hobbs* (Generic challenge to the election results)
- *Busch v. Diaz/Hobbs* (State legislative race)
- *Davis v. Wadsack* (State legislative race)



ANDY GAONA IS VERY BUSY RIGHT NOW

A judge set oral arguments for Friday morning on a motion to
contest lawsuit (YS, 12/12). And the judge tentatively told at
in the event of an evidentiary hearing. Judge Melissa Julian pla
Friday. At the start of the conference, Daniel McCauley, attorn
that the plaintiffs dismissed R Gallego from the case, leaving
as defendants. Andy Gaona, an attorney for Hobbs, said he

2024 – The Year of Pre-Election Process/Procedure Challenges

- One "problem" that came up repeatedly in 2022's election contests was contestants taking issues with election processes and procedures that were in place before the election, and Arizona law – rightly – requires such challenges be brought before the election.
- Like many other swing states, Arizona has seen a flurry of pre-election litigation challenging everything from the provisions of our Elections Procedures Manual authorizing ballot drop boxes to the alleged failure of the Secretary of State and Maricopa County Recorder to remove allegedly ineligible voters from the voter rolls.



Refusal to Certify Election Results – A Dangerous New Trend

- The country is facing a dangerous new trend of officials responsible for "canvassing" election results refusing to do so based on conspiracy theories and a refusal to accept lawful election results.

- In 2022, two county supervisors in Cochise County, Arizona refused to certify their county's election results. This led the Secretary of State to send a series of letters demanding that they do so because performing the canvass is a non-discretionary duty under state law. They refused, leading the Secretary to file a mandamus action (*Hobbs v. Cochise County*). After a brief hearing, the trial court ordered the supervisors to canvass.

Post-Election "Audits" and Full Hand Counts

- Post-2020, Maricopa County, Arizona was home to the infamous "audit" of the county's election results fostered by an Arizona Senate subpoena and "investigation" performed by leader contractor Cyber Ninjas. It was an all-around disaster (remember the allegations of "bamboo fibers" in ballots?)
- Then, in 2022, Arizona saw a push for various counties to conduct a full hand count. The center of the controversy was Cochise County (yes, the same county that refused to certify its election results). This led to litigation, and a judge ultimately enjoined Cochise County from performing a full hand count of its election results (*Arizona Alliance for Retired Americans v. Cochise County*). This will continue to be a national trend to monitor. s