

COURT OF APPEALS OF MARYLAND

Fritzsche v. Maryland State Board of Elections, 397 Md. 331

916 A.2d 1015 (2007) · No. No. 73, Sept. Term, 2006 · Decided February 12, 2007

SUMMARY

The Maryland Court of Appeals affirmed the denial of a temporary restraining order and preliminary injunction sought by voters who argued that delays in distributing absentee ballots unlawfully prevented timely mailing. The court held that the record did not establish that the absentee-ballot postmark deadline was arbitrary, capricious, or unreasonable as applied, and declined to require acceptance of ballots postmarked on Election Day. The court also relied on the principle that statutory election requirements designed to protect election integrity must be enforced.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Bell, C.J.; Raker, J.; Wilner, J.; Harrell, J.; Battaglia, J.; Greene, J.; John C. Eldridge, J.
JURISDICTION	Maryland
DECIDED	February 12, 2007
DOCKET	No. 73, Sept. Term, 2006
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the Circuit Court for Anne Arundel County's denial of a temporary restraining order and preliminary injunction seeking to require acceptance of absentee ballots postmarked on Election Day.
STANDARD OF REVIEW	A temporary restraining order may issue only upon specific facts showing immediate, substantial, and irreparable harm before a full adversary hearing. Courts consider likelihood of success on the merits, balance of convenience, irreparable injury, and the public interest. On the merits of the election regulation, the relevant question was whether the regulation, as applied, was arbitrary, capricious, or unreasonable.
PRECEDENTIAL VALUE	Published opinion of the Maryland Court of Appeals; precedential.
PARTIES	Melisande C. Fritzsche, et al. v. Maryland State Board of Elections, et al.

TOPICS

absentee voting

election administration

election law

interlocutory appeal

equitable relief

PRACTICE AREAS

Election law

Administrative law

Appellate procedure

Constitutional law

Remedies

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion in denying a temporary restraining order and preliminary injunction requiring the State Board of Elections to accept absentee ballots postmarked on Election Day.
2. Whether the absentee-ballot postmark regulation was arbitrary, capricious, or unreasonable as applied to voters whose ballots allegedly were delayed by election officials' processing problems.
3. Whether *Lamb v. Hammond* required Maryland to accommodate voters by accepting absentee ballots that failed the applicable postmark deadline.

HOLDINGS

1. The petitioners failed to establish the factual basis necessary for a temporary restraining order or preliminary injunction, including a sufficient likelihood of success on the merits and a causal connection between the Board's processing of absentee ballots and the late return of the ballots.
2. The petitioners did not demonstrate that COMAR 33.11.03.08(b), which required an absentee ballot received after the polls closed to have been mailed before Election Day, was arbitrary, capricious, or unreasonable as applied.
3. *Lamb v. Hammond* did not require Maryland to accept the petitioners' noncompliant absentee ballots; instead, it supported enforcing mandatory statutory and regulatory requirements designed to protect election integrity.

KEY QUOTATIONS

“This Court will not second guess the decision made by the State Board of Elections to refuse to include any absentee ballots that failed the requirements of COMAR 33.11.03.08(b).” (397 Md. at 341)

“Instead, Lamb compels this Court, in the absence of any clear evidence of the opposite conclusion, to exclude of the noncompliant votes in order to safeguard the election process.” (397 Md. at 342)

FACTUAL BACKGROUND

Melisande Fritzsche, a Maryland-registered voter attending college in New York, requested an absentee ballot for the 2006 general election. The ballot was postmarked November 1 but did not arrive until the evening of November 6, after routine mail pickups and nearby post offices had closed, so she mailed it on Election Day, November 7. Maryland regulations required an absentee ballot received after the polls closed to have been mailed before Election Day, as verified by a postmark or qualifying affidavit, and the Board would not count the ballot.

PROCEDURAL HISTORY

The petitioners filed suit on November 6, 2006, alleging that Maryland's absentee-ballot postmark deadline violated state and federal constitutional protections and Maryland election law. The circuit court denied emergency injunctive relief. The petitioners filed a direct interlocutory appeal and sought certiorari; the Court of Appeals granted certiorari, heard argument on November 13, 2006, and affirmed by order, later issuing this opinion explaining its decision.

DISPOSITION

affirmed

CASES CITED

- McDonald v. Board of Election Commissioners of Chicago, 394 U.S. 802, 807-08, 89 S. Ct. 1404, 1408, 22 L. Ed. 2d 739, 745 (1969)
- Department of Transportation v. Armacost, 299 Md. 392, 474 A.2d 191 (1984)
- In re Application of Kimmer, 392 Md. 251, 260, 896 A.2d 1006, 1012 (2006)
- LeJeune v. Coin Acceptors, Inc., 381 Md. 288, 300-01, 849 A.2d 451, 458-59 (2004)
- Fogle v. H & G Restaurant, Inc., 337 Md. 441, 654 A.2d 449 (1995)
- Lerner v. Lerner, 306 Md. 771, 776, 511 A.2d 501, 504 (1986)
- State Department of Health and Mental Hygiene v. Baltimore County, 281 Md. 548, 554, 383 A.2d 51, 55 (1977)
- Baltimore Import Car Service & Storage, Inc. v. Maryland Port Authority, 258 Md. 335, 342, 265 A.2d 866, 869 (1970)
- Stacy v. Montgomery County, 239 Md. 189, 194, 210 A.2d 540, 543 (1965)
- Kaufman v. Taxicab Bureau, 236 Md. 476, 204 A.2d 521, 523 (1964), cert. denied, 382 U.S. 849 (1965)
- Serio v. Mayor & City Council of Baltimore, 208 Md. 545, 551, 119 A.2d 387, 390 (1956)
- Masson v. Reindollar, 193 Md. 683, 688-89, 69 A.2d 482, 489 (1949)
- Gianforte v. Board of License Commissioners, 190 Md. 492, 58 A.2d 902 (1948)
- Board of Education of Carroll County v. Allender, 206 Md. 466, 475, 112 A.2d 455, 459 (1955)
- Heaps v. Cobb, 185 Md. 372, 380, 45 A.2d 73, 76 (1945)
- Hecht v. Crook, 184 Md. 271, 280-81, 40 A.2d 673, 677 (1945)
- Lamb v. Hammond, 308 Md. 286, 518 A.2d 1057 (1986)
- Fritzsche v. State, 395 Md. 485, 910 A.2d 1100 (2006)