
IN THE
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2021

No. 18

TRACI SPIEGEL, ON BEHALF OF HERSELF AND HER MINOR CHILDREN, S.L.S.
AND S.F.S., AND KIMBERLY FORD, ON BEHALF OF HERSELF AND HER MINOR
CHILDREN, A.M.F. AND E.L.F.,

Appellants,

v.

BOARD OF EDUCATION OF HOWARD COUNTY,

Appellee.

ON WRIT OF CERTIORARI TO THE COURT OF SPECIAL APPEALS OF MARYLAND
ON APPEAL FROM THE CIRCUIT COURT FOR HOWARD COUNTY
(The Honorable Richard S. Bernhardt, Judge)

BRIEF OF AMICI CURIAE
FORMER STUDENT MEMBERS OF MARYLAND BOARDS OF EDUCATION

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Amici curiae Dr. Anthony Clark Arend et al. (collectively, “Amici”), by their undersigned counsel, submit the following brief in support of the brief of Appellee Howard County Board of Education (the “Board”) and affirmance of the judgment by the Circuit Court for Howard County (the “circuit court”).

STATEMENT OF INTEREST OF AMICI

Amici are 75 past student members of boards of education in every jurisdiction in the state, including the Maryland State Board of Education.¹ Amici served as student members as early as 1975 and as recently as 2021. Some Amici are former student members of HCBE. Others served in jurisdictions pursuant to statutes similar to the statute at issue in this case. Others, who served in jurisdictions without student-member voting rights, know all too well the limits that the lack of voting rights placed on their ability to shape effective education policy.

Several Amici recently concluded their terms on various boards of education across the state. These include:

- a. Ninah Jackson served as the Prince George’s County student member during 2020-2021. Ms. Jackson passed a resolution that authorized the county superintendent to permit one excused mental-health day per semester for county students. She also co-sponsored a successful resolution that created a work-group to develop budgetary policy recommendations to support English-language learners (“ELLs”), led this work-group over a 9-month period, and delivered findings and recommendations to the Board. Ms. Jackson also introduced a resolution, unanimously passed by the Board, to make full voting rights to future student members a legislative priority for the 2021 session.

¹ See Apx. 1 (list of Amici). Appellants and Appellee both consent to Amici’s filing of this brief. See Apx. 6, 8 (emails from counsel).

- b. Zachary Koung served as the Howard County student member during 2020-2021. Mr. Koung introduced a resolution directing the superintendent to create an elective secondary social studies course on the history of the LGBTQ community. The resolution was passed unanimously, and Howard County will become the second jurisdiction in the state to offer an LGBTQ history course.
- c. Drake Smith served as the most recent Anne Arundel County student member. He introduced two resolutions, both passed, that asserted the Anne Arundel County Board of Education's support for the Black Lives Matter movement. In October 2020, Mr. Smith introduced a successful resolution to host a virtual public hearing on Anne Arundel County's COVID-19 school reopening plan.

Other Amici include Dr. Anthony Clark Arend, chair of Georgetown University's Department of Government; Baltimore County Executive John Olszewski, Jr., Ph.D.; and Marcia Leonard, Principal of Wilde Lake High School in Howard County.

As former student members of boards of education across the state, Amici have a strong interest in shedding light on the grievous statewide harm that could result if Appellants prevail. They can speak to the importance of student voting rights on boards of education and address Appellants' assertions that students lack capacity to participate in educational decision-making and governance.

STATEMENT OF THE CASE

Amici incorporate by reference the Board's Statement of the Case.

QUESTIONS PRESENTED

Amici incorporate by reference the Board's Questions Presented.

STATEMENT OF FACTS

Amici adopt the facts set forth by the Board, supplemented by the following:

I. Voting Rights for Student Board Members Have Existed in Maryland for Nearly Fifty Years.

Students members of multiple boards of education in Maryland have enjoyed voting rights for almost five decades. In 1974, the General Assembly passed Senate Bill (“S.B.”) 476, which created the student member position on the Anne Arundel County Board of Education—the first in the state. It was a non-voting position. The next year, Delegates Michael Wagner (D) and Robert Neall (R) co-sponsored House Bill (“H.B.”) 1239 to grant the student member voting rights equal to those of the board’s elected adult members. The bill received full support from the Anne Arundel County delegation, passed both houses, and was signed by the Governor, making Anne Arundel County one of the first jurisdictions—if not the first—in the nation to vest a student member on its board of education with full voting rights.

Other jurisdictions followed Anne Arundel County’s lead, and the General Assembly continued to recognize and prioritize the importance of student voices in Maryland public education. Today, nearly fifty years after the first Anne Arundel County student member took his seat on the board, student members serve on every board of education in Maryland. The General Assembly created a student-member position on the Maryland State Board of Education in 1985; they cast a vote on most matters that come before the board and participate fully in executive session. *See* Md. Code Ann. Educ. (“Educ.”) § 2-202(c). In addition to Anne Arundel County, *see id.* §§ 3-2A-01, 3-2A-05, student members also have voting rights in Baltimore City, *id.* §§ 3-108.1(d), (m); Baltimore County, *id.* §§ 3-2B-01, 3-2B-05; Charles County, *id.* §§ 3-501(a)(1)(ii), (h);

Harford County, *id.* §§ 3-6A-01(b), (g); Howard County, *id.* §§ 3-701(a), (f); Montgomery County, *id.* §§ 3-901(b), (e); and Prince George’s County, *id.* §§ 3-1002(b)-(c), (g). Thus, the interests of roughly 705,000 of over 909,400 Maryland public school students currently are represented by a voting student member at the local level—over 75 percent. *See Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools*, Maryland State Department of Education, at 1 (Sept. 30, 2019), <http://marylandpublicschools.org/about/Documents/DCAA/SSP/20192020Student/2020EnrollmentRelease.pdf>.² And the interests of *every* Maryland public school student are represented by the voting student member at the state level.

In recent years, the General Assembly has expanded the scope of student-member voting rights across the state. In 2015, the Legislature enlarged the scope of the Montgomery County student member’s voting rights, first codified in 1989, to include matters related to the school system’s budget, boundaries, and negotiations. *See* Mark Robinson, *Student B.O.E. member to receive expanded voting rights*, *Montgomery County Sentinel* (Jun. 16, 2016), https://www.thesentinel.com/communities/montgomery/news/local/student-b-o-e-member-to-receive-expanded-voting-rights/article_6e10769f-8711-5f0c-b6c3-544a5b4c9e90.html. Just this year, the General Assembly granted voting rights to the Charles County student member. Introduced by Del. Edith Jerry Patterson, Ed.D, the bill passed by a 47-0 vote in the Senate and a 114-24-3 vote in the House of Delegates. *See*

² All web citations were last accessed on September 15, 2021.

H.B. 1060, 2021 Regular Session, General Assembly of Maryland Voting Record, <https://legiscan.com/MD/bill/HB1060/2021>.) The Charles County student member now votes on all matters before the Charles County Board of Education, with few enumerated exceptions. *See* Educ. §§ 3-501(h)(4)(ii).

At the same time, legislative attempts to curtail existing student-member voting rights have failed. In 2014, Sen. Edward Reilly introduced a bill to restrict the full voting rights of the Anne Arundel County student member. The Anne Arundel County Board of Education opposed the bill, and it died in committee. *See* S.B. 194, 2014 Regular Session, General Assembly of Maryland Senate Education, Health, and Environmental Affairs Voting Record, <https://legiscan.com/MD/bill/SB194/2014>. This year, Del. Reid Novotny introduced H.B. 629, which proposed that, in any jurisdiction where student members vote, “the vote of the student member may not be the deciding vote on any matter being decided by the county board.” *See* H.B. 629, 2021 Regular Session, General Assembly of Maryland, House Ways and Means Committee Voting Record, <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/hb0629?ys=2021RS>. This bill, too, died in committee. *Id.*

II. The General Assembly Codified Voting Rights for the Howard County Student Member in Response to Overwhelming Support from Howard County Citizens and Legislators.

Efforts to create a voting student member position on the Board began in 1987. *See* Hearing on H.B. 513 Before H. Comm. on Ways and Means, 2007 Leg., 423rd Sess. 1 (Md. 2007) (statement of Joshua L. Michael). The efforts were not successful, but a nonvoting student member (then called a “student associate”) was placed on the Board in

1988 as a compromise.³ *Id.* For nearly twenty years, the position remained non-voting and was not codified by statute.

In 2005, Howard County students renewed efforts to secure voting rights for Howard County's student member. *Id.* After over two thousand Howard County residents signed a petition in favor of voting rights,⁴ the Board held a public hearing, where the vast majority of the speakers supported student-member voting rights.⁵ On May 25, 2006, the Board voted unanimously to support proposed legislation codifying student-member voting rights in the following legislative session.⁶

On February 7, 2007, the Howard County delegation introduced H.B. 513, which proposed amending Section 3-701 of the Education Article—the statute governing the Board's composition—to include a student member with voting rights, selected by a vote of all Howard County students in grades 6 through 11, through a process subject to Board approval. The student member would be permitted to vote on most matters before the

³ The first student associate was Amicus Marcia Leonard, then a student at Wilde Lake High School. After graduating from Wilde Lake, Haverford College, and Wake Forest University, Ms. Leonard began her career in Howard County Public Schools as a social studies teacher at Wilde Lake High School in 1994. Since 2002, she has served as Assistant Principal at Wilde Lake, Principal at Atholton High School, and Principal at Hammond High School. She is now Principal at Wilde Lake.

⁴ Hearing on H.B. 513 (statement of Joshua L. Michael).

⁵ See Oct. 27, 2005 Minutes of the Board of Education of Howard County, at 11-17, available at: [https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/legacy-content/83NL874D477B/\\$FILE/10%2027%2005%20Reg%20Mtg%20Approved.pdf](https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/legacy-content/83NL874D477B/$FILE/10%2027%2005%20Reg%20Mtg%20Approved.pdf).

⁶ See May 25, 2006 Minutes of the Board of Education of Howard County, at 7-8, available at: [https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/legacy-content/83NL2X4D435D/\\$FILE/05%2025%2006%20Regular%20Meeting%20Approved.pdf](https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/legacy-content/83NL2X4D435D/$FILE/05%2025%2006%20Regular%20Meeting%20Approved.pdf).

Board, with several enumerated exceptions. The Board voted 7-0 to support the legislation.⁷ The bill passed unanimously in the House of Delegates on March 8, 2007 and by a 42-4 vote in the Senate on April 2, 2007. MD S. Roll Call Vote, 2007 Sess. H.B. 513; MD H.D. Roll Call Vote, 2007 Sess. H.B. 513. Governor Martin O'Malley signed the bill into law.

III. The Student Member of the Board Is Appointed through a Process Subject to Board Approval.

Under Section 3-701, the Board today consists of seven “elected members” and one “student member.” Educ. § 3-701(a). There is one elected member for each councilmanic district of the county, chosen by the voters of that district, and there are two at-large elected members, chosen by all voters of the county. *Id.* § 3-701(a)(2). The elected members are chosen in the general election every two years on a staggered basis for four-year terms. *See id.* §§ 3-701(c)(1), (d)(2).

Under Section 3-701, the student member is chosen differently, through a “process” that must “be approved by the [Board].” *Id.* § 3-701(f)(3)(i). Unlike elected members, student members serve only one-year terms running from July 1 to June 30. *Id.* § 3-701(f)(2). The student-member selection process accordingly begins in January each year. Interested students submit applications to the Howard County Association of Student

⁷ See Mar. 22, 2007 Minutes of the Board of Education of Howard County, at 9, available at: [https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/legacy-content/83NKU34D3DA6/\\$FILE/03%2022%2007%20Regular%20Meeting%20Approved.pdf](https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/legacy-content/83NKU34D3DA6/$FILE/03%2022%2007%20Regular%20Meeting%20Approved.pdf).

Councils (“HCASC”).^{8,9} Thereafter, HCASC hosts a convention of delegates representing each middle and high school in the county. HCASC delegates interview each applicant and choose two final nominees.

The nominees are permitted to campaign for a specific period of time. Then, on a selected day or days, typically in the last quarter of the school year, students in grades 6 through 11 select their favored nominee. This step occurs on-site at each school; students view videos from the nominees and make their selection on Scantron forms. Completed forms are delivered from the school to HCASC, whose members tally the results by hand.¹⁰ The tally is “subject to confirmation of the election results by the county board.” Educ. § 3-701(f)(2).

⁸ HCASC is a community advisory committee chartered by the Board. *See* Policy 2060, Advisory Committees to the Board of Education (eff. Jul. 1, 2017), [https://www.boarddocs.com/mabe/hcpssmd/Board.nsf/files/B996C9143B65/\\$file/2060.pdf](https://www.boarddocs.com/mabe/hcpssmd/Board.nsf/files/B996C9143B65/$file/2060.pdf). HCASC is open to all middle and high school students in Howard County and “brings together students across the school system to talk about leadership and government in HCPSS.” *See About Us*, HCASC, <https://hcasc.hcpss.org/about>.

⁹ Appellants state that “students must first be nominated by their principals” to be chosen as the Student Member. Br. 4. This is incorrect; rather, applicants must submit two letters of recommendation and three signed forms, one each from the applicant’s parent, guidance counselor, and principal. The principal signs an “Applicant and Policy Recognition” form, an acknowledgement that the student may be taking on Board duties, not a nomination for the position.

¹⁰ This process has, of course, looked differently during the pandemic. In 2020 and 2021, students registered their choice for the student member using Canvas, an online learning platform. In 2021, this process was facilitated by media specialists at each school. The HCASC advisor then collected the results from each school and compiled all data in a final report that was delivered to the Board. *See* <https://news.hcpss.org/news-posts/2021/02/2021-2022-smob-election-to-be-held-online-on-may-3-5-2021/>.

For the student member’s selection to be confirmed, HCASC’s faculty advisor—a salaried HCPSS employee—submits the results of the student vote to the superintendent. The superintendent submits a recommendation to the Board that the results of the student-member selection process be confirmed. The Board then confirms the results through a vote. This last step of the process—the Board’s confirmation by vote—has occurred every year after the student member acquired voting rights. The Board voted 8-0 to confirm the results of the student-member selection process in both 2020 and 2021.

ARGUMENT

I. Section 3-701(f) Must Be Presumed Constitutionally Valid.

As a threshold matter, Appellants fail to articulate appropriate standards of statutory review for constitutionality, addressing only how they believe the Court should interpret Maryland’s Constitution. *See* Appellants’ Brief (“Br.”) 6. Legislative enactments are not readily overturned on constitutional grounds. Respect for separation of powers requires deference to the Legislature, the elected representatives of the citizenry, and its broad police power to protect public welfare. “In republican government, the legislative authority necessarily predominates.” *The Federalist No. 51*, at 381 (James Madison) (Jacob E. Cooke ed., 1980). Thus, “plenary power in the Legislature for all purposes of civil government is the rule, a prohibition to exercise a particular power is an exception, and can be founded only on [a] constitutional clause plainly giving rise to it.” *Leonard v. Earle*, 155 Md. 252, 260 (1928). “[B]efore a statute may be declared unconstitutional ‘its repugnancy to the provisions ... of the Constitution should be manifest and free from all reasonable doubt[.]’” *Att’y Gen. v. Johnson*, 282 Md. 274, 281 (1978) (citation

omitted)). “[E]nactments of the Legislature are presumed to be constitutionally valid and [...] this presumption prevails until” the statute is “invalid or obnoxious” under the Constitution. *Dep’t of Nat. Res. v. Linchester Sand & Gravel Corp.*, 274 Md. 211, 218 (1975). Appellants fail to acknowledge this required deference to the General Assembly.

Similarly, Appellants fail to address the rules of statutory construction. Courts “first look to the plain meaning of the statutory language, and give effect to the clear and unambiguous language.” *Stracke v. Estate of Butler*, 465 Md. 407, 428 (2019). In so doing, courts “must interpret a statute as to give every word effect, avoiding constructions that render any portion of the language superfluous or redundant.” *Id.* (internal citations omitted). “[S]tatutory 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.” *State Bd. of Elections v. Snyder ex rel. Snyder*, 435 Md. 30, 54 (2013). It is for this reason that, “where a statutory provision is a part of a statutory scheme, that provision will be interpreted within the context of that statutory scheme.” *Id.*

Finally, Plaintiffs fail to address properly an opinion issued by the Office for the Attorney General that found that an analogous legislative proposal for voting privileges for the student member of the Prince George’s County Board was constitutional. *See* Att’y Gen. Op. No. 80-030, 1980 WL 127893 at *2 (Mar. 12, 1980) (the “Prince George’s County Opinion”). These opinions are entitled to substantial deference in discussions of legislative intent. *See McCloud v. Dep’t of St. Police, Handgun Permit Rev. Bd.*, 426 Md. 473, 485 (2012) (“We have said that courts are not bound by an Attorney General’s Opinion, but that when the meaning of legislative language is not entirely clear, such legal

interpretation should be given great consideration in determining the legislative intention.”) (quoting *Chesek v. Jones*, 406 Md. 446, 463 (2008) (quotation marks omitted in original)).

II. The Student-Member Selection Process Is a Constitutional Exercise of the Legislature’s Power to Regulate Boards of Education.

A. The student-member selection process is not an election subject to Article I § 1’s requirements.

Appellants’ first contention is that, because Article I, Section 1 of the State Constitution requires Howard County voters to be eighteen or older to vote in an election, the student-member statute for Howard County is unconstitutional, as the voting power to elect the student member is exercised by students under age eighteen who lack legal capacity to register to vote in elections under Article I. *See* Br. 11; Md. Const. Art. I § 1. This argument assumes, however, that the student member is chosen by an *election* subject to Article I. This assumption is wrong.

The student-member selection process is not an “election,” in which students in grades 6-11 cast “votes,” to which the requirements of Article I apply. These terms have been precisely defined by the General Assembly pursuant to its authority under Sections 7 and 8 of Article I, which give the General Assembly authority to pass laws to implement Article I. Those laws are codified in the Election Article, Md. Code Ann. Elec. Law (“Elec.”) §§ 1-101, *et seq.* Section 1-101 defines an election as “the process by which voters cast votes on one or more contests under the laws of this State or the United States” and as a process whereby voters cast votes, including “all general elections, primary elections, and special elections.” Elec. §§ 1-101(v)(1)-(2). The student-member selection

process is none of these because (1) students under eighteen are not “voters,” and (2) in any event do not cast “votes,” as defined by the Election Article.

Section 3-102 of the Election Law provides that only adults (or individuals who will be adults by the date of the election) duly registered are “voters” under Maryland law. *Id.* § 3-102(a). Thus, because “voters” do not select the student members, the selection process is not an election under Maryland law. Similarly, under Section 1-101, “[v]ote’ means to cast a ballot that is counted.” *Id.* § 1-101(uu). A ballot, in turn, is either “an absentee ballot, a provisional ballot, a document ballot, or a voting machine ballot.” *Id.* § 1-101(d)(1); *see also id.* § 1-101(b) (defining absentee ballot); *id.* § 1-101(ll) (defining provisional ballot); *id.* § 1-101(s)(1) (defining document ballot); *id.* § 1-101(ww) (defining voting machine ballot). The Election Article requires “all voting” to be by ballot. *Id.* § 9-201. Students who engage in the selection process do not cast any of these kinds of “ballots.” They make their choices using generic Scantron forms. *See* p. 8, *infra*. The selection process thus is not an election under the Constitution because the student member is not selected by votes cast by qualified Maryland voters. Appellants do not address either definitional hole in their theory.

Indeed, the plain language of Section 3-701(a) of the Education Article confirms the student member is not an *elected* official subject to Article I § 1’s requirements. Section 3-701 states that:

(a)(1) The Howard County Board consists of:

(i) Seven **elected** members; and

(ii) One student member.

(Emphasis added.) The word “elected” is used to qualify seven members on the Board, but it is not used to qualify the student member. This distinction is carried consistently throughout the entire statute. Each time Section 3-701 refers to the seven members of the Board who are *not* the student member, it refers to them as “elected members.” By contrast, the statute refers to the student member *only* as the “student member”; the word “elected” never appears just before it as a qualifier. The statute thus explicitly distinguishes between *student* and *elected* members, confirming that the student member is not an elected official.

Appellants dismiss this distinction as “one of semantics,” Br. 17, asking this Court to ignore the express language of the statute, an obvious breach of the foremost rule of statutory construction. *See Centre Ins. Co. v. J.T.W.*, 397 Md. 71, 79 (2007) (“In construing the plain language, a court may neither add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute; nor may it construe the statute with forced or subtle interpretations that limit or extend its application.”) (internal quotations and citations omitted). The statutory distinction between “student” and “elected members” necessarily means that the student member is not an “elected” position. Because the student member is not an “elected member” like others on the Board, the student-member selection process is not an election, and, thus, is not subject to Article I § 1’s requirements.

Because the language of Section 3-701 is “plain and free from ambiguity, and expresses a definite and simple meaning,” the Court need not “look beyond the words of the statute itself to determine legislative intent.” *Consol. Constr. Servs., Inc. v. Simpson*, 372 Md. 434, 456-57 (2002) (citations omitted). But recourse to legislative history is

nonetheless appropriate to confirm that intent. *See In re J.C.N.*, 460 Md. 371, 391 (2018). Here, the circuit court correctly found that legislative history confirms that the General Assembly made a conscious choice to distinguish the Student Member from the elected members of the Board. Before H.B. 513 was passed in 2007, Section 3-701 stated only that “[t]he Howard County Board consists of seven members.” *See* Educ. § 3-701(a), eff. Oct. 1, 2004. H.B. 513 introduced the terms “elected member” and “student member” to describe the Board’s composition at the same time that voting rights for the student member were first proposed. As the circuit court noted, the terms “elected member” and “student member” were the same terms the General Assembly had already used to codify student-member voting rights that existed at that time in other jurisdictions around the state. *See* Educ. §§ 3-2A-01(a) (Anne Arundel County); 3-108.1(d) (Baltimore City); 3-2B-01(a) (Baltimore County); 3-901(b) (Montgomery County); 3-1002(b) (Prince George’s County). E49. Thus, in amending Section 3-701 to distinguish between “elected members” and the “student member,” the General Assembly sought to bring Howard County into step with other jurisdictions where student members already possessed voting rights and had employed selection processes for their student members resembling the one Howard County has now. By contrast, in many jurisdictions where student members do not have voting rights, the corresponding statutes still refer only to “members” without any qualifier that they must be “elected.” *See, e.g.*, Educ. § 3-301(a) (“The Calvert County Board consists of five voting members and one nonvoting student member.”).

The plain text and legislative history of Section 3-701 thus confirm that the student member is not an elected position. Accordingly, the student-member selection process is

not an election that falls within the scope of Article 1 § 1. Because every argument Appellants raise rests on their assumption that Howard County’s student member is elected, those arguments necessarily fail.

Elsewhere, the statute does sometimes use the words “elected” and “election” to describe the Student Member selection. *See* Educ. § 3-701(f)(3), (f)(4)(ii) (describing a “nomination and election process for the student member” and explaining what should occur if “the student member who is elected” becomes unable to complete their term). But the use of the words “election” and “elected” in this context do not mean that the Student Member is an elected position for the purposes of Article I § 1; rather, as the trial court found, these terms were used “in a non-technical manner and as a way to efficiently describe the process whereby the student stakeholders express their opinion and select their representative.” E49. As the Court has explained:

There is no rule of construction which requires the same meaning always to be given to the same word, when used in different connections in the same statute or in different statutes. On the contrary, such is the flexibility of language and the want of fixity in many of our commonest expressions, that a word or phrase may bear very different meanings according to the connection in which it is found. Hence the rule that the terms of a statute are always to be interpreted with references to the subject-matter of the enactment.

Moore v. State, 424 Md. 118, 139 (2011) (citation omitted). The minimal use of the words “election” and “elected” to describe the Student Member selection process does not override the plain meaning of Section 3-701(a), which unequivocally states that the Student Member is not an elected position.

Multiple other provisions within Section 3-701 confirm this understanding.

First, as explained above and as directed by statute, the Student Member selection process must “be approved” by the Howard County Board. Educ. § 3-701(f)(3)(i). This means that the student-member selection process occurs outside the purview of the Howard County Board of Elections, which is directed by statute to conduct all elections in Howard County. *See* Elec. § 8-101(a) (“[A] local board shall conduct all elections held under this article in the county in which the board is located.”). All of this is consistent with the fact that the student member is not an elected position, as the circuit court correctly found. E46-47. By contrast, elections for the other members are managed by the Board of Elections and governed by provisions of the Election Law Article, in accordance with the General Assembly’s repeated reference to those members as “elected.” *See* Educ. § 3-114(h).

Second, Section 3-701(b)(1) requires that each elected member be a resident and registered voter of Howard County, reflecting the constitutional residency and registration requirements for elected office holders that are contained in Article I § 12. But as the trial court explained, Section 3-701(f)(1), which lists the eligibility requirements for the student member, contains no parallel voter-registration requirement. E47 (citing § 3-701(f)). Here, again, the General Assembly made its intent clear: elected members are subject to constitutional voting requirements, but student members are not.

Lest there be any doubt, in the Prince George’s County Opinion, then-Attorney General Sachs reviewed a legislative proposal for voting privileges for the Prince George’s County student member in 1980 and opined that voting privileges would be constitutional because the position was appointed and not elected. *See* AG Op., 1980 WL 127893, at *1-

2. (“[T]he selection of the student member... is more properly regarded as an appointment ... [and is] not ... subject to the one-person... one-vote principle.’ It has been suggested that the statute’s use of the term “elect” to describe the selection process of the student member is significant. It is our view, however, that the terminology used by the statute is not dispositive of the fundamental question of whether, from a constitutional point of view, that selection process is more properly regarded as an election or an appointment.”). The principal constitutional question presented to the Attorney General was whether the students’ role in selecting the student representative violated the Fourteenth Amendment’s one-man, one-vote guarantee, but the Attorney General’s reasoning applies here as well. Indeed, the opinion concluded that, “[i]f...the selection process is considered appointive from a constitutional point of view, then the question you raise of enfranchising students in possible violation of Article I, §1 of the State Constitution is not an issue.” *Id.* at 2. The Attorney General’s conclusion that the student member is appointed and not elected under the statutory scheme is entitled to substantial deference.¹¹

Appellants ask the Court to ignore the plain language contained in Section 3-701. They argue instead that the student member *must* be elected because Section 3-114(a) of the Education Article states that the members of the Howard County Board “shall be elected,” *see* Br. 15, in contrast to other jurisdictions that have a combination of elected

¹¹ The scheme then used in Prince George’s County has strong similarities to the scheme used in Howard County. In both instances, a student organization screens candidates and plays a critical role in the selection process. In Prince George’s County, the organization made the final selection, whereas in Howard County, the organization selects two finalists. Students select which these two will be submitted to the Superintendent. That candidate is then submitted to the Board for final confirmation.

and appointed members. *Compare* Educ. § 3-114(a)(10) *with id.* § 3-114(b)-(f). This is a red herring. Section 3-114(a)’s reference to “elected” members is consistent with Section 3-701’s distinction between “elected members” and the “student member”—it does not mean that the “student member” must also be “elected.” *Compare id.* § 3-114(a)(10) *with id.* § 3-701(a). The General Assembly’s recent enactment of student-member voting rights in Charles County is illustrative. Section 3-114 states that all members of the Charles County Board of Education “shall be elected,” just as in Howard County. *Id.* § 3-114(a)(6). And yet, contrary to Appellants’ theory, the same statute established a separate, clearly non-electoral selection process for the Charles County student member. That this enactment of essentially the same student-member selection process occurred shortly after the circuit court’s rejection of Appellants’ well-publicized challenge below makes the legislative intent even clearer.

Appellants similarly ask the Court to disregard Attorney General Sachs’ 1980 Prince George’s County Opinion on the basis that Prince George’s County has a hybrid of elected and appointed members and any comparison to Howard County is inapposite. Br. 20-22. Not so. In 1980, the Prince George’s County board was comprised only of *elected* members, making it analogous to Howard County’s current board. *See* 1980 WL 127893 at *3. Regardless, three years later, then-Assistant Attorney General Richard E. Israel reaffirmed the understanding that student members are not elected officials and did so in a

non-hybrid situation.¹² See Apx. 10, Letter from Ass't Att'y Gen. Richard Israel to Del. Judith Toth (Jan. 31, 1983) (the "Montgomery County Opinion"). There, AAG Israel addressed a legislative proposal to confer voting rights upon the student member of the Montgomery County Board of Education. As in Howard County, every non-student member of the Montgomery County Board of Education is elected. Educ. § 3-114(a)(12). AAG Israel nonetheless extended the Prince George's County Opinion's legal analysis to the proposed Montgomery County legislation, explaining that:

there is no constitutional objection to providing for the selection of a student member by student representatives or even the students themselves and for the election of the remaining members of the qualified voters of the county. As more fully explained in the [Prince George's County Opinion], appointment by private groups is permitted under the Maryland Constitution, and the one-person, one-vote principle has no application to such a selection process.

(Apx. 11 (citations omitted)).

In sum, the Election and Education Articles make clear that the student-member selection process is not a formal, constitutionally prescribed election. The legislative history of Section 3-701 of the Education Article confirms this understanding, as does guidance from the OAG. The constitutional age requirement for participating in elections does not apply to the selection of Howard County's student member.

¹² Letters of assistant attorneys general are useful sources of legislative interpretation. See *Mayor and City Council of Ocean City v. Comm'rs of Worcester County, Maryland*, 2021 3417685 at *7 (Md. Aug. 5, 2021).

B. Because the student member is a non-elected official, Article I § 12's age requirements do not apply.

Appellants next argue that the student-member statute is unconstitutional because the Maryland Constitution requires elected officials to be aged eighteen or older. *See* Br. 34; Md. Const. Art. I § 12. But, as discussed above, student members are non-elected positions. Section 12's age requirement for elected officials does not apply to appointed or other non-elected officials. By contrast, Sections 9, 10, and 11 of Article I set forth various requirements for both elected and appointed officials, and none has an age requirement. No provision of the Maryland Constitution has an age requirement for appointed officials, as the trial court correctly found. E53-54. This clear differentiation shows specific intent to allow individuals under the age of eighteen serve in appointed or other non-elected capacities. *See Drew v. First Guar. Mortg. Co.*, 379 Md. 318, 329 (2003) (discussing '*expressio unius est exclusio alterius*' canon).

The 1983 Montgomery County Opinion clarifies that boards of education are "legislative, rather than constitutional offices" and adds that, "[a]s the State Constitution does not generally prescribe a minimum age for public officers, the Legislature is entirely free to provide that a minor may hold an office which the Legislature has created." (Apx. 10-11.) Explaining that "county boards of education are established by statute" and that "[m]embers of these boards are generally regarded as public officers," AAG Israel explained that "the creation and abolition of these positions, the manner in which they are filled, and the duties are entirely a matter for the General Assembly." *Id.* at 10 (citing *Calvert County v. Monnett*, 164 Md. 101, 105 (1993)). He added: "As the State

Constitution does not generally prescribe a minimum age for public officers, the Legislature is entirely free to provide that a minor may hold an office which the Legislature has created.” *Id.* at 10-11. To that end, it makes no difference for constitutional purposes whether the student member is “appointed” or, as the circuit court found, chosen through a third method of selection that is specific to student members. E51. Both are non-elected positions, which the Constitution plainly permits. Because the Constitution only assigns age requirements to elected officials, a minor may serve in a non-elected position chosen by any other means, whether by appointment or otherwise.

Indeed, there is nothing improper in non-elected school board members. *See Sailors v. Bd. of Educ. of Kent Cty.*, 387 U.S. 105, 108 (1967) (“We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election.”). There is also nothing constitutionally improper about non-elected school board members who vote alongside elected members. State legislatures have broad latitude and “constitutional authority to experiment with new techniques.” *Id.* at 109 (quoting *Day-Bright Lighting, Inc. v. State of Mo.*, 342 U.S. 421, 423 (1952)).

Moreover, the non-elective process for selecting Howard County’s student member is hardly outside the scope of other Maryland schemes for non-elected officials. For example, all members of the State Board of Education are “appointed.” Educ. § 2-202(a). One member is a “teacher member,” chosen through a canvass of teachers across the state, conducted according to regulations set by the Maryland State Department of Education. *Id.* § 2-202(4)(ii)-(iv). Despite characterizing the position as an “appointed” member, *see*

id. §§ 2-202(a), (4)(ii), the statute gives the Governor no power to veto the teachers' selection, making their selection the true determinant of who serves on the board. *See id.* § 2-202(4)(ii) ("The Governor shall appoint the teacher member ... who received the highest number of votes after an election by teachers in the State.").

Similarly, on the Board of Trustees for the State Retirement and Pension System, some trustees are elected in a state-wide election, some are appointed by the Governor, and others are chosen through elections by members or retirees of various pension systems. *See* Md. Code Ann., St. Pers. & Pens. Art. §§ 21-104(a)(2), (b)(2)-(4), (b)(1)(i). Likewise, eight board members of the State Deposit Insurance Fund are appointed by the Governor, while three are elected by savings and loan associations that are members of the Fund. *See* Md. Code Ann. Fins. Inst. § 10-103(e).

These examples illustrate that it is proper under Maryland law for a non-elected member of a board to be selected by members of a relevant group. The Student Member selection process in Howard County is no different: students participate in a process to select their preferred candidate among two candidates picked by a specified group, and the Board confirms the students' choice. Because Howard County's "system for selecting its [student] member[]" of the county school board is basically appointive rather than elective," *Sailors*, 387 U.S. at 109, it does not violate Section 12 of Article I.

II. The Student Member's Vote Is Essential to Effective Board Policymaking.

Appellants disregard the long-term consequences of disempowering hundreds of thousands of Maryland students currently represented by a voting student member. Stripping them of a right to participate, via their representatives, in matters of policy

uniquely affecting them would be incongruous with Maryland law, impair the formation of effective education policy, and affront students across the state.

The significance of public education cannot be overstated. *See* Md. Const. Art. VIII § 1 (mandating “throughout the State a thorough and efficient System of Free Public Schools”). As the Supreme Court has explained:

The American people have always regarded education and the acquisition of knowledge as matters of supreme importance. We have recognized the public schools as a most vital civic institution for the preservation of a democratic system of government, and as the primary vehicle for transmitting the values on which our society rests. As pointed out early in our history, some degree of education is necessary to prepare citizens to participate effectively and intelligently in our open political system if we are to preserve freedom and independence. And these historic perceptions of the public schools as inculcating fundamental values necessary to the maintenance of a democratic political system have been confirmed by the observations of social scientists. In addition, education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society.

Plyler v. Doe, 457 U.S. 202, 221 (1982) (internal quotations and citations omitted). In other words, the nation’s success depends, in large part, on the success of its public schools. And though many metrics can help measure whether a public school is successful, the most definitive of those are student performance and wellbeing. If students are to bear this responsibility—and they do—they should not be relegated to the sidelines when it comes to matters of policy affecting their ability to succeed.

Because local and state school boards “are traditionally charged with broad power to formulate and implement educational policy,” *Swann v. Charlotte-Mecklenburg Bd. of*

Educ., 402 U.S. 1, 16 (1971), it is common sense that students, who are the most affected by these policies of any stakeholder, serve as members of these boards. For student input to be meaningful, the student member's role cannot just be symbolic, and their opinions cannot merely be advisory. Student members need voting rights to have an effective voice.

Appellants' argument that student members are not competent to vote on Board matters because "their minds are not fully developed," Br. 34, not only is insulting; it is flatly contrary to the experience of multiple local school boards since the 1970s. The General Assembly has determined that student members are competent to have voting rights, and it has reaffirmed that judgment over and over again—even this year. This Court cannot "substitute [its] judgment for that of the Legislature ... even if [the Court] disagree[s] with it." *Linkus v. Md. State Bd. of Heating Ventilation, Air-Conditioning and Refrigeration Contractors*, 114 Md. App. 262, 278 (1997).

Student members are uniquely qualified to vote on matters that come before boards of education. Students have significant insight into the realities of students, teachers, and staff simply "from the experience of being at school." Jamin B. Raskin, *We the Students: Supreme Court Cases for and about Students* (4th ed. 2015) at *x*. They learn "what happens to students when they get in trouble" and "how rules are enforced." *Id.* They learn "the way principals treat teachers when everyone is watching" and "how teachers treat students when no other adult is watching." *Id.* And they learn about "the social lives of students" and "how students of different racial and ethnic backgrounds interact." *Id.* The student member often is the *only* member with insight into "these everyday issues" that "make a big difference." *Id.*

Recent policy achievements by student members with voting power illustrates the importance of giving student members voting rights, particularly for improving curricula. In Howard County, Zach Koung’s voting power created an elective social studies course focused on LGBTQ+ history; in Prince George’s County, Ninah Jackson’s voting power helped allocate additional resources to ELLs. Student members used their voting rights to support diversity efforts, like Drake Smith in Anne Arundel County, who passed two resolutions affirming his board’s support for Black Lives Matter. And student members used their voting power to support initiatives aimed at student wellbeing. Thanks to Ninah Jackson’s voting power, Prince George’s County now recognizes mental health as an excused absence for its students.

Denying student members voting rights would eliminate this critical perspective from boards across the state. Such a result would run counter to policymaking goals, particularly in Howard County, where, according to its leadership, “[s]tudents are at the forefront of every strategy and decision,” and “[t]he values, opinions, beliefs and perspectives of individual and groups of students are actively pursued to inform instructional approaches and enhance the school environment.” *See Learning and Leading with Equity*, HCPSS’s Strategic Call to Action, <https://www.hcpss.org/scta/>. If “[s]tudent voice is” to be truly “infused throughout the educational experience to inform teaching and create learning experiences that engage and inspire all students,” *id.*, then the student member—who represents those voices—must continue to have a vote.

So, too, must student members across the state. That student members have voted on school boards in Maryland for nearly half a century is a legacy to be celebrated.

Appellants' attempt to strike down those laws and supplant the Legislature's judgment would deliver a major blow to educational policymaking in Maryland.

CONCLUSION

For the foregoing reasons, the circuit court's judgment should be affirmed.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,496 words, excluding the parts exempted from the word count by Rule 8-503.
2. This brief is prepared in 13-point Times New Roman font and complies with the font, spacing, and type-size requirements stated in Rule 8-112.

/s/ *Mitchell Y. Mirviss*

Mitchell Y. Mirviss

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 15th day of September 2021, an electronic copy of the foregoing Brief of Amici Curiae was e-served by MDEC on all persons entitled to such service. Two copies of the foregoing brief will be sent by first-class mail, postage prepaid, to the following counsel:

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APPENDIX

This Appendix is submitted for the following reasons: (1) to provide the list of Amici Curiae (Apx. 1-5); (2) to provide correspondence indicating Appellants' consent to the filing of Amici's brief (Apx. 6-7); (3) to provide correspondence indicating Appellee's consent to the filing of Amici's brief (Apx. 8-9); and (4) to provide the January 31, 1983 letter of Assistant Attorney General Richard E. Israel to Delegate Judith C. Toth (Apx. 10-11), which is not included in the record extract but which is cited in the Brief.

The following Amici Curiae join the foregoing amicus brief in support of Appellee. All Amici have joined the brief in their personal capacities only.

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From: [Tony Conti](#)
To: [Wilson, Emily J.](#)
Cc: [Jonathan Backer](#); [Amy Marshak](#); [Mark Blom](#); [Mirviss, Mitchell Y.](#); [Sines, Elizabeth A.](#)
Subject: Re: Spiegel v. Board of Education of Howard County, COA-REG-0018-2021
Date: Monday, August 30, 2021 4:53:13 PM

Caution: External Email

We have no objection assuming it is filed in a timely manner and does not serve to delay the hearing in this matter.

On Mon, Aug 30, 2021 at 4:41 PM Wilson, Emily J. <EJWilson@venable.com> wrote:

Counsel:

Former student members of Maryland boards of education plan to file an amicus curiae brief in the above-captioned case. Please let me know at your earliest convenience whether you will consent or object to the filing.

Best,

Emily

Emily J. Wilson, Esq. | Venable LLP
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(pronouns: she/her/hers)

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* Conti Fenn LLC is a Maryland limited liability company. This firm operates in Maryland and Washington D.C. through its licensed attorneys in these jurisdictions. Conti Fenn PLLC is a Virginia professional limited liability company. Anthony Conti, Lindsey Ann Thomas and Kelly Crowe are licensed in the Commonwealth of Virginia and practice under the firm name Conti Fenn PLLC in Virginia.

From: [Amy Marshak](#)
To: [Tony Conti](#)
Cc: [Wilson, Emily J.](#); [Jonathan Backer](#); [Mark Blom](#); [Mirviss, Mitchell Y.](#); [Sines, Elizabeth A.](#)
Subject: Re: Spiegel v. Board of Education of Howard County, COA-REG-0018-2021
Date: Monday, August 30, 2021 4:59:10 PM

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Hello Emily,

We consent to the filing.

Best,
Amy

On Mon, Aug 30, 2021 at 4:53 PM Tony Conti <tony@contifenn.com> wrote:

We have no objection assuming it is filed in a timely manner and does not serve to delay the hearing in this matter.

On Mon, Aug 30, 2021 at 4:41 PM Wilson, Emily J. <EJWilson@venable.com> wrote:

Counsel:

Former student members of Maryland boards of education plan to file an amicus curiae brief in the above-captioned case. Please let me know at your earliest convenience whether you will consent or object to the filing.

Best,

Emily

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(pronouns: she/her/hers)

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* Conti Fenn LLC is a Maryland limited liability company. This firm operates in Maryland and Washington D.C. through its licensed attorneys in these jurisdictions. Conti Fenn PLLC is a Virginia professional limited liability company. Anthony Conti, Lindsey Ann Thomas and Kelly Crowe are licensed in the Commonwealth of Virginia and practice under the firm name Conti Fenn PLLC in Virginia.

--

Amy Marshak

Managing Director

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PAUL F. STRAIN
DEPUTY ATTORNEY GENERAL



RICHARD E. ISRAEL
ASSISTANT ATTORNEY GENERAL
LINDA H. LAMONE
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL

STUDENT AFFAIRS OFFICE

MAR 7 1983

MONTGOMERY COUNTY
PUBLIC SCHOOLS

104 LEGISLATIVE SERVICES BUILDING
90 STATE CIRCLE
ANNAPOLIS, MARYLAND 21401-1991
AREA CODE 301

BALTIMORE & LOCAL CALLING AREA 041-3889
WASHINGTON METROPOLITAN AREA 050-3089

TTY FOR DEAF - ANNAPOLIS 041-3014 -- D.C. METRO 050-3014

January 31, 1983

The Honorable Judith C. Toth
225 Lowe House Office Building
Annapolis, Maryland 21401

Dear Delegate Toth:

This is in response to your request for advice of counsel on whether there is any constitutional objection to amending Sec. 3-701 of the Education Article to allow the student member of the Montgomery County Board of Education to vote in certain circumstances. The student member would continue to be selected by students or student representatives and the remaining members would continue to be elected by the qualified voters of the County. In my view, there is no constitutional objection to giving the student member a vote in some circumstances.

The county boards of education are established by statute, Patterson v. Ramsey, 413 F.Supp., 523, 530 (D. Md. 1977), aff'd 522 F. 2d. 1117, 118 (4th Cir. 1977), and their duties are prescribed by the Education Article. McCarthy v. Board of Education, 280 Md. 634, 646 (1977). Members of these boards are generally regarded as public officers, 58 Opinions of the Attorney General 343, 355-356. As legislative, rather than constitutional offices, the creation and abolition of these positions, the manner in which they are filled, and the duties are entirely a matter for the General Assembly. Calvert County v. Monnett, 164 Md. 101, 105 (1933). Accordingly, the Legislature may provide for a student member of a school board to exercise some of the powers of a school board member or, as in Anne Arundel County, all of those powers. See Education Article, Sec. 3-110. As the State Constitution does not generally

prescribe a minimum age for public officers, the Legislature is entirely free to provide that a minor may hold an office which the Legislature has created. Finally, for reasons which are stated in the enclosed Opinion of the Attorney General, Opinion No. 80-030, there is no constitutional objection to providing for the selection of a student member by student representatives or even the students themselves and for the election of the remaining members of the qualified voters of the county. As more fully explained in that opinion, such a selection is regarded as appointive rather than elective, appointment by private groups is permitted under the Maryland Constitution, and the one-person, one-vote principle has no application to such a selection process.

While this letter is my considered view of this matter, it is not an Opinion of the Attorney General.

Very truly yours,



Richard E. Israel
Assistant Attorney General

REI:ss
enclosure