

#### ASSISTANT ATTORNEY GENERAL'S REPORT

Ms. Brantley reported that SBE was named as a defendant in a lawsuit filed in Howard County Circuit Court, and served on February 4, 2009. The suit challenges the validity of a petition for referendum that seeks to bring a locally enacted law to a vote in Howard County. Plaintiffs claimed that petition circulators failed to comply with State and county laws governing the petition process, and additionally challenged the sufficiency determinations of the local board regarding the petition. SBE has filed a motion to dismiss the case against it on the ground that SBE is not a proper defendant in the case because the allegations solely involve the actions of Defendants Howard County Board of Elections and the petition sponsors. Since that filing, the local board has determined that the petition was insufficient, and thus, has moved to dismiss the case altogether. The case is set for a preliminary hearing on April 21<sup>st</sup>. The case is *Greenberg Gibbons Commercial Corp. v. Howard Co. Board of Elections, et al.*

Ms. Brantley reported that on March 18<sup>th</sup>, at the request of the Howard County Delegation, she and Donna Duncan appeared before the delegation to discuss recent events in Howard County concerning the petition for referendum at issue in the Greenberg case, which was recently found to be insufficient by the local board. There was a discussion about the *Doe v. Montgomery Co. Board of Elections* case, in which the Court of Appeals rejected that election officials had the authority to validate petition signatures on the basis that they could determine with "reasonable certainty" that the person signing was a registered voter. The Court stated that: "The plain meaning of the words 'shall' and 'requirements' in Section 6-203 reflect that the statutory provisions require that the voter must sign his or her name 'as it appears on the statewide voter registration lists or the individual's surname of registration and at least one full given name and the initials of any other names'; the provisions are mandatory, not suggestive." *Doe v. Mont. Co. Bd. of Elections*, 406 Md. 697, 728 (2008). Moreover, the Court reaffirmed its holding in *Barnes v. State*, 236 Md. 564 (1964), that the legislative provisions regarding additional information required to accompany a petition are mandatory. 406 Md. at 729-731. Senator Kasemeyer introduced emergency legislation, SB 1067, to allow election officials to return to the "reason certainty" standard.

Ms. Brantley reported that on March 2, 2009, she advised Ms. Lamone about proposed legislation, SB 499 and HB 1286, that would take out a requirement in the State's election law in EL § 3-503 that election officials remove a voter's name from the voter registry if the voter both (1) fails to respond to a confirmation notice and (2) subsequently fails "to vote in an election in the period ending with the second general election ..." The letter of advice concluded that there is a strong risk that a court would declare that the legislation would violate the federal National Voter Registration Act (NVRA), as well as the Help America Vote Act (HAVA).

Finally, Ms. Brantley reported that on March 16, 2009, she issued advice to Delegate Jon Cardin concerning HB 738, which would allow SBE to certify and use a voting system that does not have a voter-verifiable paper record. The change will allow voters with disabilities to continue using the State's current DRE touchscreen voting machines. Delegate Cardin asked whether there is "an equal opportunity issue with the referenced bill if the DREs are accessible and available to anyone who chooses to use it." The letter concluded that such a plan would not violate the Americans with Disabilities Act (ADA), the Help America Vote Act (HAVA), the Equal Protection Clause of the United States Constitution, or Article 14 of the Maryland Constitution.

#### PUBLIC TESTIMONY

Mr. Walker introduced Mark Norman, who had asked to address the Board regarding a petition issue in Howard County. Mr. Norman stated that he was leading a petition effort in Howard County to bring to referendum a zoning bill regarding a Turf Valley development project. According to Mr. Norman, his group initially submitted 3,300 signatures, of which 2,600 were certified by the Howard County Board of Elections. Based on this number, his group would then need an additional 5,000 signatures. To meet that requirement, they collected 9,380 signatures (assuming that the 22% rejection rate would continue). On February 12<sup>th</sup>, Mr. Norman was informed that Howard County had stopped counting signatures. The Board had reviewed and changed the procedures for verifying petitions based on the Court of Appeal's decision in the *Doe* case. That decision indicated that, instead of simply verifying that a petition signature was of a registered voter, the Board must verify that the signature matches the registration record (for example, if the voter is registered as Robert Jones, the petition signature would have to be "Robert Jones" and not "Bob Jones"). Using this verification method, the rejection rate went from 22 to 85 percent. Based on that rejection rate, the Board concluded that there was no way the petition submitted by Mr. Norman would be sufficient.

Mr. Norman stated his opinion that this policy change was unfair to his group and erodes a fundamental right to petition local government. He further noted that they had met with the county and were conscientiously following all of the instructions (including those posted on SBE's website). Mr. Norman noted that he is not blaming either the State Board or the Howard County Board, whose staff was very helpful, but he felt that changing the rules midway through the process was wrong and that the State Board act to restore the petitioners' fundamental rights.

Mr. Walker responded that, while he appreciates the position of the petitioners, the State Board is bound to comply with the Court of Appeals decision as instructed by the Attorney General. Mr. Walker stated that the State Board does not have the authority to do otherwise.