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Tuesday, Sept. 9, 2008

Court blocks transgendered law referendum

Anti-discrimination law will take effect immediately

by Sean R. Sedam Staff Writer |

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ANNAPOLIS — Maryland's highest court on Tuesday said a referendum on whether to approve a law banning discrimination against transgendered people could not go on the Nov. 4 ballot.

The ruling, a day after the Court of Appeals heard the case and a day before the ballot must be certified, puts legislation passed last year by the Montgomery County Council and signed by County Executive Isiah Leggett (D) in effect as law.

The law prohibits discrimination against transgendered individuals in housing, employment, cable television service and transportation.

"We're thrilled that this long overdue and crucial antidiscrimination measure can finally go into effect and make sure that bias doesn't go unchecked in our county," said Dan Furmansky, executive director of gay and transgender rights advocacy group Equality Maryland, which challenged the ballot petition.

The court order reversed a Montgomery County Circuit Court judge's decision. It was released without a written opinion, which will be filed later.

On July 24, Judge Robert A. Greenberg that found that Equality Maryland had acted too late in challenging the number of signatures collected by Maryland Citizens for Responsible Government, which sought to put the law to voters as a ballot question during the general election.

The law was to have taken effect in February but was delayed by Maryland CRG's challenge.

"We think it's a big loss for democracy, for Montgomery County and for privacy and safety for women," said Ruth M. Jacobs, president of Maryland CRG, which collected thousands of signatures seeking to put the question on the ballot. "We feel like Equality Maryland tried to hijack Montgomery County politics, like Equality Maryland tried to push their way to the front of the line and didn't care about anybody else. And they did it."

On Monday, the Court of Appeals considered whether Equality Maryland met the statute of limitations in challenging whether Maryland CRG collected enough signatures to put the question on the ballot. Equality Maryland had earlier challenged whether those signatures were valid.

Jonathan S. Shurberg, an attorney for Equality Maryland, argued that the group filed the challenge to the number of

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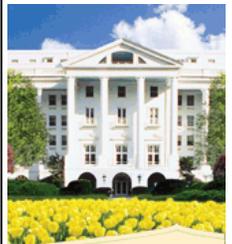
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signatures as soon as it learned at a June 11 hearing that the Montgomery County elections board had excluded inactive voters when it calculated how many signatures were required. That meant that Maryland CRG would have had to collect a lower number of signatures than if the requirement had been based on the total number of registered voters.

Shurberg had argued that the county's charter, state law and a previous Court of Appeals ruling require that petitioners meet the higher number.

"[The ruling] vindicates the rights of private citizens to participate in the referendum process and to protest a referendum petition filed by anybody," Shurberg said.

Greenberg's ruling "would've shut people out" of that process, he said.

Amy Smith, an attorney for the Alliance Defense Fund, which worked filed a brief in support of Maryland CRG, said she was disappointed.

"We thought our clients had followed the rules and Equality Maryland came in the 11th hour with a technicality that will be used to silence the voters of Montgomery County," Smith said. "This is just another example of an activist court ruling against democracy."

The county elections board had no position on the ballot question, said Kevin B. Karpinski, an attorney for the board who argued the case before the Court of Appeals on Monday.

"We complied with state policies and the Court of Appeals found that one of those processes or procedures had a fatal infirmity," he said on Tuesday.

The ruling means elections officials will take the question off ballots before they are to be certified on Wednesday, Karpinski said. Certification of the ballots could yet be delayed by another referendum challenge — that of a question of whether to legalize slot machine gambling. That challenge is to be heard today in Anne Arundel County Circuit Court.

Maryland CRG planned to meet Tuesday to discuss its next steps. That could include a lawsuit against the county elections board, Smith said.

"I think we would have to wait and see," Jacobs said of a lawsuit. "The opinion's not even out. ... The question is what is the County Council going to do to mend it? They clearly alienated people."

Councilwoman Duchy Trachtenberg, who sponsored the legislation, said she was glad voters would be spared the expense of a ballot question.

"The court ruling is a victory for justice and equality," said Trachtenberg (D-At large) of North Bethesda. "This fear-mongering tactic never belonged on the ballot," Trachtenberg said, adding that she also was glad that voters were spared the expense.

Staff Writer Margie Hyslop contributed to this report.

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