

STEPHEN N. ABRAMS

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IN THE

*

COURT OF APPEALS

v.

*

OF MARYLAND

LINDA H. LAMONE, *et al.*

*

No. 142, Sept. Term, 2005

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LINE REGARDING MOTION TO MODIFY ORDER

Respondents Linda H. Lamone, the State Administrator of Elections, and the State Board of Elections (“State Board”), through their undersigned attorneys, hereby submit this Line regarding the State Board’s August 28, 2006 motion to modify the Court’s August 25, 2006 order and, in particular, the proposed modified order submitted by the petitioner, Stephen N. Abrams. For the reasons that follow, inclusion of the additional terms suggested by Mr. Abrams is inadvisable, and the State Board respectfully requests that the Court modify its order as requested by the State Board.

1. The State Board’s motion requests that the Court modify its Order to require the State Board to provide direction to the local boards to: 1) conspicuously post notices in each polling location informing voters of the Court’s order regarding Mr. Perez’s lack of qualifications for the office of Attorney General and that any votes cast for Mr. Perez will not be counted; and 2) provide the same standard of notice to voters who will be using paper ballots.

2. While Mr. Abrams has stated that he does not object to the relief sought in the State Board’s motion, he has submitted an alternative proposed order.

3. Mr. Abrams' alternative proposed order would revise the order proposed by the State Board in three ways: first, by specifying that the notice provided to voters at the polling places and to absentee voters be given in English and Spanish; second, by requiring the State Board to direct local boards of elections to "advertise in English and Spanish in appropriate media" that votes cast for Mr. Perez will not be counted; and third, by directing "costs to be paid by the defendants." Each proposed revision raises problems of implementation that are better resolved by allowing the State Board and local boards of elections to apply their expertise to ensure that voters receive the most practicable form of notice.

4. Federal law imposes certain requirements with respect to dual language voting materials. *See* 42 U.S.C. § 1973aa-1a. Montgomery County is the only Maryland jurisdiction that meets the triggering population threshold under 42 U.S.C. § 1973aa-1a(b)(2). The State Board and the local boards of elections can be expected to implement the Court's modified order, as proposed by the State Board, in a manner that complies with federal and State law.

5. It is unclear what is meant by Mr. Abrams' proposed requirement of advertising in "appropriate media." It will be impractical to arrange for purchased advertising in many forms of media in the period remaining before the September 12 primary. It is most important to ensure that the Democratic primary voters who would be presented with a ballot (whether absentee, provisional or electronic) receive notice that Mr.

Perez is ineligible as a candidate for the office of Attorney General and that votes for him will not be counted. Targeted forms of notice accompanying absentee ballots and provided at polling places are more feasible ways of ensuring that Democratic primary voters receive this information than, for instance, advertising to radio listeners generally.

6. The intended effect of Mr. Abrams' suggested inclusion of additional language in the proposed order providing that costs are to be paid by the defendants is unclear. The costs of providing the required notice to voters will be paid by the State, not by either of the private parties in the litigation. The costs of the appeal are, under the terms of the Court's August 25 order, to be paid by the respondents, and neither the State Board's motion nor its proposed order would alter this element of the existing order.

WHEREFORE, the State Board respectfully requests that the Court modify its order as set forth in the State Board's August 28, 2006 motion to modify the order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 29th day of August 2006, a copy of the foregoing Motion to Modify Order was sent by email and served by first-class mail on:

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