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## Eye on Annapolis

The Daily Record's Maryland state government blog

### Ervin appeal may hinge on outcome of Democratic gubernatorial primary

By: [Bryan P. Sears](#) Daily Record Government Reporter June 6, 2018

Valerie Ervin, a Democratic candidate for governor, may yet appeal an Anne Arundel County Circuit Court judge's decision to not order reprinted or altered primary ballots.

Ervin, speaking Thursday prior to the taping of a debate featuring the nine Democratic candidates for governor, said an appeal remains on the table. The timing, however, may be later rather than sooner.

"We're going to focus on the primary campaign and the next three weeks," said Ervin. "If we file an appeal, it would be after the 26th."

Maryland's primary election is on June 26. Early voting begins June 14.

On Monday, Anne Arundel County Circuit Court Judge William C. Mulford II denied Ervin's request for an order requiring the reprinting of millions of primary ballots or for the use of stickers that would place her name and that of her running mate, Marisol Johnson, on the ballot. Ervin, who filed suit on May 29, sought the changes after replacing Democratic gubernatorial hopeful Kevin Kamenetz as a candidate following his sudden death last month. Ervin previously had been a lieutenant governor candidate running with Kamenetz.

On Thursday at the studios of WMAR television, Ervin hinted that an appeal would likely be tied to the results and might be used to seek a new primary.

When asked directly about that possibility, Ervin said she remains focused on the remainder of the primary campaign.

Timothy F. Maloney, a former legislator and partner at Greenbelt-based Joseph, Greenwald & Laake P.A., said such lawsuits face nearly insurmountable challenges.

"These challenges almost always fail. The loser has to prove not only that a violation of election law occurred, but that the violation more than likely changed the outcome. That's a big hill to climb."

Ervin's name will appear on the ballot underneath her deceased running mate. Johnson's name would not appear on the primary ballot at all — a situation that Ervin said causes electoral confusion and violates the constitutional rights of both herself and her running mate.

Mulford Monday said he was forced to find in favor of the state and Elections Administrator Linda Lamone and not grant Ervin's request either to reprinting millions of ballots or alter them with stickers containing the names of Ervin and Johnson.

Reprinting ballots would be too time-consuming, the judge concluded, while stickers, which are allowed by state law, are untested and run the risk of jamming machines.

The elections board has released a list of more than two dozen actions it planned to take to inform voters of the change in candidates, including posting notices at polling places and in polling booths as well as on its websites and social media accounts. Staff will be on hand to read notices to voters who call asking how to vote for Ervin.

State elections officials added that votes cast for Kamenetz and Ervin would automatically count for Ervin and Johnson.

Mulford said he believed Lamone was not acting in an arbitrary and capricious manner in deciding not to reprint the ballots and added that she was legally entitled to use the alternative method of notifying voters of the changes.

Following the Monday hearing, Ervin and her lawyer, Mariana Cordier, said all options were on the table but didn't answer specific questions about the timing.