

TRACI SPIEGEL, *et al.*,

Plaintiffs,

v.

BOARD OF EDUCATION OF HOWARD
COUNTY

Defendant.

IN THE

CIRCUIT COURT FOR

HOWARD COUNTY,

MARYLAND

Case Number: C-13-CV-20-000954

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT**

The plaintiffs, Traci Spiegel and Kim Ford, on their own behalf and on behalf of their minor children, by their attorney Anthony M. Conti and the law firm Conti Fenn LLC, pursuant to Maryland Rule 2-501, hereby submit this memorandum of law in support of their motion for summary judgment. The Plaintiffs request a speedy hearing on their Motion to be scheduled as soon as practicable in December 2020 or January 2021, pursuant to Md. Cts. & Jud. Proc. §3-409(e), which authorizes the Court to “order a speedy hearing on an action of a declaratory judgment and [] advance it on the calendar.”

**I.
Introduction**

Article I, Section 1 of the Maryland Constitution mandates 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 to be held in this State.” Md. Const., Art. I, §1 (emphasis added). Maryland’s high court has observed that “the General Assembly may neither expand nor curtail the qualifications necessary to vote.” *State Administrative Bd. of*

Election Laws v. Board of Sup'rs of Elections of Baltimore City, 342 Md. 586, 599 (1996). In its holdings, the Court of Appeals has acknowledged that the right to vote is “one of, if not, the most important and fundamental rights granted to Maryland citizens as members of a free society.” *Nader for President 2004 v. Maryland State Board of Elections*, 399 Md. 681, 686 (2007) (internal quotation marks omitted); see Md. Constitution, Declaration of Rights, Art. 7. In passing laws, the General Assembly does not have “*carte blanche* authority to enact laws and implement voting procedures that are in derogation of the Constitution.” *Lamone v. Capozzi*, 396 Md. 53, 76 (2006). In fact, the Maryland Constitution requires that the General Assembly pass legislation “necessary for the preservation of the purity of elections.” Md. Constitution, Art. I, §7.

The General Assembly enacted Md. Code Ann., Education Article (“Educ.”), §3-701, which establishes the Board of Education of Howard County (“Board”). Howard County’s Board of Elections is an elected board that consists of seven members elected by eligible adult voters registered to vote in Maryland as well as one “student member.” The student member position is elected by “student[s] in grades 6 through 11 enrolled in a Howard County public school” Educ. § 3-701(f)(3)(iii). The student member is granted broad voting powers over Board matters governing Howard County public schools. Notably, the student member is permitted to vote on all matters that the elected members can vote on, with limited exceptions. See Educ. §3-701(f)(7).

Despite the broad powers and duties of the student member, the General Assembly has carved out an exception for the student member that makes *only* the student member on the Board exempt from the rules, regulations, and requirements of the election laws of the State. Subsection (f) of Section 3-701 merely requires that the student member be “a bona fide resident

of Howard County and a regularly enrolled junior or senior year student from a Howard County public high school.” Educ. §3-701(f)(1). Thus, the student member need not be 18 years of age in order to hold the position, and residents of Howard County who have not yet reached 18 years of age are entitled to vote for the student member. For these reasons, Section 3-701(f) violates the Article I, Section 1 of the Maryland Constitution because it violates the core tenet of our democracy by permitting a minor who have not reached 18 years of age to vote for an elected position and permits a minor child to hold that elected position. These powers are undemocratic and this Court should declare the Section 3-701(f) unconstitutional, strike the offensive provision, and enjoin the student member of the Board from casting any binding vote on matters before the Board.

II.

Undisputed Material Facts

1. The Board of Education of Howard County is considered a state agency.
2. The defendant Board of Education of Howard County is the school board for Howard County, which consists of seven members elected by registered voters who are adult citizens of Howard County and one student member of the Board elected by the local students in grades 6 through 11.
3. The only qualifications for the Board’s student member are that the student member must be a bona fide resident of Howard County and a regularly enrolled junior or senior year student from a Howard county public high school.
4. To be chosen as a student member, students must be nominated by their principals and attend the Howard County Association of Student Counsels Convention. From the delegates attending the convention, two students are chosen to run for the student member position. Then, there is an election among all students from grades 6 to 11 who attend a Howard County public

school. The winner joins the Howard County Board of Education for one year, starting July 1st following the election.

5. With a few exceptions, in Howard County “the student member has the same rights and privileges as an elected member,” MD. CODE ANN., Educ. §3-701(f)(5) (2020).

6. The student member is contemplated to be a minor who has not yet reached the age of 18. The student member is voted into a specially-elected position by middle and high school students aged 11 and older, only a small percentage of whom would be the legal age to vote for an adult candidate in a regular school board election.

7. The student member is entitled to an equally weighted vote on significant and substantial matters affecting school students, such as the return of students to receiving appropriate and necessary in person instruction.

8. The student member is the only elected member of the board who is exempt from the State’s election laws.

9. The student member is a stakeholder because by definition, the student member is currently an enrolled student who receives the benefits and is directly regulated by the actions of the Board.

10. All other stakeholders, such as teachers and principals, are prohibited from serving on the Board. *See, generally*, MD. CODE ANN., Educ. § 3-114(g) (2020).

11. In the past three votes relating to returning Howard County’s children to in-person instruction, the student member has cast a vote and the overall Board vote resulted in a four to four tie vote, preventing a majority needed for passage of the vote.

12. On November 16, 2020, a Board motion on a decision relating to considering returning students through a hybrid model in the second semester failed by a four to four vote. The student member cast a vote on this motion.

13. On November 16, 2020, a Board motion to direct the Superintendent to look at other options for the hybrid model failed by a four to four vote. The student member cast a vote on this motion.

14. On December 7, 2020, a Board motion to direct the superintendent to make a reopening decision based on metrics and operational capacity failed by a four to four vote. The student member cast a vote on this motion.

III. **Standard of Review**

Pursuant to Maryland Rule 2-501(a), a party may file a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. “The Supreme Court and the Court of Appeals have, in recent years, emphasized that a trial court should not be reluctant to grant a motion for summary judgment in an appropriate case.” *Mathis v. Hargrove*, 166 Md. App. 286, 300 (2005). “Only a genuine dispute as to a material fact is relevant in opposing a motion for summary judgment. *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 242 (1992). “The facts proffered in opposition to the granting of a motion for summary judgment must not only be detailed and precise, but must be admissible in evidence, if there is to be a finding that there is a genuine dispute as to a material fact.” *Shaffer v. Lohr*, 264 Md. 397, 404 (1972). “Formal denials or general allegations are insufficient to prevent the award of summary judgment.” *Seaboard Sur. Co.*, 91 Md. App. at 243.

When interpreting Constitutional provisions, the court uses “the same rules of interpretation that relate to the interpretation of a statute, and gives the language of the provision its ordinary, plain meaning.” *Lamone v. Capozzi*, 396 Md. 53, 83 (2006). If the constitutional provision under review is clear and unambiguous, then “the Court will not infer the meaning from sources outside of the Constitution itself.” *State Bd. of Elections v. Snyder ex rel. Snyder*, 435 Md. 30, 53 (2013); *see Brown v. Brown*, 287 Md. 273, 277-78 (1980) (“[E]ach word being given its ordinary and popularly understood meaning . . . and, if the words are not ambiguous, the inquiry is terminated”). Further, “statutory laws regarding the same subject are to be read and harmonized together in order to avoid leaving the provision at issue ineffective, duplicative, or nugatory.” *Snyder*, 435 Md. at 54.

IV. Argument

A. **The Undisputed Facts Demonstrate that Section 3-701(f) Violates Article 1, Section 1 of the Maryland Constitution.**

1. Legal Background

The Maryland Declaration of Rights expressly confirms that the right of the people to participate in elections and vote is the best security of liberty and the foundation of a free government. To preserve these rights, the Maryland Constitution guarantees free and frequent elections and the right to vote for “every citizen having the qualification prescribed by the Constitution” Md. Const., Declaration of Rights, art 7. Section 3-701(f) of the Education Article violates Article 1, Section 1 of the Maryland Constitution because it permits persons under 18 years old to vote in a general election by allowing minors from grades 6 to 11 in Howard County public schools to vote for a voting member of the Board, and it allows a minor

to hold an otherwise adult-elected position that dilutes the voting rights of adult voters in Maryland.

Article I, Section 1 of the Maryland Constitution provides 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 to be held in this State.” Md. Const. Art. I, § 1 (emphasis added). This Constitutional age requirement for voting has been acknowledged by the Court of Appeals. *See Maryland Green Party v. Maryland Bd. of Elections*, 377 Md. 127, 141 (2003) (“The right to vote is conferred upon any United States citizen, age eighteen or older, who is a Maryland resident, and who is not disqualified by a criminal conviction or mental disability.”). Article I, Section 1 applies to elections for boards of education for the counties. *See State Bd. of Elections v. Snyder ex rel. Snyder*, 435 Md. 30, 51-52 (2013).

The age requirement for voting is also codified by statute. Md. Code Ann., Election Law Article (“Elec. Law”), § 3-102(a) provides that a person may become registered to vote if the person “(1) is a citizen of the United States; (2) is at least 18 years old or will be 18 years old on or before the day of the next succeeding general or special election; (3) is a resident of the State as of the day the individual seeks to register; and (4) registers pursuant to this title.” Elec. Law § 3-102(a) (emphasis added).

The qualifications to vote as prescribed in the Maryland Constitution, including the age requirement, are exclusive. *State Administrative Bd. of Election Laws*, 342 Md. at 598-99. As such, “the General Assembly may neither expand nor curtail the qualifications necessary to vote.” *Id.* at 599; *see also Southerland v. Norris*, 74 Md. 326, 328 (1891) (“These qualifications, fixed by the organic law, can neither be enlarged nor curtailed by the General Assembly.”)

(emphasis added). It is well settled that a State Legislature may not enact laws that are in derogation of the Constitution. *See Bienkowski v. Brooks*, 386 Md. 516, 546–547 (2005) (“[T]he constitutional authority to implement a constitutional provision, . . . does not authorize the General Assembly by statute or this Court by rule to contradict or amend the Constitution). Indeed, The General Assembly does not have “*carte blanche* authority to enact laws and implement procedures that are in derogation of the Constitution.” *Lamone v. Capozzi*, 396 Md. 53, 76 (2006).

Despite the prohibition on laws that “enlarge” the constitutional voting limitations, the General Assembly amended Section 3-701 of the Education Article to include provisions for a student member position on the Board of Education of Howard County. *See Acts 2007, c. 611, § 1, eff. July 1, 2007*. The student member was granted broad powers similar to those of the adult elected members of the Board. Specifically, the student member, with limited exceptions, “has the same rights and privileges as an elected member.” Educ. § 3-701(f)(5). By an affirmative vote from a majority of the elected members, the student member may also attend closed sessions of the Board. Educ. § 3-701(f)(6). The student member is entitled to “vote on all matters” except those matters expressly enumerated in the statute.¹ Educ. § 3-701(f)(7).

¹ The student member may not vote on matters relating to:

- (i) Geographical attendance areas under § 4-109 of this article;
- (ii) Acquisition and disposition of real property and matters pertaining to school construction under § 4-115 of this article;
- (iii) Employment of architects under § 4-117 of this article;
- (iv) Donations under § 4-118 of this article;
- (v) Condemnation under § 4-119 of this article;
- (vi) Consolidation of schools and transportation of students under § 4-120 of this article;
- (vii) Appointment and salary of a county superintendent under §§ 4-201 and 4-202 of this article;
- (viii) Employee discipline and other appeals under § 4-205(c) of this article;

In order to qualify for the student member position, the statute requires that the candidate be a resident of Howard County and be “a regularly enrolled junior or senior year student from a Howard County public high school.” Educ. § 3-701(f)(1). Importantly, the adult non-student residents of Howard County who are 18 years or older are not permitted to vote for the student member. Instead, the student member is elected by “student[s] in grades 6 through 11 enrolled in a Howard County public school [who] vote directly for one of the two student member candidates.” Educ. § 3-701(f)(3)(iii).

2. Section 3-701(f) Violates Article I, Section 1 of the Maryland Constitution.

In contrast to Article I Section 1’s mandate that residents of Maryland “of the age of 18 years or upwards shall be entitled to vote,” Section 3-701(f) explicitly states that the student member, which shares most of the powers and duties of adult elected members of the Board, is elected directly by minors in grades 6 through 11 of Howard County public schools. *See* Educ. § 3-701(f)(3)(iii). It is undisputed that most, if not all, children who fall within this grade range are under the age of 18. Indeed, by allowing sixth graders to vote for a member of public office, Section 3-701(f) permits minors as young as eleven years old to vote for a member of the governing body of Howard County public schools.

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- (ix) Budgetary matters under Title 5 of this article;
 - (x) Appointment and promotion of staff under § 6-201 of this article;
 - (xi) Discipline of certificated staff under § 6-202 of this article;
 - (xii) Collective bargaining for certificated employees under Title 6, Subtitle 4 of this article;
 - (xiii) Collective bargaining for noncertificated employees under Title 6, Subtitle 5 of this article; and
 - (xiv) Student suspension and expulsion under § 7-305 of this article.

Educ. § 3-701(f)(7).

Article 1 Section 1's requirement that a resident must be 18-years or older to vote in a general election was expounded upon in *State Bd. of Elections v. Snyder ex rel. Snyder*, 435 Md. 30 (2013). The narrow issue before the Court was "whether under Maryland law, 17 year-olds who will turn 18 by close of registration for the general election and, thus, are eligible to vote in the partisan primary election preliminary to, and associated with, that election, could vote in non-partisan primary elections . . . for county school boards" *Snyder*, 435 Md. at 32-33. Ultimately, the Court held that a 17-year-old may vote in a primary election for county boards of education if the minor will turn 18 years-old by the close of voter registration before the next general election. *Id.* at 62. The *Snyder* Court concluded that Article I Section 1 of the Maryland Constitution applies to primary elections because a primary can result in the election of a public official.

The Court *Snyder* Court observed that primaries were not actual elections but instead were historically unofficial "nominating procedures by which the candidates in the general election are selected." *Id.* at 58. The lower court in *Snyder* determined that the age and residency requirements in Article 1 Section 1 did not apply to party primaries because they were not mandated by the Constitution or even in existence at the time the Constitution was drafted. *See id.* at 41 and 58. To highlight the absurd result if Article I, Section 1 did not apply to primary elections, regardless of how unofficial they were, the Court reasoned:

If Article I, § 1 were read to exclude primary elections, "such a reading could lead to an absurd result, as it would eliminate all Constitutional qualifications for primary elections. **Thus, a 12 year-old, non-U.S. citizen, residing in Virginia, would not be barred by the Maryland Constitution from voting in the Maryland primary election.**" Such a reading simply cannot be correct.

435 Md. at 35 (quoting *Capozzi*, 396 Md. at 89) (emphasis added). Additionally, the *Snyder* Court concluded that an interpretation of Article I, Section 1 that did not impose such an age

requirement “would impute an anti-democratic meaning upon that provision, and would thus contradict the democratic imperatives underlying Article I, § 1 of the Constitution.” *Id.* at 60.

In the instant case, an even stronger claim can be made for applying the voting requirements of Article 1 Section 1 to the student Board member election. Unlike a primary that does not result in any official actually being placed into a position of governmental authority and power, the student member vote to the Board directly propels the candidate to a position of elected office. In fact, the election of a student member of the Board is consistent with the statutory definition of a general election because the election results in actual elected office. *See* Elec. Law § 1-101(v)(1)-(2) (defining “election” as “the process by which voters cast votes on one or more contests under the laws of this State or the United States,” including “all general elections, primary elections, and special elections.”); Elec. Law § 1-101(uu) (“‘Vote’ means to cast a ballot that is counted.”).²

Snyder stands for principle that Article I Section 1 applies to *all* elections that result in electing someone to a democratically-elected position with binding voting power on a state agency such as a school board. Indeed, Article I, Section 1 is clear and unambiguous in that an individual who resides in Maryland *must* be 18 years-old by the close of registration next preceding an election in order to vote. *See Snyder*, 435 Md. at 55. Following that principle, Article I, Section 1 must apply to the election of a student member to the Board because the student member has the power to make a binding vote on most Board matters.

² Notably, Section 3-701(f) of the Education Article also conflicts with the requirements of the Election Law Article. Section 5-202 of the Election Law Article requires that “[a] candidate for public or party office **must be a registered voter** at an address that satisfies any residence requirement for the office that is imposed by law and, in the case of a party office, by party rules.” (emphasis added).

Further, Section 3-701(f) violates Article I Section 1 because it prohibits residents of Howard County over the age of 18 to vote in an election for public office. By virtue of permitting *only* Howard County public school students in grades 6 through 11 to vote for the student member, it excludes almost every lawfully registered voter in Howard County from voting for a member of the Board. Section 3-701(f) establishes an undemocratic student position on the Board because it has the effect of diluting the votes of legal, registered voters in Howard County. This violates the well-established principle that each person is entitled to one vote. *See Baker v. Carr*, 369 U.S. 186, 208 (1962) (“A citizen’s right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution”); *Gill v. Whitford*, 138 S. Ct. 1916, 1935 (2018) (noting that vote dilution “arises when an election practice . . . devalues one citizen’s vote as compared to others.”); *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019) (“[V]ote dilution in the on-person, one-vote cases refers to the idea that each vote must carry equal weight.”).

In *Rucho*, the United States Supreme Court concluded that, in order to withstand a vote dilution claim, “each representative must be accountable to (approximately) the same number of constituents.”). Yet, Section 3-701(f) authorizes a voting member of the Board to be elected by a population less than 80,000 of minors, while the seven remaining members of the Board are elected by a population of over 335,000.³ *See* Howard County demographics,

³ In 2012, then-Senator now Attorney General Brian Frosh made a similar argument against legislation for adding a student member to the Board of Education for Montgomery County. Specifically, Sen. Frosh indicated: “It is simply undemocratic to have one member elected from a population of 70,000 people and five members elected from a population of 1,000,000 people.” David Moon, Sen. Brian Frosh Responds to Critics After Unilaterally Killing Young Voting Rights on Montgomery County School Board, MARYLAND JUICE (April 20, 2012, 2:45 p.m.), <http://www.marylandjuice.com/2012/04/sen-brian-frosh-responds-to-critics.html>. Sen. Frosh further argued that having a student member on the Board is “undemocratic.” David Moon, Sen. Brian Frosh Attempts to Kill Youth School Board Voting Rights, MARYLAND JUICE,

<https://www.census.gov/quickfacts/howardcountymaryland> (last accessed December 17, 2020).

Although the student member is elected *only* by minors enrolled in grades 6 through 11 of Howard County public schools, the student representative is expected to represent interests of other groups who cannot vote for the student member, including “students, staff, parents, and others in the community[.]” See Howard County Public School System (“HCPSS”) Policy 2010—Student Representation, IV.B.7, available at <https://policy.hcpss.org/2000/2010/>. Further, the one-person, one-vote principle applies to local elections as well as state and federal elections. See *McMillan v. Love*, 379 Md. 551, 560-61 (2004) (Holding that the “one-person/one-vote requirement of the Fourteenth Amendment extends to local government and imposes the same standard of proportionality to local government officials.”).

Finally, it is widely accepted that minors cannot and should not be treated as adults because their minds are not fully developed. The same basic concept is what supports the prohibitions on minors entering into contracts, consenting to sex, purchasing tobacco, alcohol or other regulated substances, making medical decisions, withdrawing from mandatory education and, of course, voting in elections. The Board has recognized this fact and has incorporated it into its policies concerning the student member. Specifically, the Board has stated:

Board service may create scheduling conflicts with the responsibilities of the Student Member of the Board of Education as a student in the HCPSS. **Recognizing that the Student Member of the Board of Education is a minor, the student’s parent(s) are responsible for balancing these obligations and determining which Board activities the Student Member of the Board of Education should attend.**

HCPSS Policy 2010, IV.B.12. (emphasis added). Further recognizing that student members, as minors, cannot take on the full responsibilities as adults, the Board has stated:

(April 6, 2012, 7:57 p.m.), <http://www.marylandjuice.com/2012/04/sen-brian-frosh-attempts-to-kill-youth.html>.

The role and obligation of the Board regarding attendance of the Student Member of the Board of Education at Board meetings or events does not include providing transportation or supervision of the Student Member of the Board of Education at the event. **Parent(s) of the Student Member of the Board of Education assume these responsibilities.**

HCPSS Policy 2010, IV.B.13. Thus, as the Board itself has recognized, despite having responsibilities and duties similar to those of the other Board members (including voting on Board matters), the student member must be chaperoned by his or her parents or guardians.

Additionally, a minor who is subjected to this process does not have the ability or capacity to escape undue influence. This is precisely why in every other field, a minor is entitled to a presumption of incapacity. This is why otherwise legally binding acts taken by a minor are cast aside or treated appropriately as juvenile matters. Instead of recognizing this widely acknowledged infirmity, the legislature has empowered a minor to make decisions that should be beyond the minor's reach, including carrying out the executive, legislative, and quasi-judicial functions of the Board.⁴ See HCPSS Policy 2000–School Board Governance, IV.B.1, available at

⁴ In 2012, again arguing that a student member position should not be established for the Board of Education for Montgomery County, now Attorney General Frosh argued: “SMOBs will be pressured by teachers, unions, parents, school administrators, county officials and lobbyists...I do not think it is reasonable to expect 17 year olds to find their way through the maze of pressure, policy and politics, however smart they may be.” Louis Peck, Controversial Bill Increasing Student Power On School Board Returns To Legislative Agenda, BETHESDA MAGAZINE (Dec. 3, 2014, 10:01 a.m.), <https://bethesdamagazine.com/bethesda-beat/politics/controversial-bill-increasing-student-power-on-school-board-returns-to-legislative-agenda/>.

Current Attorney General Frosh also reasoned that: “These disputes are the most highly charged, complex and controversial of the issues handled by the School Board. SMOBs will be pressured by teachers, unions, parents, school administrators, county officials and lobbyists. Each SMOB serves for one year only. No SMOB will even have the benefit of one year's prior experience. I do not think it is reasonable to expect 17 year olds to find their way through the maze of pressure, policy and politics, however smart they may be.” David Moon, Sen. Brian Frosh Responds to Critics After Unilaterally Killing Young Voting Rights on Montgomery County School Board, MARYLAND JUICE (April 20, 2012, 2:45 p.m.), <http://www.marylandjuice.com/2012/04/sen-brian-frosh-responds-to-critics.html>.

<https://policy.hcpss.org/2000/2000/> (recognizing that the Board has executive, legislative, and quasi-judicial functions.).

For these reasons, Section 3-107(f) circumvents the voting requirements set forth in Article I, Section 1 by enacting subsection (f) of Section 3-107. The General Assembly has “curtail[ed] the qualifications necessary to vote.” *State Administrative Bd. of Election Laws*, 342 Md. at 599. The statute has “enlarged” the legal voting population to include minors who are constitutionally prohibited from voting. As a result, legislation violates the Maryland Constitutional limitations on the age and is prohibited. *See Bienkowski*, 386 Md. at 547.

3. Other Provisions of the Maryland Constitution Provide Support that Article I, Section 1 is Violated by Section 3-701(f) of the Education Article

In interpreting Article I, Section 1, this Court is required to read it in the context of other relevant provisions in the Constitution and harmonize its meaning with the other provisions. *See Snyder*, 435 Md. at 54. Article I, Section 5 prohibits a person from “vot[ing] in more than one election district, or precinct” Md. Const., Art. I, § 5. That Constitutional provision, however, did not intend to allow an expansion of Article I, Section 1 to create exempt, special elections. Pursuant to Section 3-701(f), the student member is elected directly by students of Howard County public schools in grades 6 through 11. *See Educ. § 3-701(f)(3)(iii)*. Section 3-701 does not, however, delineate any age requirement for the Howard County public school students who are voting, such as a maximum age. As a consequence, some students enrolled in Howard County public schools aged 17 and 18 could vote for the student member *as well as* an elected member of the Board in their precinct, if the student is over the age of 18 and otherwise registered to vote at the time of the general election.

For example, a student may be enrolled in grade 11 at a Howard County public school who is over the age of 18 by the time of the general election. By virtue of the student's status as an eleventh grader, he or she is permitted to vote for the student member as well. If registered to vote, the student is also permitted to vote for an adult elected member of the Board in his or her precinct in the general election. Thus, Section 3-701 enables a person to vote *twice* for a voting member of the Board. This is inconsistent with Article I, Section 5's prohibition that a person may not "vote in more than one election district, or precinct."⁵

Further, the Maryland Constitution expressly provides that the General Assembly is charged with the duty to pass laws "necessary for the preservation of the purity of Elections," and, in passing a law permitting the addition of a student member, the General Assembly violated this mandate. *See* Md. Const., Art. I, § 7; *see also Anderson v. Baker*, 23 Md. 531, 597 (1865) ("That the right of suffrage is a very important privilege, and cannot be too highly estimated . . . and that it should be distinctly defined, and strictly guarded, is as readily conceded. The free exercise of the right by those entrusted with it, and the purity of elections, are fundamental principles of free Government."); *Smith v. Higinbotham*, 187 Md. 115, 128 (1946) (It is "absolutely essential" that the General Assembly enact legislation and regulations "to preserve the purity of elections . . ."). Section 3-701(f) violates the constitutional mandate of "purity of elections" because it has the double effect of denying those adults 18-years or older to vote for a member of the Board and diluting the voting power of those same legal voters. Thus, Section 3-701(f) is a "material impairment of an elector's right to vote," rather than a law

⁵ For that reason, Section 3-701(f) also violates Elec. Law § 16-201(a), which prohibits a person from "willfully and knowingly" "vot[ing] or attempt[ing] to vote more than once in the same election, or vot[ing] more than one election district or precinct; [or] vot[ing] in election district or precinct without the legal authority to vote in that election district or precinct."

“necessary to ensure the secrecy and purity of elections.” See *Jackson v. Norris*, 173 Md. 579, 596 (1937).

Finally, the Maryland Constitution forbids a person from holding any elected office “if the person was not a registered voter in his State on the date of the person’s election or appointment.” Md. Const., Art I, § 12. The intent behind this constitutional provision is legitimate. It not only protects the purity and sanctity of elections, but was intended to prevent underage persons from voting. In *Broadwater v. State*, 306 Md. 597 (1986), the Court of Appeals, citing, with approval, to the trial court’s decision, reasoned that:

Registration manifests the fact of residency; it is indicative of the candidate’s seriousness and his willingness to accept the new community as his home and involve himself meaningfully in its affairs. These are legitimate state interests. Registration also protects against fraudulent voters and candidates, **ensuring that the underage and convicted felons are disqualified from seeking office.**

306 Md. at 607 (emphasis added) (internal quotation marks and citations omitted). Section 3-701(f), by permitting minors under the age of 18 to vote for the student member who has a binding vote on most Board matters would appear to circumvent and is certainly inconsistent with of Article I, Section 12.

The provisions within the Maryland Code that created the student position violate the mandates in the Maryland Constitution and Maryland Declaration of Rights. The position was created through a statutory scheme designed to circumvent the Constitutional guarantees that enfranchise adults 18 years and older and permit these adults to hold elected positions in government. The statutory scheme not only permits minors to hold elected positions in government, but has carved out a position that can only be voted on by otherwise ineligible voters. As now Attorney General Brian Frosh best articulated, allowing a student member to have a binding voting position on any board of education is “undemocratic.”

V.
Conclusion

Section 3-701(f) of the Education Article suffers from several fatal Constitutional defects that warrant this Court granting summary judgment. Based upon the undisputed material facts, § 3-701(f) violates Article I, Section 1 of the Maryland Constitution. As a result, Plaintiffs are entitled to judgment as a matter of law, and this Court should grant summary judgment in favor of Plaintiffs ruling § 3-701(f) of the Education Article unconstitutional.




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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December 2020, a copy of the foregoing Memorandum of Law in Support of Plaintiffs' Motion for Summary Judgment was electronically filed with the Clerk of the Court via MDEC, and a copy was served upon the Defendant's General Counsel, by consent, via regular and electronic mail (mark_bloom@hcpss.org), along with the Complaint, to the following addresses:

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TRACI SPIEGEL, *et al.*,

Plaintiffs,

v.

BOARD OF EDUCATION OF HOWARD
COUNTY

Defendant.

IN THE

CIRCUIT COURT FOR

HOWARD COUNTY,

MARYLAND

Case Number: C-13-CV-20-000954

**PLAINTIFFS' REQUEST FOR A SPEEDY HEARING
ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

The plaintiffs, Traci Spiegel and Kim Ford, on their own behalf and on behalf of their minor children, by their attorney Anthony M. Conti and the law firm Conti Fenn LLC, pursuant to Maryland Rule 2-311(f) and Md. Cts. & Jud. Proc. §3-409(e) hereby file this request for a speedy hearing on their motion for summary judgment. Pursuant to Md. Cts. & Jud. Proc. §3-409(e), the "court may order a speedy hearing on an action of a declaratory judgment and may advance it on the calendar."

WHEREFORE, the Plaintiffs request a speedy hearing on their Motion for Summary Judgment to be scheduled as soon as practicable in December 2020 or January 2021.



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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December 2020, a copy of the foregoing Request for a Speedy Hearing on Plaintiffs' Motion for Summary Judgment was electronically filed with the Clerk of the Court via MDEC, and a copy was served upon the Defendant's General Counsel, by consent, via regular and electronic mail, along with the Complaint, to the following addresses:

Mark C. Blom
General Counsel
Howard County Public School System
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