

COURT OF APPEALS OF MARYLAND

In re: Petition for Emergency Remedy by the Maryland State Board of Elections

No. 21, September Term, 2022; COA-REG-0021-2022 · No. No. 21, September Term, 2022; COA-REG-0021-2022 · Decided October 7, 2022

SUMMARY

The Court of Appeals of Maryland affirmed the Circuit Court for Montgomery County's order granting the Maryland State Board of Elections an emergency remedy to permit the early canvassing and tabulation of mail-in ballots for the 2022 Gubernatorial General Election. The court also affirmed the suspension of specified statutory restrictions governing the timing of canvassing, opening ballot envelopes, and releasing unofficial results, and ordered costs against the appellant.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Per Curiam; Fader, C.J.; Watts; Hotten; Booth; Biran; Eaves; Adkins; Sally D. Adkins, Senior Judge, Specially Assigned
JURISDICTION	Maryland
DECIDED	October 7, 2022
DOCKET	No. 21, September Term, 2022; COA-REG-0021-2022
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Circuit Court for Montgomery County concerning an emergency petition to permit early canvassing and tabulation of mail-in ballots for the 2022 Gubernatorial General Election. The Court of Appeals granted the State Board's petition for a writ of certiorari and affirmed the circuit court's order.
PRECEDENTIAL VALUE	Published per curiam order
PARTIES	Daniel Cox v. Maryland State Board of Elections

TOPICS

[election administration](#)[election law](#)[writ of certiorari](#)[appellate procedure](#)[remedies](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Circuit Court for Montgomery County's emergency order permitting early canvassing and tabulation of mail-in ballots and suspending specified statutory timing restrictions should be affirmed.
2. Whether the circuit court's determination that Election Law § 8-103(b)(1) was not unconstitutional and that the circumstances constituted an emergency should stand.

HOLDINGS

1. The Court of Appeals affirmed in all respects the Circuit Court for Montgomery County's Opinion and Order granting the State Board's petition for an emergency remedy and permitting the specified early canvassing, tabulation, and reporting of mail-in ballots for the 2022 Gubernatorial General Election.

KEY QUOTATIONS

“ORDERED, by the Court of Appeals of Maryland, that the Opinion and Order entered on September 26, 2022 by the Circuit Court for Montgomery County are AFFIRMED in all respects” (3)

“For reasons to be stated later in an opinion to be filed” (3)

FACTUAL BACKGROUND

The Maryland State Board of Elections sought authority to begin canvassing and tabulating mail-in ballots before the ordinary statutory timetable for the 2022 Gubernatorial General Election. The circuit court found that the undisputed circumstances constituted the emergency circumstances contemplated by Election Law § 8-103(b)(1) and suspended specified restrictions governing when local boards could meet, open ballot envelopes, canvass, tabulate, and release unofficial results. Daniel Cox intervened and challenged the emergency remedy and its constitutionality.

PROCEDURAL HISTORY

On September 2, 2022, the Maryland State Board of Elections petitioned the Circuit Court for Montgomery County under Election Law § 8-103(b)(1) for an emergency remedy permitting early canvassing and tabulation of mail-in ballots. Daniel Cox intervened and opposed the petition. On September 26, 2022, the circuit court granted the petition, found no constitutional defect in § 8-103(b)(1), and suspended specified statutory timing restrictions for the 2022 election. Cox appealed and sought a stay; the Court of Special Appeals denied the stay. The Court of Appeals granted the State Board's petition for a writ of certiorari, conducted expedited review, and affirmed the circuit court's order in all respects.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

None. The mandate was ordered to issue forthwith.

OPINION

Emergency Remedy of Bd. of Elections

PER CURIAM.

Circuit Court for Montgomery County Case No. C-15-CV-22-003258 Argued: October 7, 2022

IN THE COURT OF APPEALS

OF MARYLAND

No. 21 September Term, 2022

IN RE: PETITION FOR EMERGENCY

REMEDY BY THE MARYLAND STATE

BOARD OF ELECTIONS

Fader, C.J., Watts Hotten Booth Biran Eaves Adkins, Sally D. (Senior Judge, Specially Assigned)
JJ.

PER CURIAM ORDER

Filed: October 7, 2022

* IN THE

* COURT OF APPEALS

IN RE: PETITION FOR EMERGENCY

REMEDY BY THE MARYLAND * OF MARYLAND

STATE BOARD OF ELECTIONS

* COA-REG-0021-2022

* No. 21 * September Term, 2022

PER CURIAM ORDER

Upon consideration of the filings by Daniel Cox, Appellant, and the Maryland State Board of Elections (the “State Board”), Appellee, and oral argument conducted in the above-captioned case on October 7, 2022, WHEREAS, on September 2, 2022, the State Board filed in the Circuit Court for Montgomery County a Petition for Emergency Remedy by the Maryland State Board of Elections in which the State Board petitioned the circuit court pursuant to § 8-103(b)(1) of the Election Law Article of the Maryland Code for an emergency remedy permitting the early canvassing and tabulation of mail-in ballots for the 2022 Gubernatorial General Election; and WHEREAS, on September 14, 2022, Appellant filed in the Circuit Court for Montgomery County a motion to intervene and a response in opposition to the petition and a memorandum in support thereof, and on September 16, 2022, the Circuit Court for Montgomery County granted Appellant’s Motion to Intervene; and WHEREAS, on September 26, 2022, after a hearing, the Circuit Court for Montgomery County entered an Opinion and Order, in which the court: (1) granted the Petition for Emergency Remedy by the State Board; and (2) ruled that it did “not find the provisions of § 8-103(b)(1) of the Election Law Article to be unconstitutional” and that “the

undisputed facts of this case amount[ed] to emergency circumstances envisioned in the law”; and WHEREAS, the Circuit Court for Montgomery County ordered the following: that the restriction imposed by [Election Law Article (“EL”)] § 11- 302(a), requiring each local board to meet “[f]ollowing an election” in order to canvass mail-in ballots was suspended from application to the 2022 Gubernatorial General Election, that the restriction imposed by EL § 11-302(b)(1), forbidding a local board of canvassers from opening “any envelope of an absentee ballot prior to 8 a.m. on the Wednesday following election day” was suspended from application to the 2022 Gubernatorial General Election, that all local boards of canvassers may meet and open envelopes, canvass, and tabulate mail-in ballots no earlier than 8:00 a.m. on October 1, 2022, that the requirement imposed by EL § 11-302(e), directing each local board to “prepare and release a report of the unofficial results of the absentee ballot vote tabulation” at the end of each day of canvassing was suspended from application to the 2022 Gubernatorial General Election, and that all local boards of election may prepare and release an unofficial report of the mail-in ballot tabulation no earlier than the closing of the polls on election day, November 8, 2022, and thereafter at the end of each day of canvassing, and WHEREAS, on September 27, 2022, Appellant noted an appeal to the Court of Special Appeals and sought a stay of the circuit court’s order and an expedited schedule for resolving the appeal; and WHEREAS, on September 28, 2022, the State Board filed in this Court a Petition for Writ of Certiorari and Request for Expedited Review; and 2 WHEREAS, on September 29, 2022, the Court of Special Appeals issued an order denying Appellant’s motion for stay; and WHEREAS, on September 30, 2022, Appellant filed in this Court a response to the State Board’s petition for writ of certiorari in which he agreed that the petition should be granted; and WHEREAS, on September 30, 2022, this Court granted the petition for writ of certiorari and ordered expedited briefing; and WHEREAS, on October 7, 2022, this Court held oral argument, For reasons to be stated later in an opinion to be filed, it is this 7th day of October, 2022, ORDERED, by the Court of Appeals of Maryland, that the Opinion and Order entered on September 26, 2022 by the Circuit Court for Montgomery County are AFFIRMED in all respects; and it is further ORDERED, that costs are to be paid by Appellant and the mandate is to issue forthwith. Pursuant to Maryland Uniform Electronic Legal Materials Act (§§ 10-1601 et seq. of the State Government Article) this document is authentic. 2022-10-07 15:17-04:00 /s/ Matthew J. Fader Chief Judge Suzanne C. Johnson, Clerk 3