

MICHAEL D SMIGIEL, Sr, <i>et al</i>	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	FOR
PETER FRANCHOT, <i>et al</i>	*	CARROLL COUNTY
Defendants	*	Case No: C-07-49648
	*	
* * * * *		

OPINION

This matter is before the Court on a Verified Complaint for Declaratory Relief filed pursuant to the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, Sections 3-401 & 3-409, *et seq.*, a Motion for Summary Judgment filed on behalf of the Plaintiffs in this matter, and a Motion to Dismiss, or in the Alternative Motion for Summary Judgment filed on behalf of the Defendants.

PARTIES

Plaintiffs

- 1) Plaintiff *Michael D. Smigiel, Sr.* is a citizen and resident of Cecil County, Maryland, where he lives, works and pays taxes to the State of Maryland. He is also a member of the Maryland House of Delegates.

- 2) Plaintiff *John C. Pardoe* is a citizen and resident of Carroll County, Maryland, where he lives, works and pays taxes to the State of Maryland. He is also the President and Chief Executive Officer

of Byte Right Support, Inc., a corporation organized and existing under the laws of the State of Maryland engaged in the business of computer sales and support services.

- 3) Plaintiff *David R. Brinkley* is a citizen and resident of Frederick County, Maryland, where he lives, works and pays taxes to the State of Maryland. He is also a member of the Maryland Senate.
- 4) Plaintiff *Allan H. Kittleman* is a citizen and resident of Howard County, Maryland, where he lives, works and pays taxes to the State of Maryland. He is also a member of the Maryland Senate.
- 5) Plaintiff *Anthony O'Donnell* is a citizen and resident of Calvert County, Maryland, where he lives, works and pays taxes to the State of Maryland. He is also a member of the Maryland House of Delegates.
- 6) Plaintiff *Christopher Shank* is a citizen and resident of Washington County, Maryland, where he lives, works and pays taxes to the State of Maryland. He is also a member of the Maryland House of Delegates.

Defendants

- 1) Defendant *Peter Franchot*, is the Comptroller of the State of Maryland
- 2) Defendant *Department of Health & Mental Hygiene* is a state agency doing business throughout the State of Maryland.
- 3) Defendant *Maryland Health Care Commission* is a state agency doing business throughout the State of Maryland.

- 4) Defendant *Health Services Cost Review Commission* is a state agency doing business throughout the State of Maryland.
- 5) Defendant *Dennis C. Schnepfe* is the Secretary of State of Maryland
- 6) Defendant *State Board of Elections* is a state agency doing business throughout the State of Maryland.
- 7) Defendant *Carroll County Board of Elections* is a County agency doing business throughout Carroll County.

BACKGROUND

On October 15, 2007, Martin O'Malley, Governor of the State of Maryland, issued Executive Order 01.01.2007.23 proclaiming his intention to convene the Maryland General Assembly in an extra-ordinary legislative session.

It was Governor O'Malley's belief that emergency action was needed to cure the State's alleged \$1.7 billion projected structural deficit for the Fiscal Year 2009 and similar budget shortfalls for future Fiscal Years. Governor O'Malley further contended that immediate action was needed in order to prevent the estimated budget deficit from expanding to an additional \$500 million.

The plan for resolving the structural deficit included, among other actions, a raise in income tax to generate additional revenue, a raise in the corporate income tax, the closure of certain corporate tax loopholes, a raise in the tobacco tax, a Constitutional Amendment allowing for state regulated slot machines, and a series of "targeted investments" in state services such as transportation, education,

and health care.¹ Conceding to his request, the General Assembly convened legislative session on Monday, October 29, 2007.

After the introduction of the proposed legislation, the standing committees with jurisdiction over the legislation held closed hearings for the remainder of that week, through Saturday, November 3, 2007. During the following week of November 5, 2007, the Senate considered five bills that were reported favorably by the committees, along with many proposed amendments. By Friday, November 9, 2007 the Senate had passed its versions of the five approved bills and sent them forward to the House of Delegates for consideration.

Since the Senate's desk was clear and no bills had yet reached consideration on the House floor, the Senate moved to adjourn for the remainder

¹ *Senate Bill 1, House Bill 1: The Budget Reconciliation Act*

This Act would repeal state aid to certain counties and repeal tax exemptions for equipment used to reduce dependence on foreign oil, while directing the Comptroller to distribute additional tax revenues to fund certain educational institutions and to establish a variety of special funds.

Senate Bill 2, House Bill 2: The Tax Reform Act of 2007

Increasing tax revenue starting on January 1, 2008 through new individual income tax brackets; higher corporate and income tax rates; fewer tax exemptions; new sales taxes for patrons of health clubs and tanning salons; expanded real estate recordation and transfer taxes; the Act would collect and to distribute an additional \$77.1 million which the Administration expects to receive from Maryland taxpayers in fiscal year 2008, and an additional \$412.2 million in fiscal year 2009 and beyond.

Senate Bill 3, House Bill 3: Maryland Education Trust Fund - Video Lottery Terminals

This Act would collect revenue from the licensing and operation of slot machines throughout the State, and to distribute this revenue to an Education Trust Fund for needy schools, to a Purse Dedication Account for winning horses, to a Racetrack Facility Renewal Account for underfunded race tracks, and up to \$100 million per year for fertile horses and those who breed them.

Senate Bill 4, House Bill 4: Video Lottery Terminals - Authorization and Limitations

Authorizing the state to sell five slot machine licenses for the primary purpose of funding state educational institutions. This revenue plan would permit the installation of up to 15,000 machines at four specific locations, including the Eastern Shore, the Baltimore Metropolitan Area, Cecil County and Western Maryland.

Senate Bill 5, House Bill 5: The Transportation Investment Act

Proposing to increase the vehicle excise tax rate, raising the fee to obtain a certificate of title, increasing the sales tax by 20%, raising the cigarette tax, imposing a 20% amusement tax on electronic bingo, and requiring the Comptroller to collect and to distribute revenues raised from these taxes.

Senate Bill 6, House Bill 6 :Working Families and Small Business Health Coverage Act

This bill would establish a Small Employer Health Insurance Premium Subsidy Program to be administered by the Maryland Health Care Commission and the Department of Health and Mental Hygiene. It would also require the Comptroller to account for a newly established Health Care Coverage Fund which shall be subsidized through portions of hospital fees to be assessed by the State Health Services Cost Review Commission.

of the Veteran's Day holiday weekend, to reconvene Tuesday morning, November 13, 2007. Notification was sent to Chief Clerk of the House of Delegates, Mary Monahan.

By Monday November 12, the House of Delegates had still made little progress on its portion of the proposed legislative package. Seeking an extension of the Senate's adjournment, Senator Mike Miller, President of the Senate, instructed the Secretary of the Senate, William "Billy" Addison, to contact the Speaker of the House of Delegates, Mike Busch, regarding how to handle the planned extended absence. Not wishing to make the commute from his home in Upper Marlboro to the State House in Annapolis, Mr. Addison phoned Mary Monahan for assistance. Secretary Addison requested Ms. Monahan confer with the Speaker regarding an opinion as to how to handle the proposal from Sen. Miller.

Unable to locate the speaker personally, Ms. Monahan advised Mr. Busch's support staff of the inquiry and tendered them a copy of House Rule #80². Upon receiving acquiescence to the adjournment from Speaker Busch, Ms. Monahan received instructions from Secretary Addison to remove Senate letterhead from his office and compose a letter to the House requesting the adjournment until Thursday November 15, 2007, under the auspices that the letter had come from the Senate itself. Feeling ill, Ms. Monahan retrieved the letterhead

² Essentially a recitation of Article III §25 of the Maryland State Constitution, the rule states that "Neither House shall, without the consent of the other, adjourn for more than three days, at any one time, nor adjourn to any other place, than that in which the House shall be sitting, without the concurrent vote of two-thirds of the members present."

and instructed her staff to compose both the letter requesting the adjournment, and also the subsequent letter from the Speaker's office consenting thereto.³

Upon retiring to her home, Ms. Monahan testified that she received a phone call from her assistant, Colleen Cassidy, requesting clarification as to which dates to place upon the letters. Unable to answer the question adequately, Ms. Monahan instructed Ms. Cassidy to consult the Speaker's legal counsel for guidance. According to Ms. Monahan's testimony, it was ultimately decided that the letter purportedly from the Senate requesting the adjournment should be back-dated to November 9, 2007, and the letter from the House of Delegates granting the request dated as November 12, 2007.⁴

Ms. Monahan testified further that when she returned to work on Tuesday November 13, she received both letters and instructed them to be journalized into the House journal, but not adopted or read on the House floor. When questioned why she had them journalized without being adopted, she stated that she could not recall, and that she had been ill at the time.⁵

On Thursday November 15, 2007, the Senate reconvened its session resuming deliberations. By Monday, November 19, 2007, the House and Senate moved to adjourn their session "Sine Die," having passed an amended version of the Governor's comprehensive spending package. Governor O'Malley was presented with the legislation later that same day, which he signed into law.

³ See Deposition of Mary Monahan; pg 97

⁴ See Deposition of Mary Monahan; pgs 84-105.

⁵ See Deposition of Mary Monahan; pg. 111.

Q: Why did it seem like the thing to do at that time?

A: I was sick – We've discussed this before – I wasn't thinking correctly, and I wanted it Journalized.

On Wednesday, December 13, 2007, the above captioned action was filed before this Court. In addition to a prayer for Emergency Relief, Plaintiffs filed several motions for Preliminary Injunction, Temporary Restraining Order, a Verified Complaint for Declaratory and Injunctive relief, and a Motion for Summary Judgment. Defendants answered soon after with a Motion to Dismiss or in the Alternative for Summary Judgment. A hearing was scheduled for December 21, 2007, with counsel for both sides instructed that it was to be a hearing by affidavit only.

In response to the instruction that no live testimony was to be permitted during the course of the hearing, Plaintiffs filed for a deposition of Mary Monahan. Attempting to prevent the testimony as unnecessary, Defendants filed opposition under a theory that as Chief Clerk, Ms. Monahan was protected by legislative privilege. After due consideration, this Court determined that the legislative privilege Defendants sought to invoke did not apply to Ms. Monahan, and therefore granted the Deposition with an instruction that it was to be completed by Monday December 17, 2007.

However, upon attempting to serve Ms. Monahan with notice, Plaintiffs realized that they would not be able to carry out the Deposition as planned, for Ms. Monahan was unable to be located, and her whereabouts unknown. In response Plaintiffs filed for a continuance of the hearing scheduled for December 21, 2007 stating that the testimony Ms. Monahan would offer was essential to their case.

After hearing arguments from both parties as to the need for a continuance, the Court held that it was in the best interests of efficiency and expediency to continue the hearing to January 4, 2008. Responding to the postponement, Defendants opted to appeal this Court's decision allowing the Deposition of Mary Monahan to the Court of Special Appeals.

After a review of the file and all arguments presented before it, the Court of Special Appeals determined that there was no privilege to be had and summarily denied the Defendants' Appeal. Undeterred, Defendants applied for *Certiorari* to the Court of Appeals seeking a renewal of their opposition. Upon a review of the pleadings, *Certiorari* was denied.

Having exhausted their appellate efforts, the Deposition of Ms. Monahan occurred on Wednesday January 2, and the hearing in the matter *Sub Judice* held as scheduled Friday January 4, 2008.

THE LAW

Declaratory Judgment Standard

Pursuant to §§3-401 & 3-409 of the Maryland Courts and Judicial Proceedings Article, a Court may grant a declaratory judgment when it will serve to terminate an uncertainty or controversy at issue if: (1) an actual controversy exists between contending parties; (2) antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or (3) a party asserts a legal relation, status, right or privilege and this is challenged or denied by an adversary party, who has or asserts a concrete interest in it. *Phillips v. Allstate Indem Co.*, 156 Md App. 729, 848 A.2d 681 (2004).

Motion for Summary Judgment Standard

Summary judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Md. Rule 2-501. The purpose of the summary judgment procedure is to allow the court to decide whether there is an issue of fact sufficiently material to be tried. *Hartford Ins. Co. v. Manor Inn of Bethesda, Inc.*, 335 Md. 135, 144 (1994). A material fact is a fact that, depending on how it is decided by the trier of fact, will affect the outcome of the case *Mandl v. Bailey*, 159 Md.App. 64, 82 (2004); citing *Arroyo v. Bd. of Educ. of Howard County*, 381 Md. 646, 654 (2004).

The court construes the facts properly before the court, and any reasonable inferences that may be drawn from them, in a light most favorable to the non-moving party. *Remsburg v. Montgomery*, 376 Md. 568, 579-80 (2003) citing *Todd v. MTA*, 373 Md. 149, 154-55 (2003). If the record reveals that there are material facts in dispute, summary judgment is not appropriate. *Horst v. Kraft*, 247 Md. 455, 459 (1967); *Lawless v. Merrick*, 227 Md. 65, 70 (1961).

Motion to Dismiss Standard

In considering a motion to dismiss filed pursuant to Maryland Rule 2-322, the Court “must assume the truth of all well pleaded relevant and material factual allegations in the complaint as well as any reasonable inferences that might be drawn from those allegations. *Hogan v. The Maryland State Dental Ass'n*, 155 Md.App. 556, 561 (2004); (citing *Allied Inv. Corp. v. Jasen*, 354 Md. 547, 555 (1999) (other citations omitted)). A claim is properly dismissed when the alleged facts and reasonable inferences, if proven, would nevertheless fail to afford relief.

Id. (citing *Bobo v. State*, 346 Md. 706, 709 (1997); *Morris v. Osmose Wood Preserving*, 340 Md. 519 (1995)). The Court is limited to examining only the sufficiency of the allegations in the pleading and whether it pleads a legally sufficient cause of action. *Howard County v. Connolley*, 137 Md.App. 99, 114 (2001); *Porterfield v. Mascari II, Inc.*, 374 Md. 402, 414 (2003).

DISCUSSION

I. **Declaratory Judgment to Invalidate All Legislation Enacted As A Result Of The November 2007 Extraordinary Legislative Session.**

a. Plaintiffs' Arguments

It is the Plaintiffs' chief contention that if Congress or a State legislature violates a constitutional requirement [in proposing and enacting legislation], the courts are obligated to declare its enactments void.⁶ Moreover, that court intervention is essential when legislators disregard clearly-stated constitutional limitations on their power, or otherwise fail to exercise it in strict compliance with constitutional procedures.⁷

It is alleged by the Plaintiffs that when the Senate failed to return to chambers after the constitutionally permissible three days without proper consent of the House, that they violated Article III §25.⁸ Due to this alleged violation, Plaintiffs assert that the General Assembly violated a constitutional requirement

⁶ Mason's Manual of Legislative Procedure at 10 (2000); see, e.g., *Getty v. Board of Elections*, 399 Md. 710 (2007).

⁷ The constitutional requirement in question before this Court, is Article III, §25 of the Maryland State Constitution. This clause precludes either House of the General Assembly from taking a prolonged adjournment (longer than three days) without first obtaining the requisite approval of the other.

⁸ See e.g., *Plaintiffs' Verified Complaint for Emergency Declaratory and Injunctive Relief*

for deliberation and that because of this; the Court should void any legislation passed during the special session.⁹

Defendants' Arguments

Defendant counter the Plaintiffs' arguments with a response that is two fold. First they suggest that the Plaintiffs' request for relief should be dismissed because despite arguments to the contrary, the House gave valid consent to the Senate in extending its adjournment.¹⁰ Second, the Defendants suggest that even if there was irregularity in the granting of the adjournment as per the Constitution, that the Complaint should still be dismissed since the appropriate remedy is a return to deliberations, not invalidation of legislative enactments.

The Defendants' primary contention is that the House gave valid consent for the Senate to adjourn. Defendants suggest that while Article III, §25 does in fact require consent for one house to adjourn for longer than three days, that it does not clearly specify the method by which the consent is given.. It is Defendants' position that in similar situations, the procedural judgments of the Legislature should control, since the Constitution provides no basis for judging the methods of consent, and further, that it is repugnant to the principles of deference to the actions of the Legislature to second guess the implementation and execution of its own rules.

Defendants also claim that although the Plaintiffs are partially correct in their assertions, Article III, §25 was enacted to prevent one house of the

⁹ Essentially, Plaintiffs state that the Legislature should not be allowed to make the law when it has itself, broken the law. Even elected lawmakers must be held to respect the Constitution and follow the letter of the law in conducting their affairs no matter how trivial the provision.

¹⁰ See, e.g.; *Defendant's Motion to Dismiss or in the Alternative for Summary Judgment*

legislature from frustrating the actions of the other by adjourning for extended periods of time. Therefore, the remedy for a violation is to command the errant chamber to resume its duty, not to invalidate the legislation enacted upon its return.

Defendants contend that even if it is held true that the Senate did in fact violate the constitution and remain adjourned for longer than three days without proper consent of the House, that such an adjournment could not serve as the basis for declaring legislation enacted by the General Assembly unconstitutional. Violation of this rule must not render void an act that is passed by the unanimous vote of each house and approved by the Governor.

b. Conclusions of Law

Upon an exhaustive review of the pleadings, motions and memoranda filed in this case, and upon due consideration to the oral arguments given January 4, 2008, it is the opinion of this Court that although there has clearly been an egregious lack of judgment on the part of the Offices of the President of the Senate and the Speaker of the House of Delegates regarding their conduct in failing to abide by constitutionally mandated procedures, there is ultimately no merit to the Plaintiffs' arguments.

The mandate of the Judiciary is that it shall do equal right and justice according to the laws of this state. *Whittington v. Polk, 1 H. & J. 236, 242-45 (Md. 1802)*. Further it is the sworn duty of a Judge that when presented with a question of legislative action, to examine the Constitution and consider whether the action was made pursuant to Maryland laws. *Id.* For, "if a legislative

enactment is not the result or emanation of authority derived from the constitution, it is not law..." *Id.*

It seems readily apparent that the cornerstone of the argument in Count I of Plaintiffs' Complaint is that the Maryland Senate failed to lawfully receive consent from the House of Delegates before extending its adjournment from Tuesday November 13, 2007, until Thursday November 15, 2007.¹¹

The Plaintiffs contend that because the Legislature failed to abide by a mandated rule of procedure under Article III, §25, of the Maryland State Constitution, that all work completed after the violation should be void as a matter of policy.

Although the Court is inclined to agree with the Plaintiffs regarding the reprehensible nature in which the Legislature conducted itself, the remedy they seek in redress is too drastic a notion to accept. The Court can simply not agree that when a technicality in procedure is violated, the entire slate of lawfully enacted legislation should be invalidated.

Instead, it is apparent to the Court that an overwhelming majority of authority on the issue suggests that the only appropriate remedy to a violation of Article III, §25 is to order the offending legislative chamber back to its deliberative duty.

In coming to its decision on this matter, the Court was influenced heavily by the various interpretations as to what underlying effects this provision of the State Constitution would have on Legislative action. Specifically speaking, the

¹¹ See e.g., *Plaintiffs' Verified Complaint for Emergency Declaratory and Injunctive Relief and Pre-trial Memoranda.*

Court gave a great amount of deference to cases such as *Abbott v. Town of Highlands*, 277 S.E. 2d 820, 827 (N.C. App. 1981); *Wilson v. City of Fargo*, 186 N.W. 263 (N.D. 1921); *Frame v. Sutherland*, 327 A.2d at 623 (Pa. 1974)¹², which all hold a similar principle that allowing the adjournment of one house of the Legislature (permissive or not) to defeat the legislative actions of the body as a whole, would essentially negate the very purpose by which the provision was initially enacted.¹³ Ultimately, this Court is loathe to allow for the relief sought by Plaintiffs inasmuch as it would give rise to a most terrible precedent.

While the Court herein holds that the legislation at issue passes constitutional muster, it feels compelled to observe that if the actions presented by way of deposition are *business as usual* for the General Assembly, the citizens of Maryland deserve far better.

However, notwithstanding the Court's concern with the conduct presumably allowed for by Senator Miller and Speaker Busch regarding the Special Session, it is the Courts final opinion that one chamber of the Legislature must never be permitted to defeat the actions of the other by simply refusing to participate in the legislative process.

Therefore the Defendants Motion to Dismiss must be granted.

¹² *Opinion of the Justices*, 257 So.2d 336 (1972); “[An] adjournment clause does not allow a recalcitrant chamber to defeat all legislative efforts of the other.”

¹³ That is, to ensure both House of the Legislature are kept to their task and not allowed to thwart the efforts of their counterparts for mere failure to appear and perform their duty.

II. Declaratory Judgment To Invalidate The Slots Bill Package

a. Plaintiffs' Arguments

It is the Plaintiffs' main contention that under Article XVI, §2 of the Maryland State Constitution, "No law making any appropriation for maintaining the State Government, or for maintaining or aiding any public institution...shall be subject to rejection or repeal" by referendum vote.

The foundation of Plaintiffs' prayer for relief involves two separate pieces of legislation, comprising what has come to be known as Governor O'Malley's comprehensive Slots Bill.¹⁴ The package contains a House Bill (titled House Bill 4) allowing for a State Constitutional Amendment for the placement of Slot Machine Gambling fixtures, and a Senate Bill (titled Senate Bill 3), which allows for the logistics of the Slots Amendment, and provides for appropriations for any revenue collected as a result of the Slot Machines.¹⁵

The thrust of the Plaintiffs' argument implies that House Bill 4 and Senate Bill 3 must be declared invalid because both are tied to the enactment of measures directly related to appropriations for aiding State and Public institutions, and are therefore repugnant to the State Constitution. Moreover, Plaintiffs contend that even if House Bill 4 was permissibly placed before a popular vote, that inherently Senate Bill 3 must be declared invalid because although it is not being placed to a referendum vote, it is made contingent upon voter approval of its sister package in

¹⁴ See *Supra*; *Plaintiffs Verified Complaint*

¹⁵ Essentially Senate Bill 3 Authorizes the state to sell five slot machine licenses for the primary purpose of funding state educational institutions. This revenue plan would permit the installation of up to 15,000 machines at four specific locations, including the Eastern Shore, the Baltimore Metropolitan Area, Cecil County and Western Maryland

House Bill 4. Thus, while the Legislature purports to send only one of the two measures to a popular vote, it is, in reality, delegating final approval of both bills.

b. *Defendants' Arguments*

It is the Defendant's contention that although true Article XVI, §2 of the Maryland State Constitution allows for no law making an appropriation for maintaining the State Government subject to rejection or repeal by referendum, Article XVI, §2 is inapplicable to House Bill 3 or Senate Bill 4.¹⁶ Moreover, the applicable provision which must be acknowledged is Article XIV, §1, which grants authority for enactment of valid Amendments to the State Constitution.

Under Article XIV, §1, once a Constitutional Amendment is properly introduced to the General Assembly and passed by three-fifths of the members of both houses, it shall be published and placed to a majority vote of the persons of Maryland at the next election cycle, before it can be submitted to the Governor for approval. Therefore, Defendants argue that the Slot Package, as referenced by the Plaintiffs, is not only valid, but is also constitutionally required to be put to a popular vote.

Addressing the contention made by the Plaintiffs that passage of Senate Bill #3 cannot be made conditional upon approval of a valid constitutional amendment, Defendants argue that there is overwhelming support to the contrary. It is their opinion that because legislation is often enacted contingent to the happening of some future event, that legislation contingent upon the passage of a valid constitutional amendment is also permissible.

¹⁶ See *Supra*; *Defendants' Motion to Dismiss*.

c. *Conclusions of Law*

After careful consideration; it is the Opinion of this Court that the Plaintiffs' argument that House Bill 4 and Senate Bill 3 are improper under Article XVI, §2 of the Maryland State Constitution is without merit.

It is alleged by the Plaintiffs that because House Bill 4 (which is a proposed Amendment to the State Constitution) and Senate Bill 3 (which is a companion authorization package to the proposed Amendment) are part of a comprehensive revenue and appropriations package expressly contingent upon voter approval, the two measures are invalid under Article XVI, §2 of the Maryland Constitution.

Plaintiffs hinge support for their argument upon the Court of Appeals ruling in *Kelly v. Marylanders for Sports Sanity*, 310 Md. 437, 530 A.2d 245 (1987). This case involved an appropriations package purporting to both extend authority to the State Stadium Authority to borrow funds through bonds, and also to allow for a measure designating a site for the construction of a stadium for professional football and professional baseball. *Id at 439*. The Court of Appeals held that although the portion designating the site for the stadiums made no appropriations which would be invalid under Article XVI, §2, the enactment was interdependent and legally inseparable from the package of legislation which did, and as such was an appropriations type measure barred from referendum. *Id at 441*.

The Plaintiffs argue that since the ruling in *Kelly* would not allow for a referendum vote for pieces of package legislation involving appropriations, that

this Court must invalidate the Slots package as passed by the Special Legislature. They suggest that since Senate Bill 3 is attached to House Bill 4 (a Constitutional Amendment which in essence funds Senate Bill 3), that the ruling in *Kelly* would mandate that the Court invalidate the legislation as an impermissible referendum measure under article XVI, §2.

The Court disagrees. In *Kelly* the Court of Appeals invalidated the legislative act because although the proposed bill contained no language that would suggest it was an appropriations measure, it was inseparably linked to a measure which did (thus invalidating it under Art. XVI, §2). Although the Plaintiffs are correct in their reading of the case, the ruling in *Kelly* is inapplicable to the facts presented here.

The chief difference between the ruling in *Kelly* and the issue before the Court today is the nature of the measure placed before a referendum. In *Kelly* the package in question was a legislative proposal, meaning the referendum measures were required to comply with Article XVI, §2. The legislation in question presently, however, involves a Constitutional Amendment and as such falls under Article XIV, §1.

Constitutional Amendments under Article XVI, §1, enjoy a nearly limitless range of subjects, and are bound by few if any restrictions on what may be included. *80 Md. Op. Att’y Gen. 151, 153, 1995 WL 709350 (1995)*.

Additionally, there are many instances of legislation which been made contingent upon the passage of constitutional amendments, including amendments

that involved fiscal legislation. *State v. Kirkley*, 29 Md. 85, 102 (1869); see also *Druggan v. Anderson*, 269 US 36 (1925).¹⁷

House Bill 4 was introduced and validly passed by both houses of the legislature, and because it is a proposed Amendment to the State Constitution, the measure falls under the guidelines of Article XIV, §I. Therefore because House Bill 4 falls under the authority of Article XIV, §I and not Article XVI, §2, this Court finds that Senate Bill 3 is a valid piece of contingent legislation, and as such is not subject to invalidation under the ruling in *Kelly*.

Therefore it is the opinion of this Court it has no other alternative than to grant the Defendant's Motion to Dismiss.

Conclusion

For the above stated reasons, the Court will sign an attendant order reflecting the findings above.

Date

Thomas F. Stansfield
Judge

¹⁷ In *State v. Kirkley*, 29 Md. 85, 102 (1869) the Court of Appeals held as valid a measure by the General Assembly authorizing a city Ordinance approving the building of Baltimore City Hall. It was the Courts reasoning that so long as the contingent ordinance had no effect before the happening of its contingent event, that it was validly permissible under the laws of the State of Maryland.

In *Druggan v. Anderson*, 269 US 36 (1925) the United States Supreme Court upheld a similar notion by refusing to invalidate a prohibition act simply because it was passed prior to the 18th Amendment becoming effective.

MICHAEL D SMIGIEL, Sr, <i>et al</i>	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	FOR
PETER FRANCHOT, <i>et al</i>	*	CARROLL COUNTY
Defendants	*	Case No: C-07-49648
	*	
* * * * *		

DECLARATORY JUDGMENT

Based upon the Court’s review of the record, transcripts of deposition testimony, arguments of counsel, each of Petitioner’s claims for relief, and for the reasons set forth in the proceeding Memorandum Opinion, it is this ____ day of January, 2008,

ORDERED, that Senate Bill 1 & House Bill 1 are enacted in compliance with the Constitution of the State of Maryland; and it is further

ORDERED, that Senate Bill 2 & House Bill 2 are enacted in compliance with the Constitution of the State of Maryland; and it is further

ORDERED, that Senate Bill 3 & House Bill 3 are enacted in compliance with the Constitution of the State of Maryland; and it is further

ORDERED, that Senate Bill 4 & House Bill 4 are enacted in compliance with the Constitution of the State of Maryland; and it is further

ORDERED, that Senate Bill 5 & House Bill 5 are enacted in compliance with the Constitution of the State of Maryland; and it is further

ORDERED, that Senate Bill 6 & House Bill 6 are enacted in compliance with the Constitution of the State of Maryland; and it is further

ORDERED, the pending Verified Complaint for Emergency Declaratory Injunctive Relief be, and hereby is, **DISMISSED**; and it is further

ORDERED, that all costs in the above captioned proceedings are hereby **WAIVED**.

Hon. Thomas F. Stansfield