

TRACI SPIEGEL, <i>et al.</i> ,	*	IN THE
	*	CIRCUIT COURT FOR
Plaintiffs,	*	HOWARD COUNTY,
v.	*	MARYLAND
BOARD OF EDUCATION OF HOWARD COUNTY,	*	
	*	Case No. C-13-CV-20-000954
Defendant.	*	
	*	
* * * * *		

**MOTION OF AMICI CURIAE FORMER STUDENT MEMBERS
OF MARYLAND BOARDS OF EDUCATION FOR LEAVE TO FILE
MEMORANDUM IN SUPPORT OF DEFENDANT’S OPPOSITION TO PLAINTIFFS’
MOTION FOR SUMMARY JUDGMENT**

Dr. Anthony Clark Arend, et al. (“Amici”),¹ by their undersigned counsel, respectfully move this Court for leave to file the attached memorandum of law as amici curiae in support of Defendant’s opposition to Plaintiffs’ motion for summary judgment and Defendant’s cross-motion for summary judgment in the above-captioned case.^{2,3} In support of this motion, Amici set forth the following grounds, points, and authorities.

1. Amici are 128 past student members of boards of education in every jurisdiction in the State, including the State Board of Education. Amici served as student members as early as 1975 and as recently in 2020. Some Amici are former student members of the Howard County Board of Education. Others served in jurisdictions pursuant to statutes governing the Howard County Student Member’s voting rights that is at issue in this case. Others, who served in jurisdictions without student member

¹ Amici have filed this Motion and related filings on MDEC as intervenors only to conform to the available MDEC filing options. Amici do not seek leave to intervene.
² The names of every amicus joining this motion and the accompanying memorandum are set forth in Exhibit A.
³ Defendant consents to granting Amici leave to file their memorandum. Plaintiffs oppose the motion.

voting rights, know all too well the limits that the lack of voting rights placed on their ability to shape effective education policy.

2. Amici include the following:

- a. Dr. Anthony Clark Arend served as the Anne Arundel County Student Member in 1975-76. He was the first Student Member in the State (and one of the first in the country) to have voting rights. He is Chair of the Department of Government at Georgetown University, where he also co-founded the Institute for International Law and Politics. Dr. Arend is a University Affiliate at the Center for National Security and the Law at Georgetown University Law Center, where he has also served as an adjunct professor. He holds degrees from Georgetown and the University of Virginia.
- b. Rebecca Gifford Goldberg served as the Howard County Student Associate (the former name for the Student Member) in 1997-98 and the Student Member of the State Board of Education in 1998-99. Ms. Goldberg is a partner with a national non-profit that provides strategy consulting services aimed at enabling equitable outcomes for all children. She is a parent to two young children. She holds degrees from Princeton University and Harvard Business School.
- c. Marcy Leonard served as the first Howard County Student Associate in 1988-89. She 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. Ms. Leonard holds degrees from Haverford College and Wake Forest University and advanced to candidacy for a Ph.D. at the University of Maryland.
- d. John Olszewski, Jr., Ph.D. served as the Baltimore County Student Member in 1999-2000. He taught social studies and special education in Baltimore County before he was elected Baltimore County Executive in 2018. Mr. Olszewski holds degrees from Goucher College, George Washington University, and the University of Maryland, Baltimore County.
- e. Oluwatomi (“Tomi”) Williams served as the Howard County Student Member in 2011-2012. While at River Hill High School, Mr. Williams founded Hands on Works, a non-profit organization that offered internships to underserved Baltimore students to introduce them to professional career paths. At Amherst College, Mr. Williams was twice elected student body president and served as editor-in-chief of the *Amherst College Law Review*. At Columbia Law School, Mr. Williams served as the first Black male editor-in-chief of the *Columbia Law Review*. He holds degrees from both institutions and practices corporate law.

2. As former student members of boards of education across the state, Amici have a strong interest and unique experience to shed light on the potential statewide impact and grievous harm that could result if Plaintiffs prevail. They can speak both to the importance of student membership and voting rights on a board of education and to address assertions in the Complaint that students lack the capacity to participate in decision-making regarding educational policy and school governance.

3. Plaintiffs specifically suggest in the Complaint and their Motion for Summary Judgment that student members lack the experience and mental capacity to vote on matters before their boards. Compl. ¶ 34; Mot. at 13-15. Amici have a strong interest and unique perspective in explaining why that is not so. Student members' every day experiences inform their understanding of board matters in ways that those of their fellow board members do not. The student member is the only member who hears from teachers, school staff, and other students on a daily basis. And the student member is the only member to witness first-hand the effects of how system dollars are spent or how board policies are carried out in practice.

4. Amici therefore have a strong interest in protecting the various statutes that give Maryland's students a seat at the table when boards of education discuss and vote on policy critical to student success and well-being.

5. Numerous cases confirm the Court's authority to grant interested amici leave to participate in circuit court proceedings. See *Comptroller of the Treasury v. World Inns, Inc.*, 310 Md. 154, 157 n.1 (1987) (noting that Fader, J. granted leave for amicus to participate below); *Deane v. Conaway*, No. 24-C-04-005390, 2006 WL 6021625, at *2 (Md. Cir. Ct. Balt. City Jan. 20, 2006) (listing amici groups granted leave to file legal memoranda supporting or opposing parties' summary judgment memoranda); *Potomac Valley Orthopedic Assoc's v. Md. St. Bd. of*

Physicians, No. 277833, 2007 WL 4959463 (Md. Cir. Ct. Montgomery Cty. Apr. 25, 2007) (granting leave); *Doe v. Montgomery Ctny. Bd. of Elections*, No. 293857-V, 2008 WL 4375520 (Md. Cir. Ct. Apr. 25, 2008) (granting amicus leave to file briefs addressing dispositive motions and to brief merits after evidentiary hearing). Because this is a case of great public import—the outcome of which could affect the representational rights of hundreds of thousands of present and future students—granting leave for amici to file is especially warranted. Given the significant impact this case may have on students and student members, this Court should hear the unique perspective of amici, who understand what is at stake and who have unparalleled insight into the invaluable role that student members play in shaping effective education policy in their jurisdictions.

6. Amici’s proposed memorandum of law is attached for the Court’s consideration.

WHEREFORE, for the foregoing reasons, Amici Dr. Anthony Clark Arend, et al. respectfully request that this Court grant the following relief:

- a. Accept for filing Amici’s motion for leave;
- b. Grant Amici leave to file the attached memorandum in support of Defendant’s opposition to Plaintiffs’ motion for summary judgment and cross-motion for summary judgment should be granted;
- b. Deem the attached memorandum to have been filed and accepted by the Court as of the date of filing of this Motion; and
- c. Provide such further relief as the nature of this cause may require.

A proposed Order accompanies this Motion.

Respectfully submitted,

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Former Student Members of

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CERTIFICATE OF SERVICE

I hereby certify that, on this 9th day of February 2021, the foregoing Motion of Amici Curiae for leave to file the accompanying memorandum of law was served by MDEC and by email to the following counsel of record:

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* * * * *		

MEMORANDUM OF AMICI CURIAE FORMER STUDENT MEMBERS OF MARYLAND BOARDS OF EDUCATION IN SUPPORT OF DEFENDANT’S OPPOSITION TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Amici Dr. Anthony Clark Arend, et al., by their undersigned counsel, submit the following Memorandum of Amici Curiae Former Student Members of Maryland Boards of Education in Support of Defendants’ Opposition to Plaintiffs’ Motion for Summary Judgment.¹

OVERVIEW

For more than forty-five years, student members serving on state and local boards of education in Maryland have voted alongside elected members pursuant to statutes passed by overwhelming majorities in the General Assembly. These laws have given students across the state a vital and appropriate opportunity to shape policy directly affecting their education. The Student Member of the Howard County Board of Education (the “Board”), who is authorized by law to vote on most matters that come before the Board, has been and continues to be a voice for students in one of Maryland’s most populous, diverse, and high-achieving public school districts.

¹ The names of every amicus joining this memorandum is set forth in the accompanying Motion for Leave to File Memorandum of Amici Curiae, which is incorporated by reference. A statement of interest of the amici also is set forth in the Motion.

Plaintiffs, two parents unhappy with actions taken collectively by the Board, have singled out the Student Member as the reason for their dismay. They believe that the solution to their dissatisfaction is to strip him—and only him—of his voting rights, arguing that his ability to vote violates the State Constitution because he was selected by students in grades 6 through 11, who are not of sufficient age to vote for elected officials. Plaintiffs’ argument fails at its starting premise—the Student Member is an *appointed* member of the Board, *not* an *elected* member subject to Article 1, Section 1 of the State Constitution, as Plaintiffs insist. Students do not exercise any purported statutory right to elect the Student Member to the Board; rather, they select a fellow student through a process that is subject to the Board’s approval. The Student Member’s membership on the Board thus is an *appointed* position, and Plaintiffs make no argument that the Maryland Constitution prohibits such an appointment. Their argument fails on its starting premise because the Student Member is not an elected official selected by registered voters in an election subject to the Maryland Constitution Article 1’s election requirements.

Amici, more than 125 past student members from every jurisdiction in the State and the State Board of Education, have come together to inform the Court about the potential statewide impact and the grievous harm that could result if Plaintiffs prevail: upending a system of student participation in school governance that Maryland has championed for decades. Student membership on local and state school boards is a statutory directive enacted by diverse sessions of the General Assembly over many years since the 1970s, reflecting the clear and consistent policy of the State for student participation in the governance of their school systems. Maryland has led the way nationally in establishing and promoting student participation, giving voting rights to student members of the boards of six of Maryland’s largest school systems and the State Board of Education. All of that is put at risk by Plaintiffs’ challenge here.

Plaintiffs' argument has no basis in Maryland law. As such, it is an egregious attack on not just the Student Member, but on the hundreds of thousands of Maryland public school students, including those in Howard County, who make their voices heard each year by participating in the student member selection process. Plaintiffs' Motion for Summary Judgment should be denied.

BACKGROUND

I. Voting Rights for Student Members of Boards of Education in Maryland have Existed for Nearly Fifty Years.

Students have voted on boards of education in Maryland 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 such position to exist in the state. Under S.B. 476, the student member was a non-voting position. The next year, during the first student member's tenure, Delegates Michael Wagner (D) and Robert Neall (R) co-sponsored a bill to grant the student member voting rights equal to those of the elected, adult members of the Board. 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; that student member casts a vote on the majority of matters that come before the Board and participates freely and fully in executive session. *See* Md. Code Ann. Educ. ("Educ.") § 2-202(c).

In addition to Anne Arundel County² and, of course, Howard County, student members also have voting rights in Baltimore City,³ Baltimore County,⁴ Harford County,⁵ Montgomery County,⁶ and Prince George’s County.⁷ The student member voting rights in those jurisdictions are at least commensurate with those in Howard County. *See* nn.2-6, *supra*. The best interests of roughly 667,000 of over 896,000 Maryland public school students currently are represented by a voting student member at the local level—nearly 75 percent. And the best interests of *every* Maryland public school student are represented by the voting student member at the state level.

That Maryland has been a pioneer in this regard should be celebrated. It remains one of very few jurisdictions nationally to recognize a student member with voting rights on a state or local board of education. *See* Stephen Sawchuck, *Few Student Board Members Can Vote. Should That Change?*, Education Week (Jun. 11, 2019), <https://www.edweek.org/leadership/few-student-board-members-can-vote-should-that-change/2019/06>. All the while, Maryland’s K-12 public education system has consistently been ranked as one of the best in the country for the past decade. *See, e.g., Pre-K – 12 Rankings: Measuring how well states are preparing students for college,*

² *See* Educ. §§ 3-2A-01, 3-2A-05. In 2014, a bill was introduced to restrict the full voting rights of the Anne Arundel County student member. Joe Burris, *Bill would curtail Arundel student school board member voting rights*, The Baltimore Sun (Feb. 1, 2014), <https://www.baltimoresun.com/maryland/anne-arundel/annapolis/bs-md-ar-smob-20140129-story.html>. The Anne Arundel County Board of Education opposed the bill, and it died in committee. *See* <https://legiscan.com/MD/bill/SB194/2014>.

³ *See* Educ. § 3-108.1(d), (m).

⁴ *See* Educ. §§ 3-2B-01, 3-2B-05.

⁵ *See* Educ. §§ 3-6A-01(b), (g).

⁶ *See* Educ. §§ 3-901(b), (e). The General Assembly first codified partial voting rights for Montgomery County student members in 1989. In 2015, the General Assembly expanded the student member’s voting rights to include matters related to the school system’s capital and operating 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; *see also* Testimony of Eric Guerci before Maryland General Assembly (Mar. 23, 2016), <https://www.youtube.com/watch?v=r6jHg2DzqQ0&list=UUuGmJLRicLd-mPNpMtWQ-Bg&index=4>.

⁷ *See* Educ. §§ 3-1002(b)-(c). In 1980, then-Attorney General Stephen A. Sachs defended the constitutionality of proposed student member voting rights in Prince George’s County, explaining that “the selection process is considered appointive from a constitutional point of view” and thus that a “possible violation of Article 1, § 1 of the State Constitution [was] not an issue.” Att’y Gen. Op. No. 80-030, 1980 WL 127893 at *2 (Mar. 12, 1980).

U.S. News and World Report, <https://www.usnews.com/news/best-states/rankings/education/prek-12> (last visited Feb. 8, 2021).

II. The Student Member of the Howard County Board is Appointed Through A Process Subject to Board Approval.

Nearly 60,000 students attend Howard County public schools. *See Fast Facts – Howard County Public School System*, <https://www.hcpss.org/f/aboutus/profile.pdf> (last visited Feb. 8, 2021). Howard County’s students are diverse: no single racial or ethnic group makes up more than 35% of the student population. They are also hardworking and, by all relevant metrics, high-achieving. Howard County students graduate high school at a rate of 92%, four points higher than the national average, and they score above the national average on standardized tests. The district’s attendance rate is over 95%. *See About Us – Facts and Figures*, <https://www.hcpss.org/about-us/facts/> (last visited Feb. 8, 2021). These diverse students have demonstrated they are capable of understanding the importance of having qualified and mature representation on the Board.

In Howard County, the first student member (then called “Student Associate”) joined the Board in 1988.⁸ For nearly twenty years, the position was non-voting, and it was not codified by statute. In 2005, the Board discussed a student member with voting rights for the first time, and the Board subsequently scheduled a public hearing on the topic.⁹ At that hearing, the vast majority of those who spoke expressed support for student member voting rights.¹⁰ As a result, on May 25, 2006, the Board voted unanimously to support proposed legislation granting the student member voting rights in the following legislative session.

⁸ The first Student Associate, Marcia Leonard, is now the principal of Wilde Lake High School.

⁹ *See* Oct. 6, 2005 Minutes of the Board of Education of Howard County, at 5-6, available at: [https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/legacy-content/83NL8P4D47D9/\\$FILE/10%2006%2005%20Regular%20Meeting%20Approved.pdf](https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/legacy-content/83NL8P4D47D9/$FILE/10%2006%2005%20Regular%20Meeting%20Approved.pdf).

¹⁰ *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).

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 partial voting rights. H.B. 513 proposed that the student member would be selected by a vote of all Howard County students in grades 6 through 11 through a process that was subject to the Board’s approval. It also proposed that the student member would be permitted to vote on most matters before the Board, with several enumerated exceptions. The Board voted 7-0 to support the legislation.¹¹ 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.

Accordingly, 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 at the general election every two years on a staggered basis. *See id.* § 3-701(c)(1). Newly elected members assume office the first Monday in December after the general election. *Id.* § 3-701(d)(1)(ii). All elected members serve a four-year term. *Id.* § 3-701(d)(2).

Pursuant to Section 3-701’s directive, the Student Member is chosen differently, through a “process” that must “be approved by the Howard County Board of Education.” *Id.* § 3-701(f)(3)(i). Unlike elected members, Student Members serve only one-year terms that run from July 1 to June 30. *Id.* § 3-701(f)(2). As a result, the Student Member selection process begins in January of

¹¹ *See* Mar. 22, 2007 Minutes of the Howard County Board of Education, 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).

every year. Interested students submit an application to the Howard County Association of Student Councils (“HCASC”).^{12,13} Thereafter, HCASC hosts a convention of delegates representing each middle and high school in the county. The HCASC delegates interview each applicant and choose two final nominees.

The nominees are permitted to campaign for a set period of time. Then, on a selected day or days, typically in the last marking period of the school year, students in grades 6 through 11 select their favored nominee. This step of the process occurs on site at each middle and high school; students view videos from each nominee and make their selection on a Scantron form. Completed Scantron forms are then delivered from the school to HCASC. HCASC members tally the results by hand.¹⁴ The Student Member serves their term, beginning July 1, “subject to confirmation of the election results by the county board.” Educ. § 3-701(f)(2).

In order for the Student Member’s selection to be confirmed, the faculty advisor of HCASC—a salaried HCPSS employee—submits the results of the student vote to the superintendent. The superintendent then submits a recommendation to the Board that the results of the Student Member selection process be confirmed.¹⁵ The Board then confirms the results

¹² 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://hcascc.hcpss.org/about> (last accessed Feb. 8, 2021). HCASC is overseen by a full-time faculty advisor who is salaried by HCPSS.

¹³ Plaintiffs state that “students must be nominated by their principals” to be chosen as the Student Member. *Pls. Mot. for Sum. J.* at 3. 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. *See* Letter from Cindy Drummond to 2021-2022 Student Member Applicants, https://docs.google.com/document/d/1jEQ0uaffwtTcfSky9XBK_w676AJihjP2T6bLXHjGLY0/edit (last visited Feb. 8, 2021); *see also* Applicant and Policy Recognition Form – Principal, <https://docs.google.com/document/d/1fhofuvuIxIHDepIYhCTy3a-vDC0IdYRcc6P5hhilDU/edit> (last visited Feb. 9, 2021).

¹⁴ This process has, of course, looked differently during the pandemic. In 2020, students registered their choice for the Student Member using Canvas, an online learning platform. This year, the nominating convention will occur virtually. *See* n.14, *supra*.

¹⁵ *See* n.14, *supra*.

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.¹⁶ In 2020, the Board voted 8-0 to confirm the results of the Student Member selection process.¹⁷

Plaintiffs argue that this process, and, by extension, any votes cast by the Student Member, violate Maryland’s Constitution. For the reasons below, Plaintiffs’ arguments fail. First, Plaintiffs fail to apply applicable standards of review requiring deference to the acts of the General Assembly and the opinion of the Attorney General, who has already examined and affirmed the constitutionality of a bill providing voting rights to Prince George’s County’s student member. Second, Plaintiffs are wrong on the law: the voting-age requirements of the Maryland Constitution apply to elected officials, not to appointed officials, and the General Assembly carefully crafted Howard County’s statute to make the Student Member a non-elected official. Finally, Plaintiffs’ argument, if successful, could apply to all other student members with voting rights, undoing an important policy initiative and stifling the voices of hundreds of thousands of Maryland public school students across the state. This dramatic step should not be taken based upon the faulty arguments raised by Plaintiffs here.

¹⁶ See 2008 Certification of Election of Student Member to the Board (May 8, 2008), <https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=82C9B2106822>; 2009 Certification (Jul. 9, 2009), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=82C6J5100847>; 2010 Certification (Jun. 10, 2010), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=862MZ35D9A5B>; 2011 Certification (Jun. 9, 2011), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=8HF3D906540A>; 2012 Certification (Jun. 14, 2012), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=8US3T5085C22>; 2013 Certification (May 23, 2013), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=97QK9U50D38D>; 2014 Certification (May 8, 2014), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=9JPNYM6238FC>; 2015 Certification (May 7, 2015), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=9VRQEE54DAA3>; 2016 Certification (May 12, 2016), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=A9KKEQ4E3CB7>; 2017 Certification (May 4, 2017), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=ALLRWT6C8212>; 2018 Certification (May 3, 2018), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=AXZHTZ49E124>; 2019 Certification (May 9, 2019), <http://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=BB4KHQ51FCDC>.

¹⁷ See 2020 Certification of Election of Student Member to the Board (Jun. 11, 2020), <https://go.boarddocs.com/mabe/hcpssmd/Board.nsf/goto?open&id=BPZU6K729F1E>.

ARGUMENT

Amici make the following arguments in support of the Board’s opposition to Plaintiffs’ summary judgment motion (“Mot.”). All arguments made by the Board in its opposition that are not addressed specifically below are incorporated by reference.

I. Plaintiffs Do Not Apply Applicable Standards of Review.

In Maryland, legislative enactments are not readily overturned on constitutional grounds. Plaintiffs’ argument fails to apply any such deference to the General Assembly as required by Maryland law. 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 Natural Resources v. Linchester Sand & Gravel Corp.*, 274 Md. 211, 218 (1975).

Similarly, Plaintiffs fail to address the rules of statutory construction when they discuss various provisions of the Education Article. Those rules are pertinent here. 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 part of a statutory scheme, that provision will be interpreted within the context of that statutory scheme.” *Id.*

Finally, Plaintiffs fail to address an Opinion of the Attorney General that found that an analogous legislative proposal for voting privileges for the student member of the Board of Education for Prince George’s County is constitutional. Att’y Gen. Op. No. 80-030, 1980 WL 127893 at *2 (Mar. 12, 1980) (“AG Op.”). This opinion, and a similar Attorney General opinion from earlier in the same year, said, “[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 opinion is also entitled to substantial deference in its discussion 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 Not an Election Subject to the Requirements of Article I § 1 of the Maryland Constitution.

A. Article 1 § 1 applies only to elected officials.

Plaintiffs' core contention is that, because Howard County voters must be 18 or older to vote in an election under Article I, Section 1 of the State Constitution, the Student Member legislation is unconstitutional, for it denies registered voters 18 or older their right to elect the Student Member. Instead, the voting power to elect the Student Member is exercised by students under age 18 who lack legal capacity to register to vote in elections under Article I. A further problem, Plaintiffs allege, is that the Student Member is not an adult when they take office, and the Constitution requires that all elected officials be age 18 or older. *See* Mot. 17; Md. Const. Art. I, §§ 1 (specifying that citizens age 18 and older are entitled to register to vote) & 12 (limiting elected office to registered voters). Both arguments assume that the Student Member is an *elected* official subject to Article I, and, further, that the Student Member is chosen by an *election* subject to Article I. Plaintiffs' arguments are wrong because both assumptions are wrong.

The age requirement for elected officials in Section 12 does not apply to appointed officials. By contrast, Sections 9, 10, and 11 of Article I set forth various requirements for both elected and appointed officials; none has an age requirement. Indeed, no provision of the Maryland Constitution has an age requirement for appointed officials. This clear differentiation shows specific intent to allow appointments of officials under age 18. *See Drew v. First Guar. Morg. Co.*, 379 Md. 318, 329 (2003) (“Informed by the maxim ‘*expressio unius est exclusio alterius*,’ meaning the expression of one thing implies the exclusion of another, we conclude that, because the General Assembly expressly required written notice in the first two parts of the statute, the fact that it did not expressly require written notice in part (iii) reveals an intent to exclude notice for that provision”) (internal citations and quotations omitted).

B. Section 3-701 of the Education Article makes the Student Member an appointed official, not an elected official.

The key question accordingly becomes whether the Student Member is an appointed or elected official, which, in turn, asks whether the Student Member is selected by an election subject to Article 1 of the State Constitution or instead is selected by a non-elective process. The statutory schemes governing both elections and the Student Member make clear that the Student Member is not selected by an election governed by Article I and thus is not an elected official.

Sections 7 and 8 of Article I 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 a process whereby voters cast votes, and Section 3-102 provides that only adult voters duly registered to vote may vote. Elec. §§ 1-101(v), 3-102(a). The Student Member selection process thus is not an election under the Constitution because the Student Member is not selected by votes cast by qualified Maryland voters.

Moreover, Section 3-701(a) of the Education Article unequivocally states that the Student Member is not an elected position. Section 3-701 states, in plain language, 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.

This distinction, and thus, the intent of the General Assembly, could not be clearer. Based on this plain reading of the statute, the Student Member is not an “elected” position. *See Arundel Corp. v. Marie*, 383 Md. 489, 502 (2004) (“[T]he Legislature is presumed to have meant what it said and said what it meant.”) (internal citations and quotations omitted); *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 citations and quotations omitted). As a result, 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), and here, the 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 for the first time 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. 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). 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—jurisdictions that already employed selection processes for their student members similar to the one Howard County has now. By contrast, in many jurisdictions where student members do not have codified voting rights, the corresponding statutes still only refer 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 Plaintiffs raise rests on the assumption that the Student Member is an elected position, those arguments necessarily fail.

Elsewhere, the statute does sometimes use the words “elected” and “election” to describe the Student Member selection. *See* Educ. § 7-301(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. As the Court of Appeals 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) (citing Henry C. Black, *Handbook on the Construction and Interpretation of the Laws*, 171-72 (2d ed.1911)). 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, Section 3-701(f)(3)(i) requires that the Student Member selection process “be approved by the Howard County Board of Education.” This means that, per the statute, the Student Member selection process occurs entirely outside the purview of the Howard County Board of Elections, which is the body directed by statute to conduct all elections in Howard County. *See* Elec. Law § 8-101(a) (“Under the supervision of the State Board, and in accordance with regulations and procedures adopted by the State Board, 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. By contrast, elections for the other members are managed by the Board of Elections, in accordance with the General Assembly’s repeated reference to those members as “elected.” *See* Educ. § 3-114(h) (“The election of the county boards shall be held as provided in Subtitles 2 through 14 of this title and the Election Law Article.”).

Second, Section 3-701(b)(1) requires that each elected member is 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 Section 3-701(f)(1), which lists the

eligibility requirements for the Student Member, contains no parallel voter registration requirement. *See* § 3-701(f) (“The student member shall be a bona fide resident of Howard County and a regularly enrolled junior or senior year student from a Howard County public high school.”). 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, 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 (“[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.”) (quotation marks omitted). 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.¹⁸

¹⁸ The scheme then used in Prince George’s County has strong similarities to the scheme used 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 one of these two will be submitted to the Superintendent. The candidate is then submitted to the Board for final confirmation.

The statutory scheme makes clear that the Student Member is an appointed, unelected official. Accordingly, the age requirement for elected officials (and elections) in Article I of the State Constitution simply do not apply here.

C. The Student Member selection process resembles other appointive processes codified by Maryland law.

There is nothing improper in appointed 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 improper about appointed school board members who serve—and vote—alongside elected members. Setting aside the appointed student member that serves on each board, multiple Maryland jurisdictions have a hybrid model where some of the board members are elected and others are appointed. *See* Educ. § 3-108.1(d)(1) (Baltimore City); § 3-2B-01 (Baltimore County); § 3-3A-02 (Caroline County); § 3-6A-01 (Harford County); § 3-1002 (Prince George’s County). Here, the Student Member is simply another appointed member serving alongside elected members. This structure poses no constitutional violation; 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)).

Finally, the process by which the Student Member is appointed in Howard County falls well within the scope of how political appointments are made under Maryland law. For example, on the State Board of Education, all members are “appointed.” Educ. § 2-202(a). One of the members, however, is a “teacher member” who is chosen through a canvass of teachers across the state, conducted according to regulations set by the Maryland State Department of Education (“MSDE”). *Id.* § 2-202(4)(ii)-(iv). Although the General Assembly made it clear that the teacher

member is an “appointed” member, *see id.* §§ 2-202(a), (4)(ii), it also gave no latitude to the Governor to veto the results of the teachers’ selection, making the results of the teachers’ 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.”) (emphasis added).

The process used to select the teacher member on the state board of education echoes other appointive processes codified by the General Assembly in other contexts. On the Board of Trustees for the State Retirement and Pension System, some of the trustees, like the State Comptroller, are elected in a state-wide election. *See Md. St. Pers. & Pens. Art. § 21-104(a)(2)*. Some trustees are appointed by the Governor. *See id.* § 21-104(b)(2)-(4). Other trustees, however, are chosen through elections by members or retirees of various pension systems. *See id.* § 21-104(b)(1)(i) (“The trustees who are members or retirees of the Correctional Officers’ Retirement System, the Employees’ Pension System, the Employees’ Retirement System, the Judges’ Retirement System, the Legislative Pension Plan, the Local Fire and Police System, or the Law Enforcement Officers’ Pension Plan shall be elected by the members and the retirees of those State systems.”). Similarly, on the board of the State Deposit Insurance Fund, eight members are appointed by the Governor and three members 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 entirely proper under Maryland law for an appointed official to be chosen, either in whole or in part, through an “election” by members of a relevant group. The Student Member selection process in Howard County is no different: students participate in a process that is subject to the Board’s approval by voting for their preferred candidate, and the Board confirms the students’ choice. *See n.16-17, supra* (links to every Board

vote since 2008). 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 Article I, § 1.

III. The Student Member’s vote is essential to effective Board policymaking.

Plaintiffs’ suit is not only legally unsound, but myopic. They seek to “solve” their own short-term problem without any regard for long-term consequences their suit would have on hundreds of thousands of Maryland students currently represented by a voting student member. If Plaintiffs’ theory were accepted, it could strip from hundreds of thousands of students any real, meaningful representation regarding matters of policy that uniquely affect them. Such a result would be incongruous with Maryland law. It would be counterintuitive to the formation of effective education policy. And it would be an affront to students across the state.

The significance of public education cannot be overstated. *See* Md. Const. Art. XVIII § 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 is 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 that affect 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 only common sense that students, who are the most affected by these policies of any stakeholder, serve as members of these boards. For student input on matters of policy 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.

Plaintiffs’ argument that student members are not competent to vote on board matters because “their minds are not fully developed,” Mot. 13, is both unavailing and insulting, not to mention contrary to the experience of multiple local school boards in Maryland 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. Years of experience have proven the skeptics wrong. In any event, this Court cannot substitute its judgment for that of the Legislature. *See, e.g., Linkus v. Md. State Bd. of Heating Ventilation, Air-Conditioning and Refrigeration Contractors*, 114 Md. App. 262, 278 (“We may not substitute our judgment for that of the Legislature . . . even if we disagree with it.”).

Regardless, student members are uniquely qualified to vote on the matters that come before boards of education. Students gain 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.*

In other words, the Student Member is the only member with insight into “these everyday issues” that “make a big difference.” *Id.* The Student Member is the only member who is guaranteed to hear from teachers, school staff, and other students on a daily basis. And the Student Member is the only member to witness first-hand the effects of how system dollars are spent or how board policies are carried out in practice.

To deny 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 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,” then the Student Member—who represents the voice of every Howard County student—must continue to have a vote. *See id.*

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. Plaintiffs' misunderstanding of the law cannot be permitted to tarnish it.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment should be denied, and the Court should declare that process for selecting the Student Member for Howard County does not violate the Maryland Constitution.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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