

LAW REVIEW 1071

Maryland Court of Appeals Case on Military Voting

7.0 - Military Voting Rights

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***Lamb v. Hammond*, 308 Md. 286, 518 A.2d 1057 (Maryland Court of Appeals 1987).**

This 24-year-old case decided by Maryland's highest court shows the power of military absentee ballots in deciding a close election.

Maryland has a unique election system. All statewide officials and members of both houses of the legislature are elected for four-year terms that end in the even-numbered non-presidential year, like 1986 or 2010. In such a year, the primary is held in September, just 49 days before the general election. Certifying the primary winners and printing and mailing general election ballots takes some weeks. As a result, Maryland's sons and daughters serving in our armed forces overseas are likely to be disenfranchised in the general election. There just won't be time for the absentee ballot to get to the overseas voter and back by Election Day.

In 1985 and again in 1986, I traveled to Annapolis and testified before committees of the Maryland Senate and House of Delegates. I asked them to move back the primary to earlier in the year, in order to enfranchise the brave young men and women who serve our country in uniform. The legislators were unwilling to consider changing the primary date. A late primary benefits incumbents, and the legislators we must convince are by definition incumbents.

As a "consolation prize," the legislators passed a bill providing for absentee ballots received up to ten days after Election Day to be counted, under certain conditions. The 1986 general election was the first election to which this new rule applied.

In the 1986 general election, the voters of District 30 in Anne Arundel County had the opportunity to elect three members of the House of Delegates. The top three vote-getters were deemed elected. When the Election Day ballots were counted, Donald E. Lamb came in third with 12,553 votes, and John R. Hammond came in fourth with 12,420. When the absentee ballots were counted, Lamb's margin was reduced to just three votes, 12,898 to 12,895. Among the absentee ballots counted, Hammond won 475 to 345.

With the election down to just three votes, a careful review was made of all the absentee ballots that the canvassing board had decided not to count, for various reasons. Among those ballots were 12 that came in from APO (Army Post Office) addresses that were postmarked *on* Election Day and were received during the first ten days after Election Day. Under the law in effect at the time (since amended—see Law Review 1070), an absentee ballot had to be postmarked by the day *before* Election Day, if the ballot were to be counted if received during the ten-day post-election counting period. These 12 ballots were rejected because they were postmarked *on* Election Day.

Hammond filed suit in the Maryland Circuit Court (trial court), contending that these 12 ballots should be counted because the instructions that accompanied the absentee ballots stated that an absentee ballot had to be postmarked *by Election Day* (not the day before

Election Day) for the ballot to be counted. The Circuit Court agreed and ordered the counting of these 12 ballots. Among those ballots, Hammond won 8-4. That four-vote net gain gave Hammond a one-vote margin over Lamb, 12,903 to 12,902. Yes, the outcome of the election turned on the arcane question of whether the deadline for the postmark was Election Day or the day before Election Day.

Lamb appealed, and the Maryland Court of Appeals gave the case expedited handling, because the legislative session was about to start. In an unusual move, the Maryland Court of Appeals reviewed the Circuit Court decision directly, bypassing the Court of Special Appeals, Maryland's intermediate appellate court. The high court held that misleading or incorrect instructions do not override statutory requirements, and the law in effect at the time required that the ballot be postmarked by the day *before* Election Day. Thus, Lamb won by three votes instead of losing by one.