Obeisance to the Separation of Powers and Protection of Individuals' Rights and Liberties: the Honorable John C. Eldridge's Approach to Constitutional Analysis in the Court of Appeals of Maryland, 1974-2003

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As one who is at the dawn of her judicial career, I have had the privilege of working with a judge whose service to the State of Maryland is virtually unparalleled. Although most are well aware that Judge John C. Eldridge has served over twenty-nine years on the Court of Appeals of Maryland and has had the third longest tenure since the court’s inception, few actually have a sense of his encyclopedic presence in our jurisprudence. For instance, he has written extensively about products liability and has contributed considerably to the

* Judge, Court of Appeals of Maryland. I would like to thank my law clerks, Michelle Vanyo, David Sommer, Brent Bolea, and one of my interns, Peter Wirig, for their research and analytical assistance, without which this piece would not have been possible. As for any errors or omissions, they are mine alone.

1. See United States Gypsum Co. v. Mayor of Baltimore, 336 Md. 145, 194, 647 A.2d 405, 429 (1994) (affirming the award of compensatory damages against an asbestos manufacturer for the cost of removing asbestos-containing building material and reversing the award of punitive damages based on the City’s lack of proof of the manufacturer’s actual malice); Kelley v. R.G. Indus., Inc., 304 Md. 124, 158-59, 497 A.2d 1143, 1160 (1985) (holding that manufacturers and marketers of “Saturday Night Special” firearms are strictly liable to innocent persons who suffer gunshot injuries from the criminal use of such products); Phipps v. Gen. Motors Corp., 278 Md. 337, 353, 363 A.2d 955, 963 (1976) (adopting a strict liability theory from Restatement (Second) of Torts § 402A (1965) for liability of defective products); Frericks v. Gen. Motors Corp., 274 Md. 288, 301, 336 A.2d 118, 126 (1975) (holding that an automobile manufacturer is liable for design defects, which aggravate injuries received in an accident, even though the defect itself is not the
evolution of other areas of tort law, including governmental immunities and punitive damages. By virtue of his long tenure on the bench, Judge Eldridge is also known for his myriad of opinions in the area of criminal law and procedure. Almost single-handedly, he

cause of the accident); Volkswagen of Am., Inc. v. Young, 272 Md. 201, 219-21, 321 A.2d 737, 746-48 (1974) (holding that an automobile manufacturer is liable for a reasonably foreseeable defect in design, which leads to or enhances injuries in an automobile accident).

2. See Williams v. Maynard, 359 Md. 379, 395, 754 A.2d 379, 388 (2000) (holding that the notice requirement of the Local Government Tort Claims Act (LGTCA) applies to an action for damages brought against a county government); Sawyer v. Humphries, 322 Md. 247, 257-61, 587 A.2d 467, 472-74 (1991) (holding that "scope of public duty" as used in the Tort Claims Act was coextensive with the common law concept of "scope of employment" when applied to a police officer's immunity from civil suits); Boyer v. State, 323 Md. 558, 594 A.2d 121 (1991) (dealing with the tort liability of police officers and their governmental employers when the officers are involved in a high-speed chase and innocent persons are killed or injured); Kee v. State Highway Admin., 313 Md. 445, 545 A.2d 1312 (1988) (construing the Maryland Tort Claims Act as applied to an automobile accident where plaintiffs claimed the State Highway Administration negligently maintained a guardrail); Clea v. Mayor of Baltimore, 312 Md. 662, 684-85, 541 A.2d 1303, 1314 (1988) (holding that a public official has no immunity from tort claims based upon alleged violations of constitutional rights).

3. See Bowden v. Caldor, Inc., 350 Md. 4, 710 A.2d 267 (1998) (involving several important issues with regard to the court's review of jurors' punitive damages awards in tort actions); Middle States Holding Co. v. Thomas, 340 Md. 699, 668 A.2d 5 (1995) (concerning the procedure by which a tort case is remanded for a new trial on punitive damages); Montgomery Ward v. Wilson, 339 Md. 701, 664 A.2d 916 (1995) (involving the requirements for the availability of punitive damages in malicious prosecution and false imprisonment cases); Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs., Inc., 336 Md. 635, 662, 650 A.2d 260, 273-74 (1994) (reversing an award of punitive damages in an action for alleged wrongful interference with contractual relations); Owens-Illinois, Inc. v. Zenobia, 325 Md. 420, 472, 601 A.2d 633, 658-59 (1992) (holding that punitive damages may be awarded only upon proof that the defendant's conduct was the product of actual, not implied malice); Schaefer v. Miller, 322 Md. 297, 312, 587 A.2d 491, 498 (1991) (Eldridge, J., concurring) (agreeing with the majority's award of punitive damages, but disagreeing with its adherence to the Testerman-Wedeman standard for punitive damages).

4. See Cardinell v. State, 335 Md. 581, 598, 644 A.2d 11, 19 (1994) (Eldridge, J., dissenting) (taking the position that the state's right to appeal in a criminal case arises only by statute, a position that the majority of the court later adopted in State v. Green, 367 Md. 61, 78, 785 A.2d 1275, 1285 (2001)); Schochet v. State, 320 Md. 714, 717, 580 A.2d 176, 177 (1990) (holding that a Maryland criminal statute prohibiting "unnatural or perverted sexual practices" does not "encompass consensual, noncommercial, heterosexual activity between adults in the privacy of the home"); State v. Ferrell, 313 Md. 291, 301, 545 A.2d 653, 658 (1988) (holding that a prosecution for use of a handgun in the commission of a felony is barred under double jeopardy principles by a prior conviction for that same felony); State v. Jenkins, 307 Md. 501, 522, 515 A.2d 465, 475 (1986) (holding that the offenses of assault with intent to murder and assault with intent to maim, disfigure, or disable are not inconsistent, but where both convictions arise from a single assault, the assault with intent to maim merges into the assault with intent to murder); Hardy v. State, 279 Md. 489, 496, 369 A.2d 1043, 1048 (1977) (holding that a criminal defendant, when appealing a district court judgment, has the right to a jury trial in circuit court, irrespective of whether the defendant could have elected a jury trial under section 4-302(d) of the Courts and Judicial
spurred the development of administrative law in Maryland, a legal topic that had received little appellate attention prior to his arrival on the court. Judge Eldridge’s contributions to any one of these areas of law are worthy of much discussion. Nevertheless, for the focus of this Article, I have chosen to explore Judge Eldridge’s approach to the constitutional rights of the individual, an area of jurisprudence in which I highly regard Judge Eldridge’s work.

In reflecting upon the contributions of remarkable jurists, one might be tempted to classify a judge’s method of constitutional analysis by traditionally accepted categories, such as textualism, literalism, or purposivism. Judge Eldridge, however, not only questions the appropriateness of such labeling, but his method would not fit into one of these recognized categories, even if he so desired. This is not to say that his opinions lack direction; in fact, when reviewing Judge Eldridge’s constitutional law opinions, one readily can identify a central focus. His opinions underscore the necessity of protecting the consti-

Proceedings Article); Cousins v. State, 277 Md. 383, 396-98, 354 A.2d 825, 833-34 (1976) (rejecting the “same transaction” test as the standard for determining whether two separate offenses amount to the “same offense” for double jeopardy purposes).

5. See Robinson v. Bunch, 367 Md. 432, 434, 788 A.2d 636, 638 (2002) (holding the State Personnel and Pensions Code provided the exclusive statutory administrative and judicial review remedy for plaintiff’s overtime compensation claim); Bd. of License Comm’rs v. Corridor Wine, Inc., 361 Md. 403, 410, 761 A.2d 916, 919 (2000) (holding that the circuit court had no authority to issue a writ of certiorari to an administrative agency in order to examine the subject matter jurisdiction of a case still pending before the agency); Sugarloaf Citizens’ Ass’n v. Dep’t of Env’t, 344 Md. 271, 287-88, 686 A.2d 605, 614 (1996) (applying the test to determine if plaintiffs have standing to maintain actions for judicial review of adjudicatory administrative decisions); Ins. Comm’r v. Equitable Life Assurance Soc’y, 339 Md. 596, 615-16, 664 A.2d 862, 872 (1995) (holding that an administrative agency or official is authorized to hold a statute unconstitutional as applied to the matter before the agency or official); Modular Closet Sys., Inc. v. Comptroller of the Treasury, 315 Md. 438, 443-44, 554 A.2d 1221, 1223 (1989) (holding that the definition of a “contested case” under the Maryland Administrative Procedure Act for the purposes of applying a provision of the Small Business Litigation Expenses Act is whether the party is entitled to a hearing); Hirsch v. Md. Dep’t of Natural Res., 288 Md. 95, 416 A.2d 10 (1980) (involving the validity of certain provisions of the Wetlands Act of 1970); Ottenheimer Publishers, Inc. v. Employment Sec. Admin., 275 Md. 514, 520, 340 A.2d 701, 704-05 (1975) (holding that a form used by the Employment Security Administration did not fairly notify the parties of the administrative decision concerning unemployment benefits).

6. Judge Eldridge’s contributions to constitutional law began early in his career, which he committed almost entirely to public service. After law school, Judge Eldridge served as law clerk to another eminent Maryland jurist, the Honorable Simon E. Sobeloff, Chief Judge of the United States Court of Appeals for the Fourth Circuit. He then moved on to the United States Department of Justice, where he was assigned to the Appellate Section of the Civil Division as a trial attorney and later, Assistant Chief. Next, the Governor of Maryland tapped into Judge Eldridge’s talent by hiring him as his Chief Legislative Officer. After nearly five years on the Governor’s staff, Judge Eldridge accepted an appointment to the Court of Appeals of Maryland in 1974 and has excelled there ever since.
stitutionally guaranteed rights of the individual. The opinions also illustrate an understanding that protecting individual rights does not necessitate granting every individual the relief he or she seeks. That is, if an individual’s rights have received the protection they deserve under the Constitution, Judge Eldridge advocates against expanding the role of the judiciary to provide any undeserved protection. With these principles of constitutional interpretation in mind, I will explore how Judge Eldridge’s judicial persuasion is portrayed in the areas of Maryland constitutional law where, I believe, his contributions are most notable.

I. PROTECTING AN INDIVIDUAL’S CONSTITUTIONAL RIGHTS

Judge Eldridge’s opinions reveal a dedication to an individual’s constitutional rights in at least three areas: the right to free speech, the right to a jury trial, and the right to vote.7 When Judge Eldridge...

7. My discussion of these three areas of law does not begin to encompass all of Judge Eldridge’s contributions to the law of individual constitutional rights. Two other areas of Maryland Constitutional Law to which Judge Eldridge has made significant contributions, for example, include women’s rights and the interpretation of Article 19 of the Maryland Declaration of Rights. In the area of women’s rights, Judge Eldridge wrote the court’s opinions in two influential cases: State v. Burning Tree Club, Inc., 315 Md. 254, 554 A.2d 366 (1989), and Coalition for Open Doors v. Annapolis Lodge No. 622, 333 Md. 359, 635 A.2d 412 (1994). In Burning Tree, a country club challenged a statute designed to eliminate state-sponsored sex discrimination in Maryland. Burning Tree, 315 Md. at 261-62, 554 A.2d at 370. Among its numerous arguments, the country club argued that a single provision under the statute, which allowed limited sex discrimination, violated the Maryland Equal Rights Amendment (ERA) and rendered the entire statute unconstitutional. Id. at 262, 554 A.2d at 370. Judge Eldridge, for the court, agreed that the single provision violated the ERA but held that the provision was severable from the statute. Id. at 290, 554 A.2d at 384. The court’s holding reinforced Maryland’s strong policy favoring equal rights and effectively strengthened the ERA.

Judge Eldridge’s majority opinion in Coalition for Open Doors similarly strengthened equal rights for women. The court upheld a city ordinance that prohibited issuing liquor licenses to establishments with discriminatory membership policies. Coalition for Open Doors, 333 Md. at 383, 635 A.2d at 423-24. The private organization that challenged the ordinance argued that a single provision under the statute, which allowed limited sex discrimination, violated Maryland’s public accommodation law, which prohibited discrimination only in places of public accommodation, preempted the city ordinance. Id. at 378-79, 635 A.2d at 421-22. The court disagreed, holding that Maryland’s public accommodation law did not affirmatively authorize discrimination in private establishments and, therefore, did not preempt the city ordinance. Id. at 382-83, 635 A.2d at 423. The opinion fortified the cause of equal rights by allowing localities more freedom to enact anti-discrimination measures.

Recently, Judge Eldridge contributed significantly to the development of the law under Article 19 of the Maryland Declaration of Rights. This is particularly evident in two opinions that he authored last year: Dua v. Comcast Cable of Md., Inc., 370 Md. 604, 805 A.2d 1061 (2002), and Piselli v. 75th Street Med., 371 Md. 188, 808 A.2d 508 (2002). Judge Eldridge’s opinion in Dua invalidated the retroactive application of two separate statutes. Dua, 370 Md. at 610-11, 805 A.2d at 1065. One of the statutes permitted cable television providers to charge late payment fees in excess of the amount allowed at common law. Id.
believes that one of these rights has not been secured to the fullest extent allowed by the Constitution, he willingly extends the reach of the court to protect that right.

A. Freedom of Speech

Judge Eldridge's opinions reflect his stalwart support for an individual's freedom of speech under the First Amendment. For example, early in his tenure as a judge, he wrote for the majority in State v. Schuller.\(^8\) In that case, two individuals challenged their convictions under a statute that prohibited all residential picketing except in connection with a labor dispute.\(^9\) The individuals, who had picketed the private residence of Secretary of Defense Donald H. Rumsfeld, argued that the statute was unconstitutional because it interfered with their

at 610-11, 805 A.2d at 1065. If applied retroactively, the statute would have prevented individuals from bringing damage claims for the excessive late fees they had paid before the statute became effective. \(^{Id.}\) The other statute provided that Health Maintenance Organizations (HMOs) could bring reimbursement claims against its members who received tort recoveries from negligent third parties. \(^{Id.}\) at 611, 805 A.2d at 1065. If applied retroactively, any HMO could seek reimbursement from members who obtained tort recoveries before a statutory basis existed for such reimbursement claims. \(^{Id.}\)

The court invalidated the retroactive application of these statutes based, in part, on Article 19 of the Maryland Declaration of Rights, which guarantees a "'remedy by the course of the Law of the land, . . . according to the Law of the land,' for 'every [person], for any injury done to him [or her] in his [or her] person or property.'" \(^{Id.}\) at 643, 805 A.2d at 1084 (quoting Md. Decl. of Rts. art. 19 (2002)). According to Judge Eldridge, Article 19 protects recovery in causes of action for injuries that accrued before the legislature abrogated a right of recovery for that injury. \(^{Id.}\) at 644-45, 805 A.2d at 1084-85. He applied this principle and concluded that the statutes' retroactive portions violated constitutional guarantees under Article 19. \(^{Id.}\) at 646, 805 A.2d at 1085.

Judge Eldridge again lent his hand to the development of Article 19 just months later in Piselli. Therein, a unanimous court held that the statutory time limitation within which to bring a medical malpractice claim did not commence until the claimant reached the age of eighteen years. \(^{Piselli, 371 Md. at 194, 808 A.2d at 511.}\) The court found that, traditionally, the time limitations for bringing claims tolled until the claimant reached the age of majority. \(^{Id.}\) at 212-14, 808 A.2d at 522-23. The court concluded that Article 19 precluded the legislature from altering this traditional rule by mandating that time limitations run against a minor's tort claim before the minor reaches eighteen years. \(^{Id.}\) at 219, 808 A.2d at 526. In arriving at the conclusions in both \(^{Dua and Piselli,}\) Judge Eldridge succinctly explained the historical and modern significance of Article 19, creating useful resources from which lawyers and judges will draw future guidance. Moreover, these Article 19 developments ensured the protection of an individual's constitutionally guaranteed right to judicial remedies.

\(^{9.}\) \(^{Id.}\) at 307, 372 A.2d at 1077.
First Amendment rights to freedom of speech and assembly.\textsuperscript{10} The court recognized that while reasonable time, place, and manner regulations regarding the conduct of picketing might be acceptable,\textsuperscript{11} the activity itself may not be completely banned.\textsuperscript{12} In the court's judgment, the exception for labor disputes in the statute at issue amounted to content control (i.e., residential picketing was permissible so long as it involved labor disputes) and violated both the First Amendment and the Equal Protection Clause.\textsuperscript{13} Judge Eldridge voiced his sentiments by quoting the Supreme Court's opinion in \textit{Police Department of Chicago v. Mosley}:

\begin{quote}
There is an "equality of status in the field of ideas," and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say.\textsuperscript{14}
\end{quote}

Judge Eldridge's opinion in \textit{Schuller}, therefore, became the first of many examples of his willingness to strike down a legislative act that had improperly tread on guaranteed free speech rights.

In \textit{Berkey v. Delia},\textsuperscript{15} it was the judiciary itself that Judge Eldridge believed trampled upon First Amendment freedoms, a view not shared by a majority of the court. The court's opinion permitted a public official, a police officer, to file a claim for libel against a citizen, Berkey, who sent a written complaint to the police officer's superiors about his treatment on the night he was pulled over for a speeding violation.\textsuperscript{16} The Circuit Court for Prince George's County, citing \textit{New York Times Co. v. Sullivan},\textsuperscript{17} had granted the citizen's motion for summary judgment,\textsuperscript{18} but the Court of Special Appeals reversed and re-

\begin{footnotes}
\begin{enumerate}
\item Id. at 307-09, 372 A.2d at 1077-78.
\item \textit{Schuller}, 280 Md. at 316, 372 A.2d at 1081 (citing Shuttlesworth v. Birmingham, 394 U.S. 147, 152 (1969)).
\item Id. at 321, 372 A.2d at 1084.
\item Id. at 318, 372 A.2d at 1082 (quoting Police Dep't of Chicago v. Mosley, 408 U.S. 92, 96 (1972) (footnote omitted)).
\item 287 Md. 302, 333, 413 A.2d 170, 185 (1980) (Eldridge, J., dissenting).
\item \textit{Berkey}, 287 Md. at 332-33, 413 A.2d at 185.
\item 376 U.S. 254 (1964).
\item \textit{Berkey}, 287 Md. at 304, 413 A.2d at 171. The citizen, a psychiatrist, commented in the letter that "because of my professional background and training, I question if this young officer is mentally deranged, if he is psychopathic and/or pathologically sadistic. This letter is to formally request a mental evaluation of Private Delia." Id. at 308, 413 A.2d at 172.
\end{enumerate}
\end{footnotes}
manded. 19 Agreeing with the Court of Special Appeals, the Court of Appeals held that summary judgment was inappropriate because the facts were susceptible to the inference that Berkey wrote the comments with the knowledge of falsity, and the trier of fact should have been given the opportunity to determine whether clear and convincing evidence supported the legal cause of action against Berkey. 20

Judge Eldridge characterized the majority opinion as a "serious intrusion upon First Amendment rights." 21 The majority's holding, he believed, "warns all persons who might be inclined to complain about government officials that they do so at their peril in this State." 22 Judge Eldridge stated that based on the facts in the record, the plaintiff presented no evidence that Berkey knew his statements were false or acted with reckless disregard for their truth, and that to conclude otherwise would render the standard established in New York Times meaningless. 23 Actual malice under the New York Times standard, 24 Judge Eldridge contended, could not be inferred from the circumstances in Berkey. 25 Expressing his distinctive stance on First Amendment guarantees, Judge Eldridge remarked:

Certainly, a citizen has a First Amendment right to complain about a public official to that official's superior in government, to raise questions about the official, to request an investigation by the governmental agency involved, and to speak frankly when questioned by a government investigator conducting the investigation. A case like the present one may well implicate the "redress of grievances" clause of the First Amendment along with the "freedom of speech" clause. 26

Judge Eldridge commented that many citizens charged with an offense feel they have been targeted unjustly and respond by de-

19. Id. at 304, 413 A.2d at 171 (citing Delia v. Berkey, 41 Md. App. 47, 395 A.2d 1189 (1978)).
20. Id. at 332-33, 413 A.2d at 184-85.
22. Id.
23. Id. at 335, 413 A.2d at 186. Judge Eldridge noted that while his mental state might be inferred from the fact that the officer's psychological exams indicated no mental problems, "'those inferences, standing alone, do not satisfy proof of convincing clarity.'" Id. at 340, 413 A.2d at 189 (quoting Michaud v. Inhabitants of Town of Livermore Falls, 381 A.2d 1110, 1115 (Me. 1978)).
24. In New York Times the Supreme Court defines "actual malice" as "with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U.S. at 279-80.
25. Berkey, 287 Md. at 341, 413 A.2d at 189 (Eldridge, J., dissenting).
26. Id. at 339, 413 A.2d at 188.
nouncing the ill motives of the public official, and "[w]hile most such
beliefs may be unwarranted, a few may have some basis in fact. It is
neither sound constitutional law nor sound public policy for courts to
discourage these complaints by ordering full trials and allowing recov-
eries in defamation actions like the present one."27 He concluded:

If the First Amendment means anything, it means that a citi-
zen has a right to criticize, even unjustifiably, the conduct of
those operating the government. If the government itself
can decide which criticisms it will tolerate and which it will
not, by its courts freely allowing government officials to bring
defamation actions against citizens expressing grievances,
then an essential aspect of our freedom is impaired.28

Judge Eldridge made clear his view that the judiciary has the responsi-
bility to prevent First Amendment transgressions not only by other
branches, but also within its own.

Judge Eldridge's majority opinion in Telnikoff v. Matushevitch,29
which involved a libel judgment entered by an English court, invoked
First Amendment issues similar to those in Berkey. Matushevitch, the
party against whom the English libel judgment had been entered, suc-
cessfully obtained a declaratory judgment in the United States District
Court for the District of Columbia finding the English judgment to be
"repugnant" to the United States Constitution and Maryland Declara-
ration of Rights.30 Arguing that principles of comity require the English
judgment to be recognized, Telnikoff, the victorious plaintiff in the
English case, appealed to the United States Court of Appeals for the
District of Columbia Circuit.31 That court certified the following
question to the Court of Appeals of Maryland: "Would recognition of
Telnikoff's foreign judgment be repugnant to the public policy of
Maryland?"32

In affirmatively answering the certified question, Judge Eldridge
conducted a comprehensive review of the origins and progression of
freedom of the press in Maryland.33 American and Maryland law,
Judge Eldridge stated, protect freedom of the press in a much
stronger way than English law.34 He also specified how defamation
actions have evolved in Maryland following the New York Times deci-

27. Id. at 341, 413 A.2d at 189.
28. Id. at 342, 413 A.2d at 189.
30. Id. at 571-72, 702 A.2d at 235.
31. Id. at 572, 702 A.2d at 236.
32. Id. at 573, 702 A.2d at 236.
33. Id. at 580-90, 702 A.2d at 240-44.
34. Id. at 580, 702 A.2d at 240.
Comparing England's standards governing defamation actions with Maryland's, Judge Eldridge stressed that Maryland's defamation law is significantly different from England's defamation law.

One of the primary distinctions between English and Maryland defamation law is Maryland's strong emphasis on the free flow of ideas, the very principle that Judge Eldridge promoted in his Berkey dissent. In Berkey, Judge Eldridge complained that the free exchange of ideas would be obstructed by allowing a defamation action against a citizen expressing a grievance against a government employee. For the majority in Telnikoff, Judge Eldridge again took up the cause of this important First Amendment principle:

"At the heart of the First Amendment," as well as Article 40 of the Maryland Declaration of Rights and Maryland public policy, "is the recognition of the fundamental importance of the free flow of ideas and opinions on matters of public interest and concern." The importance of that free flow of ideas and opinions on matters of public concern precludes Maryland recognition of Telnikoff's English libel judgment.

Another of Judge Eldridge's notable First Amendment dissents charged the majority with impeding this free flow of ideas. Judge Eldridge wrote the dissent in Eanes v. State, where the court, in a four to three vote, upheld an individual's conviction under a statute that prohibited "'wilfully disturb[ing] any neighborhood in [any Maryland] city, town or county by loud and unseemly noises.'" The undisputed facts established that Eanes had been protesting abortion in a permitted public place at a permitted time using only his unamplified voice. Judge Eldridge disagreed with the majority on the grounds that the statute was inapplicable to an individual in Eanes's position under the rights guaranteed by the First Amendment. Believing that the majority's stance severely narrowed the scope of the
Free Speech Clause, Judge Eldridge explained that if constitutionally protected speech is limited to that which does not "disturb" some nearby workers or residents, then suppression of speech traditionally thought to be protected would occur under practically any circumstance in which "a particular speech is unpopular or unusual [and] . . . an affected citizen . . . complain[s], ostensibly because of the sound level."  

Judge Eldridge continued by decrying the majority's willingness to accept noisy disturbances by the operators of road construction equipment because of the allegedly greater benefit that results from repaired streets. "[T]he majority places more importance upon the maintenance of streets than upon free speech," Judge Eldridge stated. He further noted that the sound of one's objections or public criticisms cannot, without more, warrant suppression because "the greater a grievance the more likely men are to get excited about it, and the more urgent the need of hearing what they have to say." According to Judge Eldridge, that which allows suppression of unamplified political speech at a permitted time and place and under a vague "unreasonably loud" standard, is contrary to the First Amendment. Judge Eldridge believed that the majority's efforts to curtail the vagueness of the "unreasonably loud" standard by adopting a "complaint and prior warnings" requirement added nothing to the heightened specificity requirement because "[a]ny time government authorities desire to suppress activity protected by the First Amendment, it will not be difficult for them to find complainants and to give prior warnings . . . . Whatever protection [the complaint and warning requirements] might seem to provide against government overreaching is illusory." Judge Eldridge argued, also, that the majority's holding implicated questions of possible due process violations. According to Judge Eldridge, such uncertainty in determining what conduct constitutes a crime renders the statute invalid on vagueness.
grounds. If the criminality of one's conduct is dependent upon another's dissatisfaction, Judge Eldridge reasoned, the individual cannot have prior notice of whether his conduct will constitute a crime.

The Eanes dissent is a testament to Judge Eldridge's resolute stance on First Amendment freedoms and his view that the judiciary should be the protector of an individual's fundamental rights. The judiciary's role in this regard, according to Judge Eldridge, should not be supplanted by deferential interpretations of legislative enactments that punish constitutionally protected speech.

Recently in Galloway v. State, Judge Eldridge, once more in dissent, again revealed his now familiar stance on First Amendment freedoms. In that case, Galloway was convicted of harassment for letters he wrote from prison to the victim of the crimes for which he was imprisoned. Galloway contended that the harassment statute was unconstitutionally vague and overbroad, but a majority on the Court of Appeals disagreed. While Galloway did not make specific arguments under the Maryland Constitution or Declaration of Rights, Judge Eldridge argued that the issue Galloway presented "encompassed vagueness and overbreadth under the Maryland Declaration of Rights as well as under the First and Fourteenth Amendments." In support of his position, Judge Eldridge cited the Supreme Court's opinion in Smith v. Goguen, which stated, "[W]here a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts.

Judge Eldridge also expressed that the court should take a more active role in reviewing claims that involve an individual's First Amendment guarantees. Contrary to the majority's stance that the lower court's "findings" should not be disturbed unless clearly erroneous, Judge Eldridge stressed that "an appellate court has an obligation

51. Id. at 495, 569 A.2d at 633.
52. Id. at 494-95, 569 A.2d at 632-33.
54. Id. at 605-06, 781 A.2d at 854-55.
55. Id. at 627, 639, 781 A.2d at 867, 874.
56. Galloway, 365 Md. at 654 n.1, 781 A.2d at 883 n.1 (Eldridge, J., dissenting). Even the majority conceded that when "the challenged statute ... encroaches upon fundamental constitutional rights, particularly First Amendment guarantees of free speech and assembly, then the statute should be scrutinized for vagueness on its face." Galloway, 365 Md. at 616, 781 A.2d at 861.
59. Id. at 662-63, 781 A.2d at 888.
to make an independent examination of the whole record in order to make sure that the judgment does not constitute a forbidden intrusion on the field of free expression.\textsuperscript{60}

In describing his overall assessment of this difficult case, in which the court was asked to punish deplorable behavior that arguably fell under the Constitution's protection, Judge Eldridge also shed light on his view of the importance of protecting virtually all speech: "This case is a classic example of the saying that hard cases make bad law. No reasonable person would condone Galloway's atrocious conduct. Nevertheless, sustaining his conviction and 90 day additional sentence is not worth obfuscating the language of statutory provisions or failing to apply important constitutional safeguards."\textsuperscript{61}

\textbf{B. Right to a Jury Trial}

When Judge Eldridge perceives a threat to one's fundamental right to a jury trial, he fervently advocates for the protection of that right. As with the First Amendment cases, however, Judge Eldridge's colleagues on the court have not always shared his view of the court's role in protecting fundamental rights. Such was the case in \textit{State v. Gorman},\textsuperscript{62} where Judge Eldridge's pointed dissent criticized the court for refusing to extend the Supreme Court's decision in \textit{Batson v. Kentucky}\textsuperscript{63} to reverse the conviction of a white criminal defendant.\textsuperscript{64} The aggrieved party in \textit{Batson}, a black defendant, successfully argued that the prosecutor's use of peremptory challenges to strike black jurors solely on the basis of race denied him equal protection under the law as guaranteed by the Fourteenth Amendment.\textsuperscript{65} In \textit{Gorman}, however, a majority of the Court of Appeals was persuaded that \textit{Batson} should not apply because the criminal defendant in the state case was white, while the jurors who the prosecutors peremptorily struck were not.\textsuperscript{66}

\begin{itemize}
\item \textsuperscript{60} \textit{Id.} at 662, 781 A.2d at 888 (quoting Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485, 499 (1984) (internal quotation marks omitted)).
\item \textsuperscript{61} \textit{Id.} at 685, 781 A.2d at 902. Judge Eldridge also has been instrumental in upholding First Amendment rights when the legislature improperly limited the use of charitable funds. See, e.g., Joseph H. Munson Co. v. Sec'y of State, 294 Md. 160, 181, 448 A.2d 935, 947 (1982) (striking down a statute that placed significant limits on the amount that a charitable organization may pay in connection with a fund-raising activity thus imposing an impermissible prior restraint on protected speech), aff'd, 467 U.S. 947 (1984).
\item \textsuperscript{63} 476 U.S. 79 (1986).
\item \textsuperscript{64} \textit{Gorman}, 315 Md. at 420-21, 554 A.2d at 1212 (Eldridge, J., dissenting).
\item \textsuperscript{65} \textit{Batson}, 476 U.S. at 99 (finding that no citizen should be "disqualified from jury service because of his race").
\item \textsuperscript{66} \textit{Gorman}, 315 Md. at 416, 554 A.2d at 1209-10.
\end{itemize}
Judge Eldridge saw beyond the majority’s narrow view of Batson and unknowingly forecasted the Supreme Court’s eventual reversal of the majority’s decision in Gorman.\textsuperscript{67} While the majority refused to acknowledge that a white defendant could be injured by the exclusion of black jurors based on their race, Judge Eldridge’s broader view of Batson recognized that “[a]ll persons are injured when the state intentionally engages in racially discriminatory conduct.”\textsuperscript{68} Relying on equal protection principles of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights, Judge Eldridge argued that the court should grant standing to the white defendant because such racially discriminatory conduct “harms the persons excluded from jury service, harms the criminal justice system, and harms the entire community.”\textsuperscript{69}

The Supreme Court agreed with Judge Eldridge. Two years after the Court of Appeals’ decision in Gorman, the Supreme Court decided Powers v. Ohio.\textsuperscript{70} Applying reasoning similar to Judge Eldridge’s Gorman dissent, the Supreme Court held that a white defendant had suffered an injury when the prosecution used its peremptory challenges to strike black jurors solely on the basis of their race.\textsuperscript{71} The Court in Powers concluded, as Judge Eldridge had, that the practice of excluding jurors based on race “forecloses a significant opportunity to participate in civic life” and deprives the juror of “the right not to be excluded from [a jury] on account of race.”\textsuperscript{72} The decision in Powers effectively overruled Gorman and transformed Judge Eldridge’s Gorman dissent into a symbol of his prophetic constitutional awareness and commitment to individual rights.

In Martin v. Howard County,\textsuperscript{73} Judge Eldridge again questioned whether the individual’s right to a jury trial had been adequately protected.\textsuperscript{74} The circumstances of Judge Eldridge’s writing in Martin,
however, differed significantly from *Gorman.* In his unanimous opinion, Judge Eldridge addressed the issue of whether the Maryland Constitution guarantees a residential tenant the right to a jury trial in a legislatively created procedure to evict federally subsidized tenants who allegedly used the leased premises to administer or sell illegal drugs. Although the claim came before the court in the form of a statutory nuisance action, to which the right to a jury trial normally would not attach, Judge Eldridge saw beyond the mere form of the claim and expanded the role of the court to protect the tenant’s constitutional right. He wrote:

> With respect to actions against defendants who are allegedly engaging in activity constituting a nuisance, the relief sought will determine the nature of the action. If the relief requested is an order requiring the defendant to stop engaging in the activity, the action is equitable. If the plaintiff requests money damages, or if a plaintiff not in possession requests an order ousting a tenant from possession of the property, the actions are legal, and there is a constitutional right to a jury trial.

Because the claim in *Martin* sought to oust the tenants from possession, it “carrie[d] a right to a jury trial.” Judge Eldridge’s vision, therefore, enabled the court to identify the true nature of the claim and protect a constitutional right of the individual.

The purest example of Judge Eldridge’s dedication to the right to a jury trial is witnessed in *Kawamura v. State,* an opinion he authored on behalf of the court. There, the court resolved a direct clash between a legislatively enacted criminal procedure and a defendant’s constitutional right. The procedure at issue in *Kawamura* required that a defendant’s right to a jury trial attach in the District Court of Maryland only if the defendant faced a maximum penalty of greater than ninety days imprisonment for the crime with which he was charged. Under the procedure, however, the right to a jury trial did

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75. Unlike *Gorman,* the right to a jury trial in *Martin* arose in a civil context, and Judge Eldridge wrote for a unanimous court rather than in dissent. *Martin,* 349 Md. at 471, 709 A.2d at 127.

76. *Id.* at 471-72, 709 A.2d at 127.

77. *Id.* at 488-89, 709 A.2d at 135-36.

78. *Id.* at 489, 709 A.2d at 136.

79. *Id.* at 493, 709 A.2d at 137.


81. *Id.* at 278-79, 473 A.2d at 440.

82. *Id.*
not attach if the court agreed with the prosecution's recommendation to limit the defendant's prison sentence to less than ninety days.\textsuperscript{83} Challenging the constitutionality of this procedure as applied to a theft charge, the petitioner in \textit{Kawamura} argued that he was deprived of his right to a trial by jury as guaranteed by the Maryland Declaration of Rights.\textsuperscript{84}

\textit{Kawamura} demanded a careful analysis of the nineteenth century Maryland cases, \textit{Danner v. State}\textsuperscript{85} and \textit{State v. Glenn},\textsuperscript{86} which initially established the boundaries for a state constitutional right to trial by jury in criminal cases.\textsuperscript{87} Judge Eldridge's synthesis of these early cases clarified the threshold for determining when the right to a jury trial attached under the Maryland Constitution.\textsuperscript{88} That threshold depended on the common law and historical classification of the offense and punishment rather than on the legislature's independent determination. Judge Eldridge stated:

\textit{Glenn} and \textit{Danner}, therefore, establish that the right to a jury trial guaranteed by the Maryland Declaration of Rights does not attach, at least at the initial trial level, to certain minor criminal offenses, although this class cannot be precisely defined. Nevertheless the state constitutional jury trial right does attach in the first instance to offenses which historically had been tried before juries. It also attaches to any infamous offense or any offense subject to infamous punishment. Moreover, as the facts of \textit{Danner} show, to the extent that the length of incarceration or the place of incarceration is relevant in determining whether the state constitutional right to a jury is applicable at the initial criminal trial level, it is the maximum sentence and place of incarceration established by the legislature for the particular offense which controls, and not the maximum sentence or place of incarceration decided by the court in a particular case.\textsuperscript{89}

This thoughtful analysis led to a single conclusion: the procedure in question could not be constitutionally applied to a defendant charged with theft, like the petitioner in \textit{Kawamura}.\textsuperscript{90} By wading through a

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\item[\textsuperscript{83}] \textit{Id.} at 279, 473 A.2d at 440.
\item[\textsuperscript{84}] \textit{Id.} at 285, 473 A.2d at 443.
\item[\textsuperscript{85}] 89 Md. 220, 42 A. 965 (1899).
\item[\textsuperscript{86}] 54 Md. 572 (1880).
\item[\textsuperscript{87}] \textit{See Kawamura}, 299 Md. at 287-92, 473 A.2d at 444-47.
\item[\textsuperscript{88}] \textit{Id.}
\item[\textsuperscript{89}] \textit{Id.} at 291-92, 473 A.2d at 446-47 (footnotes omitted).
\item[\textsuperscript{90}] \textit{Id.} at 294-95, 473 A.2d at 448. Judge Eldridge later authored the court's opinion in \textit{Fisher v. State}, a case involving the same statutory criminal procedure that the court had analyzed in \textit{Kawamura}. \textit{See} 305 Md. 357, 359-60, 504 A.2d 626, 627 (1986). The court in
\end{itemize}
\end{footnotesize}
complex series of early Maryland cases and upholding the petitioner’s right to a jury trial, Judge Eldridge displayed his penchant for using the court’s power to safeguard an important individual right that the legislature had left unprotected.

C. Election Law

Judge Eldridge has taken a keen interest in questions of election law during his time on the court. He zealously authored the majority of the court’s election law opinions and served as the court’s voice on issues such as voting rights, qualification for public office, and legislative redistricting. In so doing, Judge Eldridge not only became the court’s expert on election law issues, but also advanced his philosophy on the role of the judiciary with respect to individual rights and the other branches of government. As expected, whenever a branch of Maryland’s government violated an individual’s constitutional right, Judge Eldridge was instrumental in expanding the role of the judiciary to protect that right.

The right to vote is a fundamental individual right guaranteed by Article I, Section 2 of the Constitution of Maryland. Judge Eldridge wrote a pair of opinions clarifying the qualifications for obtaining this right in Maryland: State Administrative Board v. Board of Supervisors and Gisriel v. Ocean City Board of Supervisors. Both involved legislative acts that “disqualified” certain registered voters based on their historical lack of voting activity. The first of these cases, State Administrative Board, strongly upheld this fundamental right to vote by resolving a controversy between the boards of election for the state and Baltimore City. The court affirmed the judgment of the Circuit Court for Baltimore City, which had struck down an order entered by the State Administrative Board of Election Laws. The order sought to require Baltimore City’s Board of Supervisors of Elections to purge its rolls of voters who had not voted in the previous five years. Judge Eldridge wrote for the unanimous court and explained the General Assembly’s role in regulating the right to vote in Maryland. This role, he ex-

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Fisher, this time with respect to a drunk driving charge, again held that the procedure had been unconstitutionally applied to a criminal defendant who had been charged under a statute that carried a possible sentence of one year imprisonment. Id. at 366, 504 A.2d at 630-31.

95. Id. at 603, 679 A.2d at 104.
96. Id. at 592-93, 679 A.2d at 99.
plained, was limited to regulating or prohibiting the voting rights of certain convicted criminals and those under care or guardianship for mental disability.\textsuperscript{97} The legislature’s regulation in these areas as well as the express prerequisites prescribed by Article I, sections 1 and 4 of the Maryland Constitution make up the universe of voter qualifications in the state. “The General Assembly,” declared Judge Eldridge emphatically, “may neither expand nor curtail the qualifications necessary to vote.”\textsuperscript{98} He viewed the purging of the “inactive voters” based on voting frequency as expanding the established qualifications. Judge Eldridge concluded: “[H]aving voted frequently in the past is not a qualification for voting and, under the Maryland Constitution, could not be a qualification. The ‘inactive’ voters who remained on the registration rolls and who continued to meet the constitutional qualifications for voting in Baltimore City, were not ‘ineligible voters.’”\textsuperscript{99} Based on the explicitly drawn constitutional qualifications for the right to vote, the court declined to apply the state’s order, which would have had the effect of making recent voting participation an additional requirement for obtaining the right to vote.\textsuperscript{100}

In the following year, Judge Eldridge’s opinion in \textit{Gisriel} again addressed the constitutional qualifications for voting in Maryland. For the second time in as many years, the court refused to allow the purging of registered but inactive voters from a registration roll.\textsuperscript{101} Quoting large sections of his opinion in \textit{State Administrative Board}, Judge Eldridge reemphasized that, to qualify to vote under the Constitution of Maryland, one must meet only the constitutional prerequisites under Article I.\textsuperscript{102} Furthermore, Judge Eldridge reasoned that, if the court were to allow for the purging of registered voters solely based on their voting inactivity, it essentially would be creating an entirely new and unconstitutional voter qualification requirement.\textsuperscript{103} Judge Eldridge refused to allow the legislature to disqualify voters who met the constitutional standards.\textsuperscript{104} By extending the court’s power

\textsuperscript{97} Id. at 598-99, 679 A.2d at 102.
\textsuperscript{98} Id. at 599, 679 A.2d at 102.
\textsuperscript{99} Id. at 598-99, 679 A.2d at 102 (internal citations omitted) (footnote omitted).
\textsuperscript{100} See id. at 600, 679 A.2d at 103 (stating that there was “no statutory authority” for the State Board’s order “to purge inactive voters”).
\textsuperscript{101} Gisriel v. Ocean City Bd. of Supervisors, 345 Md. 477, 504-05, 693 A.2d 757, 770-71 (1997).
\textsuperscript{102} Id. at 502-04, 693 A.2d at 770.
\textsuperscript{103} Id.
\textsuperscript{104} See id. at 502-03, 693 A.2d at 770 (finding that a city charter may not create voting requirements in addition to those already provided for in Article I, Sections 1 and 4 of the Maryland Constitution).
to its fullest, he protected the individual's fundamental right to vote as guaranteed by the Constitution of Maryland.

As Judge Eldridge is aware, the state can impinge upon the right to vote in ways other than by manipulating voter qualifications. When the government establishes voting districts that are not based substantially on population, the individual's vote may carry less impact than the one person one vote standard requires. Judge Eldridge authored the majority's opinions in a series of cases, all entitled DuBois v. City of College Park, which helped establish the constitutional standards for apportioning voting districts in Maryland. The first two DuBois opinions demonstrate Judge Eldridge's inclination to enlarge the judiciary's role in protecting a fundamental right. The third provides a good example of Judge Eldridge's preference to defer to the other branches of government if the right to vote has suffered no harm.

The first DuBois case (DuBois I) arrived before the Court of Appeals after the Circuit Court for Prince George's County dismissed a class action suit filed by students of the University of Maryland, College Park. The students had alleged that the city of College Park had unconstitutionally diluted their councilmanic votes by establishing voting districts based on the city's population minus the large number of university students who resided in the city. Nevertheless, the circuit court decided that the students lacked standing to make the claim because, despite having registered to vote in College Park, they had not established their domicile in the city. Judge Eldridge wrote for a unanimous Court of Appeals to reverse the circuit court's decision and revive the students' constitutional claim. He was convinced that the College Park Charter and the general election laws provided sufficient safeguards to insure that those on the voter regis-

105. See Reynolds v. Sims, 377 U.S. 533, 568 (1964) (holding that a state is constitutionally bound to apportion districts with populations as equal as possible); Baker v. Carr, 369 U.S. 186, 209 (1962) (holding that a claim of vote dilution based upon an apportionment scheme is justiciable).


107. See infra notes 109-121 (explaining Judge Eldridge's tendency to enlarge the judiciary's role when protecting a fundamental right).

108. See infra notes 173-180 and accompanying text. I will reserve my comments on the third DuBois case for later in the discussion.


110. The term "councilmanic" describes votes or districts that pertain to the election of the members of the city council. RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 460 (Stuart Berg Flexner & Leonore Crary Hauck ed., unabr. 2d ed. 1987).


112. Id. at 527-28, 375 A.2d at 1100-01.
If the students were not qualified, however, the city should have sought a remedy through the specific statutory procedure created to correct the registration lists. Judge Eldridge announced for the court that "the city cannot, by merely moving to dismiss [the students' claim] for lack of standing in this proceeding, contest the fact that those registered according to the city charter are not qualified voters." The court held that the students did have standing because, merely by registering to vote in College Park, they qualified to bring a claim challenging the constitutionality of the apportionment of the voting districts.

Judge Eldridge again wrote the court's opinion when DuBois made its way to the Court of Appeals for a second time (DuBois II). The issues in DuBois II concerned the students' charge that the reapportionment of the districts that the circuit court approved on remand violated equal protection principles. The reapportionment scheme at issue established voting districts based on the population of College Park, but still excluded certain university students from the population count. The court once again rejected the city's scheme for voting districts. The court held that the university students, whom the city subtracted from the population base before reapportioning the districts, had been treated differently from other university students in separate districts in violation of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights.

Judge Eldridge explained:

The concept of equal protection of the laws has traditionally required "the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged." Thus, once a constitutionally permissible apportionment base is chosen, equal protection would generally require that the apportionment base would be applied uniformly to all people and throughout all districts. According to the City's premise that students who have not registered to vote are not domiciliaries, it would seem to follow that all students who are not registered to vote are in the same class and should not be included in the apportionment base, or at

113. See id. at 529, 375 A.2d at 1101.
114. Id. at 533-34, 375 A.2d at 1103-04.
115. Id. at 534, 375 A.2d at 1104.
117. Id. at 678-79, 410 A.2d at 579.
118. Id. at 682-83, 410 A.2d at 581.
119. Id. at 691, 410 A.2d at 585-86.
120. Id. at 689-91, 410 A.2d at 584-86.
least there should likewise be an exclusion of large groups such as those living in the fraternities and sororities . . . . However, the City of College Park has differentiated among the students by not including in the apportionment base those non-voter registered students in [some] districts, but including in the base large groups of students in the fraternity and sorority houses in [another] district regardless of whether they have registered to vote.121

Judge Eldridge's staunch position on protecting fundamental rights energized the students' class action suit and forced the city to reapportion its voting districts.122

Another redistricting case, Legislative Redistricting Cases (hereinafter Legislative Redistricting 1993),123 elucidates Judge Eldridge's approach to the jurisprudence of individual liberties. Writing in dissent, Judge Eldridge argued that the Governor's plan for redrawing the legislative districts should be invalidated because it did not meet the standard expressed in Article III, Section 4 of the Constitution of Maryland.124 A majority of the court approved the Governor's plan, which promoted "communities of interest" and supported "regional interests."125 Judge Eldridge took issue with the majority's acceptance of the plan because he believed it eviscerated the constitutional requirement to give "[d]ue regard for . . . the boundaries of political subdivisions."126 By downgrading the importance of the "due regard" standard, Judge Eldridge contended, the majority endorsed a redistricting plan that "directly contravenes practical necessity, historical precedent, and, most importantly, violates the constitutional mandate."127

Not only did Judge Eldridge view the majority's holding as contrary to the explicit constitutional mandate of Article III, Section 4, but he also objected to the majority's holding on equal protection grounds.128 Characteristically in defense of a fundamental right, Judge Eldridge discussed his view of the impact of the majority's decision on an individual's right to vote: "[T]he majority all but ignores

121. Id. at 690, 410 A.2d at 585 (citation omitted).
122. See id. at 691, 410 A.2d at 585-86 (finding the voting districts to be unconstitutional).
123. 331 Md. 574, 629 A.2d 646 (1993).
124. Legislative Redistricting 1993, 331 Md. at 616-17, 629 A.2d at 667 (Eldridge, J., dissenting).
125. Id. at 618, 629 A.2d at 668.
126. Id. (quoting Md. Const. of 1867, art. III, § 4).
127. Legislative Redistricting 1993, 331 Md. at 623, 629 A.2d at 671 (Eldridge, J., dissenting).
128. Id. at 624, 629 A.2d at 671.
the fundamental right of every citizen in every region of the State to have his or her vote count equally. The standard set forth by the majority allows deliberate vote dilution on the basis of pure geographic favoritism.”

Judge Eldridge further described the majority’s opinion as “an assault on the very concept of representative government” that “sends a message to future governors for many decades that, in preparing a General Assembly redistricting plan, they need not be concerned about . . . constitutional criteria.” Judge Eldridge’s progressive reading of the Equal Protection Clause of the Fourteenth Amendment and Article 24 of the Maryland Declaration of Rights challenged the majority to exercise the court’s power for the protection of an individual’s right to vote.

Judge Eldridge’s dissent in Legislative Redistricting 1993 influenced the court’s most recent redistricting opinion, In re Legislative Districting of the State (Legislative Districting 2002). Last year, in striking down a redistricting plan that the Governor had proposed and the General Assembly had approved, the court relied primarily on Article III, Section 4, which requires a districting plan to give “[d]ue regard . . . to natural boundaries and the boundaries of political subdivisions.”

The court’s renewed emphasis on this constitutional requirement contrasts with its opinion in Legislative Redistricting 1993, but is remarkably similar to Judge Eldridge’s dissent in that case. Although cautioning the Governor that his plan came “perilously close to running afoul of Article III, § 4,” the 1993 opinion may have unintentionally implied that the “due regard” provision acted as a mere guideline instead of a command. Judge Eldridge described this treatment of the due regard provision in Legislative Redistricting 1993 as an “attempt[] to dilute [a] constitutional imperative.” Clearing up whatever confusion may have existed over the proper application of the due regard provision and, perhaps, responding to Judge Eldridge’s earlier dissent, the court in Legislative Districting 2002, stated

129. Id. at 629, 629 A.2d at 674.
130. Id. at 630, 634, 629 A.2d at 674, 677.
132. Id. at 318, 805 A.2d at 295 (quoting Md. Const. of 1867, art. III, § 4).
133. The court recognized the significance of Judge Eldridge’s dissent by citing it to support the assertion that, historically, Maryland’s legislative redistricting plans ordinarily crossed political subdivision lines only to achieve population equality. Id. at 368, 805 A.2d at 325 (citing Legislative Redistricting 1993, 331 Md. at 619, 629 A.2d at 669 (Eldridge, J., dissenting)).
134. Legislative Redistricting 1993, 331 Md. at 614, 629 A.2d at 666.
136. Legislative Redistricting 1993, 331 Md. at 618, 629 A.2d at 668 (Eldridge, J., dissenting).
unequivocally that the due regard provision is clearly mandatory, not hortatory.¹³⁷

Judge Eldridge also has recognized that an individual's right to vote can suffer from a constitutional violation in yet another context—eligibility standards for public office candidacy. The criteria that political subdivisions require for candidate qualifications can create questions of whether the criteria deny equal protection under the law. One of Judge Eldridge's opinions helps define the extent to which political subdivisions may limit an individual's candidacy without unconstitutionally favoring one class over another.

In *Board of Supervisors v. Goodsell*,¹³⁸ the Court of Appeals unanimously invalidated a provision of the Prince George's County Charter that required all candidates for county executive to have been registered as a voter in that county for the previous five years.¹³⁹ Judge Eldridge reasoned that, even though the candidates did not possess a fundamental right to pursue public office, a county's candidacy requirements could still trigger a strict scrutiny equal protection analysis because the requirements can impact voters' choices significantly and place a barrier upon the right to vote.¹⁴⁰ Judge Eldridge described the potential detrimental impact of the five-year registration requirement:

> It has often been pointed out that our society today is extremely mobile. Moreover, it is likely that there is much greater movement among the counties within a state than between different states. Using Prince George's County as an example, ... the total movement of the population both into and out of [the county] for this five year period [between 1965 and 1970] was 359,303, an extremely large figure in relation to total population. With this type of movement into a county like Prince George's, and out of Prince George's County into other areas, it is obvious that a requirement of five years' registration in a metropolitan Maryland

¹³⁹. Id. at 292-93, 396 A.2d at 1040.
¹⁴⁰. Id. at 286-89, 396 A.2d at 1037-39. A particular classification offends the Equal Protection Clause of the Fourteenth Amendment when it involves either a suspect class or a fundamental right, such as the right to vote, and it is not "reasonably necessary to the accomplishment of legitimate governmental objectives," id. at 289, 396 A.2d at 1038-39 (quoting *Bullock v. Carter*, 405 U.S. 134, 144 (1972)), or "necessary to promote a compelling governmental interest." Id. (quoting *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969), overruled in part by *Edelman v. Jordan*, 415 U.S. 651 (1974) (overruling the portion of Shapiro dealing with the Eleventh Amendment)).
county, in order to run for a local office, will render a large number of residents ineligible.\textsuperscript{141}

Finding that the five-year requirement disqualified greater than a third of the county's population, the court concluded that the "potential impact upon voter choice is clearly substantial."\textsuperscript{142} Judge Eldridge accordingly subjected the county's charter provision to strict scrutiny, which it did not withstand, because the provision was not necessary to achieve a compelling governmental interest.\textsuperscript{143} Again, Judge Eldridge's opinion extended the reach of the judiciary to nullify a legislative act that had placed improper burdens on a fundamental individual right.

II. DEFERENCE TO OTHER BRANCHES

Above all, Judge Eldridge is a champion of individual rights; however, he tempers his passion with his respect for, and appreciation of, the distinct role of the judiciary within the three branches of government. When the government protects individual rights to the extent mandated by the federal or state Constitution, Judge Eldridge tends to exercise judicial restraint and defers to the other branches of government. This philosophy also appears in the three areas discussed above—freedom of speech, right to a jury trial, and election law.

A. Freedom of Speech

Judge Eldridge describes his view on First Amendment freedoms as "almost absolutist," a philosophy manifested in the scant opinions in which he supported upholding the legislature's limit on that right. In one of his first opinions addressing First Amendment freedoms, Mangum v. Maryland State Board of Censors,\textsuperscript{144} Judge Eldridge offered a glimpse of his views on the role of the judiciary when the other branches of government have provided protection of free speech. After a trial court had found the film, "Deep Throat,"\textsuperscript{145} to be obscene under the definition set forth by the Supreme Court,\textsuperscript{146} the Court of Appeals was asked to determine the definition of the word "obscene"

\begin{itemize}
  \item \textsuperscript{141} Id. at 288-89, 396 A.2d at 1038 (footnote omitted).
  \item \textsuperscript{142} Id. at 289, 396 A.2d at 1038.
  \item \textsuperscript{143} Id. at 290-92, 396 A.2d at 1039-40.
  \item \textsuperscript{144} 273 Md. 176, 328 A.2d 283 (1974).
  \item \textsuperscript{145} DEEP THROAT (P.D., Inc. and Vanguard Film Productions, Nov. 15, 1972).
  \item \textsuperscript{146} The definition at issue was set forth in Miller v. California. See 413 U.S. 15, 24 (1973). In Miller, the Court defined "obscene materials" as those "works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political, or scientific value." Id.
\end{itemize}
under a Maryland movie censorship statute. Judge Eldridge aptly stated on behalf of the Court of Appeals that "[a]scertaining and then applying the legislative will ... is ... part 'of the warp and woof of our judicial system.'" With respect to the judiciary's role, the court's opinion noted:

Some of us, because of our views of the First Amendment's scope or of the wisdom of censorship, may agree with petitioner [that if its audience were restricted to consenting adults, it would do no harm and should be permitted to show], and some of us may not. However, we are not the appropriate forum for this particular contention. It is our duty to apply the policy determinations of the Legislature to the extent that those determinations may be applied consistent with the First Amendment . . . . The General Assembly of Maryland has made the policy determination that pornography like "Deep Throat" should not be licensed for viewing, even viewing limited to consenting adults, and the Supreme Court has held that such a determination is constitutionally valid. If petitioner is aggrieved by the policy determination, his remedy is a legislative one.

This passage provided insight into Judge Eldridge's philosophy on constitutional interpretation with respect to both individual rights and deference to the legislative branch. Because he believed the legislature's censorship determination was consistent with the First Amendment, even if he impliedly disagreed with that determination, he opted for judicial restraint and deferred to the legislative branch.

B. Right to a Jury Trial

Similarly, when the Constitution itself provides limitations or conditions on a fundamental right, Judge Eldridge reticently accepts and adheres to those limitations. Such is the case with the right to a jury trial under Maryland's Constitution. Bringe v. Collins presented Judge Eldridge with his first opportunity to expound upon the individual's right to a jury trial under the Maryland Constitution and Declaration of Rights. The petitioner, a residential tenant, asked the court whether he had the right to a trial by jury in a civil action, which had been instituted by the landlord to recover possession of the leased

147. Mangum, 273 Md. at 179, 328 A.2d at 285.
149. Id. at 194, 328 A.2d at 293.
The petitioner argued, *inter alia*, that under the Seventh Amendment to the United States Constitution and under Article XV, Section 6 of the Maryland Constitution, he was entitled to a jury trial in an action in the nature of eviction. Judge Eldridge, however, writing for a unanimous court, rejected the Seventh Amendment argument because the Supreme Court consistently had held that it was not applicable to the states through the Fourteenth Amendment.

As for the arguments under the Maryland Constitution, Judge Eldridge wrote:

Article XV, § 6, of the Maryland Constitution, like the Seventh Amendment, guarantees a right to a jury trial in actions at law, where historically there was a right to a jury trial, as opposed to equitable action where there was no such right. We agree with petitioner that an action under [the statute in question] . . . is historically an action at law to which the right to a jury trial has always attached in this State. However, since 1970 the Maryland constitutional right to a jury trial in civil actions only obtains where "the amount in controversy exceeds the sum of five hundred dollars . . . ." For a party in a landlord-tenant action to be entitled to a jury trial, there must either be a claim for money damages over $500.00 or a claim that the value of the right to possession exceeds $500.00. In the subject action, there were no such claims.

By holding that the petitioner failed to plead damages exceeding five hundred dollars, the minimum amount in controversy for the right to a jury trial to attach at the time, the court strictly adhered to the legis-

151. *Id.* at 339-41, 335 A.2d at 672-73.
152. *Id.* at 341, 345, 335 A.2d at 673, 675. The Seventh Amendment to the United States Constitution provides:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

*U.S. Const.* amend. VII.

Article XV, Section 6 of the Maryland Constitution, which was transferred to Article 23 of the Maryland Declaration of Rights in 1977, provides in pertinent part: "The right of trial by Jury of all issues of fact in civil proceedings in the several Courts of Law in this State, where the amount in controversy exceeds the sum of $10,000, shall be inviolably preserved." *Md. Decl. of Rts.* art. 23.

153. *Bringe*, 274 Md. at 341-42, 335 A.2d at 673.
154. *Id.* at 346-47, 335 A.2d at 676 (citations omitted) (footnotes omitted). At the time of this opinion, the Maryland constitutional guarantee to a jury trial was reserved for amounts in controversy that exceeded $500. *Id.* at 345, 335 A.2d at 675. This amount was changed in 1998 to $10,000. *Md. Decl. of Rts.* art. 23.
Again deferring to the legislature's directive, the majority found that, even if the petitioner had pleaded damages exceeding five hundred dollars, he had waived his right to a jury trial by failing to demand it before the district court. Convinced that the petitioner in *Bringe* had received the full protection afforded by the Maryland Constitution, Judge Eldridge wrote consistent with his view that the court's role should be limited in order to allow the other branches to fulfill their necessary functions.

Judge Eldridge again revealed his perception of this principle in *Maryland Aggregates Ass'n v. State*. The petitioners in that case challenged legislation that required operators of surface mines to compensate landowners for certain damages caused by a mining practice known as "dewatering." The legislation also granted the Department of Natural Resources authority to resolve disputes related to the amount of compensation owed to the landowner. Because an agency, rather than the courts, had the power under the statute to resolve disputes over the amount of compensation, the petitioners complained that the legislation violated Article 23 of the Maryland Declaration of Rights, which guarantees the right to a jury trial in civil proceedings where the amount in controversy exceeds five thousand dollars.

Judge Eldridge, joined by all of his colleagues on the Court of Appeals, viewed Maryland's constitutional right to a jury trial differently than the petitioners. He recognized that the right to a jury trial in a civil proceeding "concerns the allocation between judge and jury of the responsibility for decision making in judicial proceedings." The constitutional right to a jury trial, therefore, did not apply in *Maryland Aggregates*, "where the legislature has committed to an administrative agency the initial decisionmaking function with respect to..."
a particular class of disputes." As was appropriate to preserve the necessary function and operation of the government, Judge Eldridge yielded to the legislature and upheld its authority to compensate landowners who suffered damage from a potentially harmful mining practice.

In one of his more memorable recent opinions, Bowden v. Caldor, Inc., Judge Eldridge again recognized the importance of judicial restraint when individuals' rights had not suffered. Bowden concerned an award of punitive damages that the trial court had reduced as excessive without offering the option of a new jury trial on the issue of damages. The petitioner in the case argued that the trial court, by refusing to provide the option of a new trial, deprived him of his right to a trial by jury under Article 23 of the Declaration of Rights.

A majority of the court, represented by Judge Eldridge's opinion, disagreed. Judge Eldridge noted that Article 23 of the Declaration of Rights guarantees the jury trial right in a civil case as to issues of fact, not as to issues of law. As to whether the reduction of punitive damages involved a factual or legal determination, Judge Eldridge wrote:

As pointed out by Justice Scalia, the measure of compensatory damages suffered is essentially "a question of historical or predictive fact," whereas "the level of punitive damages is not . . . ." The factors limiting the size of punitive damages awards . . . are principles of law. The limits imposed upon awards of punitive damages, whether by Maryland common law or by federal constitutional law, are legal limits . . . . It is true that the limits imposed upon punitive damages involve the weighing of several legal principles, and thus are not as fixed as a statutory cap on a particular type of damages. Nevertheless, the court, in applying legal principles to reduce a jury's punitive damages award, is performing a legal function and not acting as a second trier of fact.

Because determining the excessiveness of a punitive damage award involved a legal determination rather than a factual one, the question

163. Id.
164. Id. at 682, 655 A.2d at 898.
166. Id. at 15-18, 710 A.2d at 272-73.
167. Id. at 42-43, 710 A.2d at 286.
168. Id. at 47, 710 A.2d at 288 (citing Murphy v. Edmonds, 325 Md. 342, 371, 601 A.2d 102, 116 (1992)). The Article 23 right to a jury trial also does not cover equitable matters or matters historically reserved for a judge to decide. Id.
169. Bowden, 350 Md. at 47, 710 A.2d at 288 (citations omitted).
did not give rise to a right to a trial by jury.\textsuperscript{170} Accordingly, the trial court's refusal to provide the petitioner an option for a new trial on punitive damages did not harm the petitioner's constitutional rights.\textsuperscript{171} Judge Eldridge, satisfied that the petitioner's constitutional right had been secured, elected not to expand the court's power to impose an additional requirement on the trial court.\textsuperscript{172}

C. Election Law

Judge Eldridge also has disapproved of expanding the judiciary's power to intervene in the functions of other branches when an individual's right to vote has been preserved adequately. The third of the \textit{DuBois} cases\textsuperscript{173} (\textit{DuBois III}) exemplifies his willingness to yield to other branches of government in such circumstances.\textsuperscript{174} At their third stop at the Court of Appeals, the students in \textit{DuBois III} challenged the voting districts that College Park's city council divided evenly among the registered voters in the city.\textsuperscript{175} The students complained that the division of districts based on registered voters did not reflect the actual population of the individual districts.\textsuperscript{176} Judge Eldridge and the rest of the Court of Appeals, however, disagreed. Judge Eldridge's opinion carefully followed Supreme Court precedent and acknowledged that a division of the districts based on voter registration could be a legitimate foundation for the city's reapportionment. Citing the Supreme Court's opinion in \textit{Burns v. Richardson}, Judge Eldridge instructed that voter registration lists may serve as an apportionment base even if apportionment, when calculated by the federal census, would produce a somewhat different result. The city would have been required to select a different apportionment base only if the voter registration list created a "substantially different" apportionment from that which would result under a permissible population base.\textsuperscript{177} As applied to the cases before the court, these principles "produce[d] a clear result."\textsuperscript{178} Judge Eldridge stated, "The plaintiffs have utterly failed to show that the use of voter registration

\begin{itemize}
\item \textsuperscript{170} Id.
\item \textsuperscript{171} Id.
\item \textsuperscript{172} See id. (stating that "[a]lthough the court, in its discretion, may grant a new trial option, it is not required to do so").
\item \textsuperscript{173} For a discussion of the first two cases in the \textit{DuBois} series, see supra notes 106-122 and accompanying text.
\item \textsuperscript{174} \textit{DuBois} v. City of College Park, 293 Md. 676, 447 A.2d 838 (1982).
\item \textsuperscript{175} Id. at 679, 447 A.2d at 839-40.
\item \textsuperscript{176} Id. at 680, 447 A.2d at 840.
\item \textsuperscript{177} Id. at 683, 447 A.2d at 842.
\item \textsuperscript{178} Id.
\end{itemize}
as the apportionment base under College Park’s new plan will produce a result substantially different than would be produced under a permissible population base.”179 Content that College Park had finally divided the voting districts based on constitutionally permissible criteria, Judge Eldridge deferred to the city, restricted the court’s role, and allowed the City Council of College Park to exercise its legislative powers.180

Judge Eldridge has recognized that the balance our forefathers created in the three branches of government is delicate indeed, and one branch may, from time to time, overstep its constitutional role, even in a benevolent attempt to protect an individual’s right to vote. Accordingly, Judge Eldridge, conscious of the judiciary’s specialized role, wrote the court’s opinion striking down the legislature’s unconstitutional act and reinforcing the principle of separation of powers. Similarly, in Duffy v. Conaway,181 the court was asked to order a candidate removed from a ballot for allegedly distributing bread, margarine, chickens, and smoke detectors to garner votes.182 The petitioner had brought the case against the candidate under a statute that assigned the court the limited role of collecting evidence to make findings of fact, which the court was then to submit to the House of Delegates.183 Under the statute, the court had no other role in resolving the controversy between the parties.184 In striking down the statute, Judge Eldridge iterated his view that the judiciary’s role should be limited to its particular constitutional function:

In Art. 33, § 26-18 (d), as applied to an election for register of wills, the Legislature intended that the circuit court act as a mere collector of evidence and fact finder for the House of Delegates. The court’s order under that Section binds nobody and determines nothing. This is not a judicial function under our holdings that a controversy, to be justiciable, must be capable of final adjudication by the judgment or decree to be rendered.185

179. Id. at 683-84, 447 A.2d at 842 (citations omitted).
180. See id. at 683-84, 447 A.2d at 842 (explaining that College Park’s apportionment plan did not violate equal protection principles and was acceptable).
181. 295 Md. 242, 455 A.2d 955 (1983). This appeal involved the consolidation of three separate civil actions. Id. at 245, 455 A.2d at 956.
182. Id. at 251, 455 A.2d at 959.
183. Id. at 261, 455 A.2d at 964.
184. Id.
185. Id. (citations omitted) (internal quotation marks omitted).
Consistent with his view that the role of the judiciary should not be unnecessarily expanded, Judge Eldridge rejected the statute's imposition of a non-judicial function upon the courts.186

III. Conclusion

Looking back over the hundreds of judicial opinions that Judge Eldridge has authored, what most distinguishes him from his colleagues is not his style of writing. He has not made his mark by wedging himself to a particular style of constitutional interpretation or to a specific ideology. What has made Judge Eldridge unique has been his unwavering drive to uphold the rights of individuals as they are guaranteed by the Constitution. His respect for our Constitution inspired him to develop a deep understanding of its intricacies. In service to our State, he has repeatedly applied this understanding to fulfill the pledge he made almost twenty-nine years ago, to uphold the Constitution and the laws of the State of Maryland. Along the way, he heightened and expanded our own constitutional comprehension.

My desire to write about Judge Eldridge is inspired as much by my appreciation for his friendship as by my admiration for his professional accomplishments. Since my appointment to the Court of Appeals two years ago, I have called Jack Eldridge, time and again, for personal as well as professional advice. And, he always has been, without airs, ready, willing, and able to provide the candid words that one can expect only from a most trusted colleague and friend.

Although I will miss my ready access to his archive of wisdom and knowledge, I and all those who have come in contact with him will remember Judge Eldridge as an active and communicative judge. His understanding that a judicial opinion stands perpetually as a guiding instrument will be remembered in his reluctance to hurry the writing process when the appropriate language had not yet been found. Although he will cease to sit regularly on this court after November 2003, his voice and wisdom will endure omnipresently as the opinions he has authored over these many years continue to shape the development of the law in our state. As a fellow member of the bench, I am grateful for his excellent example; as a Maryland citizen, I am even more grateful for his constancy in upholding the Constitution to protect the rights of all.

186. Id. at 252-63, 455 A.2d at 965.