

**IN THE
COURT OF APPEALS OF MARYLAND**

September Term 2021

**Petition No. 78
(CSA No. 0117, September Term 2021)**

TRACI SPIEGEL, et al.,

Petitioners,

v.

BOARD OF EDUCATION OF HOWARD COUNTY,

Respondent.

On Petition for Writ of Certiorari from the
Circuit Court for Howard County
(Case No: C-13-CV-20-000954)

**ANSWER IN OPPOSITION
TO PETITION FOR CERTIORARI**

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INTRODUCTION

This Court has repeatedly explained that its function is to decide legal questions—not to opine on policy matters best left to the General Assembly. *See, e.g., Griffin v. Bierman*, 403 Md. 186, 211 (2008) (explaining that this Court’s “duty is not to substitute [its] own judgment of what the law ought to be for what the Legislature declares it should be” (citing *Borchardt v. State*, 367 Md. 91, 129 (2001))). In seeking certiorari in this case, Plaintiffs disregard that basic distinction between law and policy.

This suit involves a constitutional challenge to a Maryland statute requiring that one seat on the Howard County Board of Education be held by a student enrolled in a local public school. Plaintiffs contend that the statute—which sets forth a rigorous, multi-step process for selecting the student Board member, culminating in a vote of the student body and confirmation by the other Board members—violates the Maryland Constitution. In particular, they argue that the statutory procedure for selecting the student Board member: (1) violates Article I, section 1 by permitting minors to vote in a general “election”; and (2) violates Article I, section 12 by permitting a minor to serve in an “elective office.”

As the Circuit Court properly concluded, the central premise of Plaintiffs’ argument—namely, that the student Board member is selected through a general “election”—is wrong. Maryland’s Constitution does not require all school-board seats to be filled via a formal election of registered voters. Rather, the Constitution grants

the General Assembly broad authority to fill school-board seats through whatever process it chooses—including through a non-elective appointment process. The General Assembly acted well within that authority when it established a non-elective process for filling the student seat in Howard County (just as it did when it established similar processes for filling school board seats on several other county school boards). Plaintiffs disapprove of that selection process for a variety of policy-based reasons. But those policy disagreements do not provide a reasonable basis for granting certiorari here, and they certainly do not provide a basis for bypassing the Court of Special Appeals. For that reason, and others set forth below, this Court should deny their petition.

QUESTIONS PRESENTED FOR REVIEW

(1) Does Education Article § 3-701(f) violate Article I, section 1 of the Maryland Constitution?

(2) Does Education Article § 3-701(f) violate Article I, section 12 of the Maryland Constitution?

COUNTERSTATEMENT

A. Statutory Background

As in many states, local school boards in Maryland are a product of state legislation. The General Assembly exercises broad authority under the Maryland Constitution to establish the size and structure of each local board. Over the past five decades, it has used that authority to create a designated “student seat” on school

boards in numerous counties. In many of those counties, including several of the largest in the state, the General Assembly has expressly granted the student school-board member the power to vote on substantive matters before the board.

In 2007, the General Assembly amended the statute establishing the Howard County Board of Education to create a new voting seat on the Board for a student member.¹ *See* 2007 Md. Laws, ch. 611, § 1. Pursuant to Education Article § 3-701, the Board is now comprised of eight seats “consist[ing] of: (i) Seven elected members; and (ii) One student member.” Md. Code, Educ. § 3-701(a)(1). Two of the “elected members” are elected at-large, while the other five are elected from each of the County’s councilmanic districts. *Id.* § 3-701(a)(2).

The student member, in contrast, is chosen through a multi-step “nomination and election process,” which must be “approved by the Howard County Board of Education.” Md. Code, Educ. § 3-701(f)(3). That process typically begins each spring, when school administrators select standout students to participate in a convention organized by the Howard County Association of Student Councils, a student-led advisory committee chartered by the Board. At that convention, student delegates from the County’s middle and high schools narrow the pool of interested candidates down to two finalists. Those finalists then run against each other in a

¹ The legislation passed overwhelmingly, receiving unanimous support in the House of Delegates and obtaining a 42-4 vote margin in the Senate. *See* Md. Senate Roll Call Vote, 2007 Sess. H.B. 513 (Apr. 6, 2007); Md. House of Delegates Roll Call Vote, 2007 Sess. H.B. 513 (Mar. 8, 2007).

student-body election; all currently enrolled students in grades 6 through 11 may participate in the election. *See id.* The selection process culminates with the elected Board members confirming the appointment of whichever student garnered the most student-body votes. *See, e.g.,* Board of Education of Howard County, *Meeting Agenda Item* (June 11, 2020), <https://perma.cc/C6XJ-P6PD>. That student then takes his or her seat on the Board on July 1st. *See* Md. Code, Educ. § 3-701(f)(2).

The student Board member generally exercises “the same rights and privileges as an elected member.” Md. Code, Educ. § 3-701(f)(6). But § 3-701 also differentiates the student member from the elected members in other respects. For instance, the student member serves only a one-year term (starting in July), rather than a four-year term (starting in January). *Id.* § 3-701(f)(2). The student’s position is also the only uncompensated position on the Board. *Id.* § 3-701(f)(8). And the student is barred from voting on certain topics, *see id.* § 3-701(f)(7), and may not participate in the Board’s closed sessions absent invitation, *id.* § 3-701(f)(6). In all other respects, however, the student member’s responsibilities mirror those of the other Board members, and the student member contributes to the Board’s work in significant ways.

B. Procedural History

Plaintiffs, Traci Spiegel and Kimberly Ford, filed this lawsuit against the Board in December 2020. Their complaint outlined their objections to the Board’s policies regarding the COVID-19 pandemic, focusing primarily on the school-reopening plan

that the Board tentatively adopted last November. The complaint’s sole cause of action alleged that § 3-701(f)’s procedure for filling the student seat on the Board violates Article I of the Maryland Constitution. Specifically, they argued that the procedure unconstitutionally permits minors—but not adults—to “elect” the student Board member (in violation of Article I, section 1) and unconstitutionally permits a minor to serve in “elective office” (in violation of Article I, section 12). In their prayer for relief, they sought a declaratory judgment holding that § 3-701(f) is unconstitutional, as well as an injunction that would have stripped the current student Board member of all voting power.

In March 2021, the Circuit Court for Howard County (Bernhardt, J.) granted summary judgment to the Board.² In a careful 18-page opinion, the court roundly rejected all of Plaintiffs’ arguments. The court began by explaining that Plaintiffs’ constitutional theory rested on the faulty premise that § 3-701(f)’s multi-step process for selecting the student Board member must be treated as an “election” for the purposes of Article I. *See* Mem. Op. 8. Rather, the court reasoned, the statute’s text and surrounding context made clear that the General Assembly intended to create a non-elective selection process. *See id.* at 8–12. The court further held that it was within the General Assembly’s power to create such a process because nothing in the Maryland Constitution precludes the establishment of non-elective school-board

² Judge Bernhardt’s opinion, which is attached to Plaintiffs’ petition, is cited throughout this brief as “Mem. Op. ____.”

positions. *See id.* at 11 (“There is no provision in the Maryland Constitution that requires that board of education members be elected nor does the General Assembly lack the power to create non-elective positions.”).

Plaintiffs immediately appealed the Circuit Court’s ruling to the Court of Special Appeals. Before they filed their opening brief in the appeal, however, they filed a petition for certiorari with this Court.

ARGUMENT

I. The Circuit Court’s decision is correct.

The Circuit Court properly rejected Plaintiffs’ constitutional claims and Plaintiffs have not identified any compelling reason for this Court to revisit that decision.

Plaintiffs contend that § 3-701(f) violates Article I, section 1 of the Maryland Constitution. That provision states that “every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections.” Plaintiffs argue that § 3-701(f) violates Article I, section 1 by permitting Howard County’s middle-school and high-school students to “elect” the student Board member. The Circuit Court correctly rejected that argument. Its reasoning was simple: the process for filling the student Board seat is not an “election” subject to the Article I, section 1.

As the court explained, the text of § 3-701(f) explicitly differentiates between the seven “elected members” of the Board and the one “student member.” Mem. Op. 8. The court also relied on the many other “major differences” in the statute between how the elected members are selected and how the student member is selected. *Id.* Besides “the most obvious difference”—i.e., that “the student member must be a junior or senior year student from a Howard County public high school”—the court cited the fact that “the election results must be approved by the Board itself,” “the student member is selected outside of the normal election cycle,” and “the statute permits the runner-up to hold office if the selected student member is unable or ineligible to complete his or her term.” *Id.* at 8–9. These aspects of the student-member selection process, the court observed, are all “uncharacteristic of elections carried out under the Election Law Article,” as is the “lack of involvement of election officials.” *Id.* at 9.

In addition to the text of § 3-701(f) itself, the court also highlighted the broader statutory scheme as evidence that the General Assembly intended the student-member selection process to be non-elective. The court noted, for instance, that the General Assembly had enacted “seven statutes within Title 3 of the Education Article establishing student members of the board with voting authority,” several of which “colloquially refer to the selection process of student members as an election.” Mem. Op. 10. And the court also pointed to a 1980 Attorney General opinion, which concluded that a similar statute—permitting students in Prince George’s County to

“elect” a student school-board member with voting authority—was constitutional. *Id.* at n.10, 12 (citing Md. Att’y Gen. Opinion No. 80-030, 1980 WL 127893 (Mar. 12, 1980)).

The court relied on the same logic to reject Plaintiffs’ contention that § 3-701(f) violates Article I, section 12 of the Maryland Constitution. That provision states that “a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State.” Plaintiffs argue that Article I, section 12 renders minors ineligible to serve on the Board because minors are not registered voters. But, as the court below recognized, Article I, section 12’s eligibility requirements apply only to “*elective* office”; the provision “does not set an age or voter registration requirement on non-elective officials.” Mem. Op. 16. Thus, because the student Board seat is not filled through an “election,” the seat holder is not subject to the eligibility requirements of Article I, section 12.

Plaintiffs’ arguments to the contrary cannot be squared with the text of § 3-701(f) or Article I itself. Nor can they be squared with basic rules of statutory interpretation. For instance, their contention that Article I, section 12 applies to the student Board position would render that provision’s reference to “elective office”—in both its title and its main text—entirely meaningless. But “[i]t is a well settled canon of statutory construction that [courts] should, when interpreting a statute, give effect to all of the language and avoid a construction that renders any portion

superfluous.” *Stanley v. State*, 390 Md. 175, 183–84 (2005). Indeed, Plaintiffs do not even attempt to argue that their reading of Article I, section 12 is *superior* to the Circuit Court’s text-based reading. Instead, they argue that their interpretation is “*equally logical*.” Petition 11 (emphasis added). Yet, even if their proposed interpretation were “equally logical” (and it is not), their desire to create a constitutional violation where one would not otherwise exist hardly provides a legitimate basis for privileging their reading over the Circuit Court’s reading.

In short, Plaintiffs’ scattershot objections to the Circuit Court’s ruling are unfounded and do not provide a basis for granting certiorari. They have not identified any sound reasons why they should be permitted to bypass the Court of Special Appeals simply to re-litigate issues that were properly resolved against them below.

II. Plaintiffs’ policy-based objections to § 3-701(f) do not justify review here.

This Court adheres to the “axiomatic principle that statutes carry a strong presumption of constitutionality.” *Koshko v. Haining*, 398 Md. 404, 426 (2007). Consistent with that principle, any duly enacted state statutes must be “construed so as to avoid a conflict with the Constitution whenever that course is reasonably possible.” *Id.* (quoting *In re James D.*, 295 Md. 314, 327 (1983)). The Circuit Court in this case did just that by concluding that the selection process outlined in Education Article § 3-701(f) could not be construed as an “election” for the purposes

of Article I of the Maryland Constitution. As explained above, that decision was plainly correct.

In urging this Court to revisit that decision, Plaintiffs rely principally on the same policy-based arguments that the Circuit Court properly rejected. They argue, for instance, that “Maryland’s practice of allowing minors to serve in a binding voting capacity on school boards is largely unique and unprecedented.” Petition 3. And they renew their objections to how the current student Board member voted on certain school-reopening decisions last year. *See* Petition 5 (describing the Board’s votes on school-reopening decisions in November and December 2020). But Plaintiffs’ policy-based grievances do provide a legitimate basis for granting review here. Insofar as Plaintiffs object to the school-board structure or selection processes established by the General Assembly, the proper recourse is for them to raise those objections with the General Assembly—not this Court.

III. If this Court grants the petition, it should limit the question presented to the questions actually raised below.

To the extent that this Court is inclined to grant certiorari in this case, it should reframe the questions presented to identify the specific *legal* questions implicated by Plaintiffs’ claims. Plaintiffs identified the following “questions presented for review” in their petition:

Does the Maryland Constitution prevent minors 11 years of age and older from selecting a member holding a binding voting position on the Howard County Board of Education, whether by election, appointment, or other means?

Does the Maryland Constitution prevent minors from holding the office of a binding voting position on the Board of Education of Howard County, a board which possesses general governmental power?

Petition 3. By framing the questions in these vague and generalized terms, Plaintiffs seek to obscure the actual legal questions at issue here in at least two ways.

First, Plaintiffs' framing of the questions conspicuously fails to identify the specific provisions of the Maryland Constitution on which their claims rest. As noted above, Plaintiffs' claims rest on two provisions of the Maryland Constitution: sections 1 and 12 of Article I. Those are the only two provisions of the Constitution that purportedly bar minors from participating in a general "election" or holding "elective office." To the extent that Plaintiffs now seek to expand their claims to include other constitutional provisions or theories, this Court should reject that effort.³ *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

Second, Plaintiffs' framing of the questions conspicuously fails to identify the statutory provision they are actually challenging here. That omission is hardly surprising. After all, focusing on the actual terms of that provision—Education

³ As noted above, Article I, section 1 of the Maryland Constitution focuses exclusively on the qualifications for participating in "elections." But Plaintiffs' first proposed question refers to constitutional constraints on the selection of the student Board member, "whether by election, appointment, *or any other means.*" Petition 3 (emphasis added). Plaintiffs' vague allusions to other methods of selections suggests that they may be exploring new theories arising under other constitutional provisions.

Article § 3-701(f)—would make it harder for Plaintiffs to cherry-pick the parts of the statute they find most offensive. Again, Plaintiffs’ entire case hinges on their characterization of the student-body election in § 3-701(f) as a general “election.” But the student-body election constitutes just one step in a much broader selection process, as outlined in § 3-701(f). And, as the Circuit Court rightly observed, that broader selection process does not even remotely resemble a typical “election.” *See* Mem. Op. 8 (outlining the “major differences between the election of the seven elected Board members and the selection of the student member”). This Court should therefore reject Plaintiffs’ attempt to frame the question presented around their selective (and inaccurate) characterization of § 3-701(f)’s selection process.

In sum, if this Court chooses to grant review in this case, it should limit its review to the narrow legal questions actually presented by this case, namely: (1) whether Education Article § 3-701(f) violates Article I, section 1 of the Maryland Constitution; and (2) whether Education Article § 3-701(f) violate Article I, section 12 of the Maryland Constitution. Plaintiffs should not be permitted to expand or adjust their claims at this stage of the case.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the font, spacing, and type-size requirements of Maryland Rule 8-112, as the brief was prepared in 14-point Garamond font. I further certify that this brief contains 2,970 words, excluding the portions of the brief excluded from the word count by Rule 8-503.

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CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2021, a copy of the foregoing brief was filed with the Clerk of the Court via MDEC, and a copy was served on the following individuals via electronic and regular mail:

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