
**IN THE
COURT OF APPEALS OF MARYLAND**

September Term, 2007

No. 122

STATE BOARD OF ELECTIONS,

Appellant,

v.

**CLIFFORD E. SNYDER, JR.,
on behalf of Carl Philip Snyder, his son, *et al.*,**

Appellees.

On Appeal from the Circuit Court for Anne Arundel County
(Paul A. Hackner, Judge)

BRIEF OF APPELLANT

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BRIEF OF APPELLANT

In this appeal under Election Law Article (“EL”) § 12-203, appellant State Board of Elections (the “State Board”) seeks clarification from this Court concerning the correct application of Article I, § 1 of the Maryland Constitution to nonpartisan primary elections. Appellees, on behalf of their 17-year old children, claim a statutory entitlement to vote in their counties’ nonpartisan school board primary elections on February 12, 2008. In *Lamone v. Capozzi*, 396 Md. 53 (2006), however, this Court held that primary elections are subject to Article I, § 1, which makes individuals eligible to vote “at all elections” if (in addition to meeting other qualifications) they are “of the age of 18 years or upwards.” All parties in this

case agree that 17-year olds who will be 18 by the time of the general election may vote in the primary elections of the political party with which they are registered. That issue is not before the Court.

STATEMENT OF THE CASE

The children whose rights are asserted in this case will turn 18 years old by the time of the general election on November 4, 2008. These 17-year olds have registered to vote under EL § 3-102. Under the State Board's longstanding interpretation of § 3-102, they would be eligible to vote in the primary election on February 12, 2008. Furthermore, to respect the federally protected associational rights of the political parties, the State Board has determined that these registered 17-year olds may vote in their own party's primary election on February 12. The narrow question in this case is whether these 17-year olds may also vote in nonpartisan primary elections, specifically county school board elections, in which the political parties have no interest. Solely because *Capozzi* applied the qualification requirements of Article I, § 1 to primary elections, the State Board has answered this question in the negative and announced that registered 17-year old voters may not vote in the nonpartisan races on February 12.

On January 18, 2008, appellees Clifford E. Snyder, Jr. and Richard D. Boltuck filed complaints in the Circuit Court for Anne Arundel County under EL § 12-202. (E. 8-15, 16-24.) Both appellees sought injunctive relief allowing their respective 17-year old children, Carl Snyder and Sarah Boltuck, to vote in nonpartisan school board elections. At a hearing

held before Judge Paul A. Hackner on February 1, 2008, appellees orally withdrew other claims concerning the manner of casting votes, and made requests for a declaratory judgment on the remaining claims. In a written order entered the same day, the circuit court granted a judgment in favor of appellees Snyder and Boltuck and directed the State Board to allow otherwise-eligible 17-year old voters to vote in the nonpartisan primary elections on February 12. (E. 118-19; E. 185-200.) Also on February 1, 2008, the State Board noted this direct appeal under EL § 12-203(a)(3). (E. 205-06.)

QUESTION PRESENTED

Do Article I, § 1 of the Maryland Constitution and this Court's decision in *Lamone v. Capozzi*, 396 Md. 53 (2006), preclude 17-year old voters, who will be 18 at the time of the next general election, from participating in nonpartisan primary elections for county boards of education?

STATEMENT OF FACTS

This case arises from the good-faith efforts of the State Board, and the Office of Attorney General as its legal advisor, to facilitate voting by all eligible Marylanders consistent with the Maryland and United States Constitutions, the Election Law Article, and this Court's precedents.

A. The State's Board's Implementation of *Capozzi*.

Article I, § 1 of the Maryland Constitution sets forth the basic qualifications for voting in Maryland. It provides in full:

All elections shall be by ballot. Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in this State.

Md. Const. Art. I, § 1.

Section 3-102(a) of the Election Law Article implements Article I, § 1. It provides that an individual is eligible to be a registered voter if he or she is a United States citizen, resides in the county of registration as of the date of registration, and “is at least 18 years old or will be 18 years old on or before the day of the next succeeding general or special election.” Historically, the State Board understood that the qualifications set forth in Article I, § 1 apply to general elections and, after becoming a registered voter under EL § 3-102, an individual who would be 18 by the general election could vote in a primary election, even if not 18 by the date of the primary. (E. 106.)

On December 11, 2006, this Court issued its decision in *Lamone v. Capozzi*, 396 Md. 53 (2006). The Court invalidated an early-voting statute because, among other reasons, the statute allowed voting outside the early voter’s election ward and “[i]t is clear from Article I, § 1, that a voter can only vote in the election ward or district in which he resides.” 396 Md. at 84. The Court explained that “[t]he phrase, ‘shall be entitled to vote in the ward or election district in which he resides,’” at the end of the second sentence of Article I, § 1,

“modifies the preceding phrase” setting forth the citizenship, residency, and age requirements. *Id.* at 85.

The Court then addressed the State’s argument that Article I, § 1 does not apply to *primary elections*, so the early voting law was constitutional with respect to those elections. The Court rejected the State’s argument and held “primary elections are included within the meaning of ‘at all elections to be held in this State’ in Article I, § 1.” *Id.* at 89. Quoting the circuit court’s decision in the *Capozzi* matter, this Court reasoned:

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

Id. *Capozzi* accordingly establishes that the qualifications for voting set forth in Article I, § 1 apply to primary elections.

Following this Court’s issuance of the *Capozzi* decision on December 11, 2006, the State Board sought the advice of Attorney General J. Joseph Curran on the effect of *Capozzi* on a number of election law issues, including whether 17-year olds could vote in primary elections. On December 18, 2006, the Office of the Attorney General advised the State Board that the inescapable consequence of this Court’s interpretation of Article I, § 1 was that only individuals who will turn 18 before the next election (as opposed to the next general election) should be permitted to register. (E. 98-102.) At the time of that advice, the political parties in Maryland had no rules concerning 17-year olds’ participation in their partisan

primaries; the Office of Attorney General therefore did not address the legal consequences of such rules. Accordingly, the State Board notified 17-year old voters who would not be 18 years or older by the date of the February 12, 2008 primary that they were not eligible to vote in that election. (E. 103.)

B. The State Board's Current Policy.

On December 10, 2007, the Maryland Democratic Party adopted a resolution – later embodied in a Party rule – allowing 17-year olds to vote in its primary elections. On December 18, 2007, the Maryland Republican Party advised the Attorney General that it was adopting the same policy. Both parties asked the State Board to allow all individuals who meet the qualifications of EL § 3-102(a) to register and vote in all elections, including the primary election on February 12, 2008. (E. 107)

These developments prompted a State Senator to ask the Office of Attorney General whether the newly adopted party rules affected the Office's advice that *Capozzi* bars primary participation by registered voters who, although they will be eligible to vote in the general election, are not yet 18 at the time of the corresponding primary election. (E. 105.)

On December 19, 2007, Attorney General Douglas Gansler issued an advice letter responding to that inquiry. (E. 105-09.) The Attorney General noted “both principal political parties have [now] indicated that they wish to open their nomination process to individuals who will be 18 by the time of the general election.” (E. 107.) Furthermore, the Attorney General observed, under the United States Constitution (as incorporated by Article 2 of the

Maryland Declaration of Rights) “political parties have a First Amendment right of association to determine who will participate in ‘the “basic function” of selecting the Party’s candidates.’” (*Id.*) (quoting *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 216 (1986)); see also *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989) (“partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments”); *Suessman v. Lamone*, 383 Md. 697, 722 (2004) (noting, in case involving a primary election, that the political parties’ First Amendment rights are “indisputable”).

Because a burden on the political parties’ protected associational rights must be justified by an overriding state interest, the Attorney General then considered the State’s interest in preventing political parties from receiving the votes of 17-year olds. He noted that EL § 3-102(a), as consistently understood and applied by the State Board, “expressed a legislative policy in favor of permitting such voters to exercise the franchise in the primary – a policy that coincides with the associational interest recently embraced by the parties.” (E. 108.) Furthermore, neither Article I, § 1 nor *Capozzi* “indicates a specific state interest in excluding from primary elections those 17-year olds who will be 18 by the time of the general election.” (*Id.*) Because he could discern no articulated or even implicit policy of the political branches to exclude 17-year olds from primary elections, the Attorney General recommended that the State Board permit 17-year olds to vote in the primaries in accordance with EL § 3-102 and the First Amendment. (E.109.)

The political parties' associational rights thus underlay the Attorney General's conclusion that the statutory authorization of primary voting by certain 17-year olds, as set out in EL § 3-102(a), survives *Capozzi*. Those associational rights are not relevant to nonpartisan elections in which the political parties play no role. See EL § 8-802(a). Such nonpartisan elections will be held on February 12, 2008. Allegany, Calvert, Carroll, Cecil, Frederick, Howard, Montgomery, Queen Anne's, Talbot, and Washington Counties have nonpartisan contests on their primary ballots. All of the nonpartisan contests to be held on February 12 are county school board races, except that Washington County also has a ballot question on the adoption of a home rule charter and the City of Cumberland in Allegany County has municipal races.

By actions on December 20, 2007 and January 3, 2008, the State Board adopted the following policy, which was consistent with the Attorney General's advice letter:

A 17-year old who is a Democrat or Republican may vote in a primary election. However, if the voter lives [in a county with non-partisan contests on the ballot], the voter must vote by provisional ballot so that the local board of elections can ensure that the voter did not cast any votes in the non-partisan contests. If a vote was cast in a non-partisan contest, this vote will not be counted, and only votes that the 17-year old is entitled to cast (i.e., partisan contests) will be counted.

(E. 103-04.)¹

¹ The class of 17-year old registered voters subject to this policy currently consists of approximately 15,000 individuals. (E. 161, 196.)

C. Appellees' Circuit Court Complaints.

Carl Snyder ("Carl") was born on October 11, 1990, in Frederick County and has resided there since birth. (E. 8.) In May 2007, he registered to vote as a Democrat. (E. 8-9.) Before the State Board revised its post-*Capozzi* policy to reflect the parties' assertions of their associational rights, Carl's father pursued administrative remedies with the Frederick County Board of Elections and the State Board in an effort to allow Carl to vote in the February 2008 primary. (E. 9-10.) After the State Board revised its policy, the State Board dismissed Mr. Snyder's complaint as moot to the extent it addressed the Democratic primary election. (E. 10.) The Board dismissed a subsequent complaint challenging the State Board's revised policy, which barred Carl from voting in nonpartisan elections for the Frederick County Board of Education, because the complaint did not allege a violation of the Election Law Article. (E. 12-13.)

On January 18, 2008, Mr. Snyder filed a complaint in the Circuit Court for Anne Arundel County on Carl's behalf, under EL § 12-202. Generally citing the Election Law Article and the Maryland Declaration of Rights, Mr. Snyder requested an injunction requiring the State Board to allow Carl to vote "in the usual way, in all contests on the ballot in Frederick County on February 12, 2008." (E. 13-14.)

Sarah Boltuck was born on July 21, 1990, and has resided in Montgomery County since 1998. (E. 16.) After Sarah submitted an application to register to vote, the Montgomery County Board of Education notified her by letter dated June 11, 2007 that her

application had been rejected under the policy that the State Board adopted after *Capozzi* but before the Democratic and Republican Party rule changes. (E. 17.) The county board explained that “you do not qualify for registration and voting in this county because you will not have reached 18 years old by the date of the next election.” (*Id.*)

On January 11, 2008, the State Board notified Sarah that she is eligible to vote for her party’s offices in the February 2008 primary. (E. 18-19.) As in Frederick County, the primary election in Montgomery County will have a nonpartisan school board contest; Sarah allegedly wishes to vote in that primary election. (E. 19.) On January 18, 2008, Sarah’s father filed a complaint in the Anne Arundel County Circuit Court, on Sarah’s behalf, that echoed and adopted the claims made by Mr. Snyder on Carl’s behalf. (E. 19-20.)

D. The Circuit Court’s Proceeding.

On January 30, 2008, the State Board moved to dismiss the complaints for failure to state a claim or, in the alternative, for summary judgment. (E. 79-115.) At a hearing held on February 1, 2008, appellees cross-moved for summary judgment and further moved for declaratory judgment. (E. 127, 197-98.) Also at the hearing, appellees abandoned their claims concerning the State Board’s implementation of 17-year old voting by means of provisional (paper) ballots. (E. 133, 180-81.) Thus, the only issue before the circuit court was whether the Election Law Article or the Maryland Declaration of Rights entitled 17-year old registered voters to vote in their home county’s nonpartisan school board elections on February 12, 2008.

The circuit court determined that 17-year olds do have a right to vote in nonpartisan primary contests. The court agreed with the Attorney General that *Capozzi* requires that an individual be 18 to vote in a primary election and recognized that the question whether 17-year olds may vote in party primaries is not presented in this case. (E. 187-89.) Based on a theory not advanced by appellees, though, the circuit court concluded that Article I, § 1 does not apply to nonpartisan school board elections at all, because those elections are not directly mandated by the Maryland Constitution. (E. 189-90.) The circuit court rested its decision on *Hanna v. Young*, 84 Md. 179 (1896), in which this Court stated that: “It is only at elections which the constitution itself requires to be held, or which the legislature, under the mandate of the constitution, makes provision, that persons having the qualifications set forth in said section 1, art. I, are by the constitution of the state declared to be qualified electors.” 84 Md. at 183. Based on that sentence, the circuit court reached the conclusion “that the voter eligibility requirements of Article I, § 1 of the Maryland Constitution do not apply to nonpartisan elections for Boards of Education, municipal elections, and local ballot questions that are not mandated by the Constitution.” (E. 118). In its view, Article I, § 1 (and *Capozzi*’s application of it) have no bearing on this case and do not limit the voting rights of 17-year olds under EL § 3-102. (E. 190.) The circuit court therefore entered a declaratory ruling that 17-year old registered voters must be allowed to vote in nonpartisan primary elections on February 12, 2008. (E. 118-19.)

ARGUMENT

The policy of the State Board is to support enfranchisement of eligible voters to the maximum extent allowed by law. The State Board came to the conclusion that 17-year olds may not vote in Maryland's nonpartisan primary elections because (1) *Capozzi* held that the constitutional eligibility requirements of Article I, § 1 apply to primary elections and (2) the resulting age requirement for primary voting is consistent with federal constitutional requirements in the context of the nonpartisan primary elections. This result – that 17-year olds who are eligible to register to vote under EL § 3-102 cannot cast ballots in some contests in the February 12, 2008 election – is awkward and appropriate for scrutiny by the political branches.² But, absent some clarification or reconsideration of *Capozzi* by this Court, the State Board believes that it has correctly applied the law governing age requirements in the context of these nonpartisan primary races. Under the law as it stands today, the State Board is bound to exclude 17-year olds from casting votes in nonpartisan contests on February 12, 2008.

² Bills proposing constitutional amendments on this topic are currently pending in the General Assembly.

I. THE CONSTITUTIONAL ELIGIBILITY REQUIREMENTS OF ARTICLE I, § 1 APPLY TO THE NONPARTISAN PRIMARY ELECTIONS IN WHICH APPELLEES SEEK TO VOTE.

The circuit court's effort to avoid *Capozzi* by limiting the applicability of the Article I, § 1 rested on a misunderstanding of the reach of Maryland's constitutional qualifications for voting.

A. The Circuit Court's Reliance On *Hanna v. Young* Conflicts With *Capozzi* And Other Decisions Of This Court.

In *Hanna v. Young*, this Court held that the town of Bel Air could establish a property-holding requirement for voting in a municipal election, without running afoul of Article I, § 1. Although the Court's holding was limited to a municipal election, the Court stated a broader rule:

It is only at elections which the constitution itself requires to be held, or which the legislature, under the mandate of the constitution, makes provision, that persons having the qualifications set forth in said section 1, art. I, are by the constitution of the state declared to be qualified electors.

84 Md. at 183. In the 111 years since *Hanna* was decided, this Court has never discussed or even cited the quoted passage. The sentence in fact is *dictum* insofar as it addresses elections other than municipal elections, which, as *Hanna* correctly held, generally are not subject to Article I, § 1. See *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 508 n.20 (1997) (noting that statutory procedures for challenging voter qualifications do not apply to municipal elections outside Baltimore City). In context, it appears that the quoted passage stands for the proposition that the "all elections" language of Article I, § 1 reaches (1)

elections that the Maryland Constitution directly “requires to be held” as well as (2) elections for a State office that the Legislature establishes pursuant to a constitutional direction. As the Court explained in *Hanna*, the Bel Air town commissioners were not chosen in an election subject to Article I, § 1 because the municipal election was not a “state or county election[],” nor were the town commissioners “clothed with power” under the Constitution “or designated as any part of our State government.” 84 Md. at 183. In short, the municipal officials were not State officers.

The circuit court stretched *Hanna* too far. It read the quoted sentence as a broad carve-out from the voter eligibility requirements of Article I, § 1. On that basis, the circuit court concluded that nonpartisan elections for county boards of education – as well as municipal elections and local ballot questions – are exempt from the constitutional age requirement. (E. 118-19, 189-90.) This holding conflicts with numerous decisions of this Court.

Most obviously, *Capozzi* held that the phrase “all elections to be held in this State,” as used in Article I, § 1, applies to primary elections. 396 Md. at 89. The State contended in *Capozzi* that early voting is permissible in primary elections even if it is not permissible in general elections, because the Legislature has plenary powers with regard to primary elections (as well as municipal elections outside Baltimore City). *See id.* at 88. The Court rejected that argument, stating without limitation that “primary elections are included within the meaning of ‘at all elections to be held in the State’ in Article I, § 1.” *Id.* at 89 (quoting

Article I, § 1). Either *Capozzi*'s discussion of primary elections was overbroad and must be narrowed to exclude county school board elections, or the circuit court was wrong.

The circuit court's reading of *Hanna* is inconsistent with other precedents as well. In *Reeder v. Board of Supervisors of Elections of Queen Anne's County*, 269 Md. 261 (1973), the Court applied the constitutional-qualification requirements to voting on county "issues and offices," without considering whether those elections were constitutionally mandated. *Id.* at 262, 264.

In *Nader for President 2004 v. Maryland State Board of Elections*, 399 Md. 681 (2007), the Court applied Article I, § 1, among other constitutional and statutory provisions, to the election for President of the United States – an election not directly mandated by the State Constitution. *See, e.g., id.* at 697 ("[N]o restrictions can be imposed that will require other or different qualifications for voting, than those prescribed by the first Article of the Constitution of the State.") (quoting *Langhammer v. Munter*, 80 Md. 518, 527 (1895)).

Similarly, in *Maryland Green Party v. Maryland Board of Elections*, 377 Md. 127 (2003), the Court applied Article I, § 1 to an election for a seat in the U.S. House of Representatives, which also is not directly mandated by the Maryland Constitution. *See id.* at 136-37, 140-42. Noting that "the right to vote is conferred upon any United States citizen, age eighteen or older," the Court also relied on Article 7 of the Declaration of Rights, which "emphasizes that 'every citizen having the qualifications prescribed by the Constitution' has 'the right of suffrage.'" *Id.* at 141 (quoting Article 7).

In *Suessmann v. Lamone*, 383 Md. 697 (2004), the Court held that Article 7 did not preclude the State from preventing unaffiliated voters from participating in political parties' primary elections for judicial candidates. While the majority did not address whether such elections are subject to Article I, § 1, Chief Judge Bell and Judges Cathell and Eldridge all suggested that § 1's phrase "all elections" should be given broad sweep so as to reach all primary elections administered by the State. *See id.* at 734 (Cathell, J., concurring) ("[T]his Court would be hard pressed to hold that an election (even a primary) conducted by State officials in a State facility, on ballots provided by the State, at times designated by the State, with the qualifications of the voters vis-a-vis registration created by the State – is not a State election"); *id.* at 750 (Bell, C.J., joined by Eldridge, J., dissenting) ("[W]hen [a] state-regulated primary is open to candidates for judgeships regardless of party affiliation, it . . . very likely is an 'election' within the meaning of Article I, § 1").

Thus, *Reeder*, *Nader*, *Green Party*, and the separate opinions in *Suessmann* all suggest that the constitutional phrase "all elections to be held in this State" has a broader reach than the circuit court gave it (to exclude county school board elections).

B. The Circuit Court's Holding Is Inconsistent With The Election Law Article.

The Constitution authorizes the General Assembly to regulate the conduct of elections in the State. Article I, § 7 (formerly Article III, § 42) directs the General Assembly to "pass Laws necessary for the preservation of the purity of Elections." Article III, § 49 authorizes the General Assembly "to regulate by Law, not inconsistent with this Constitution, all matters

which relate to Judges of election, time, place and manner of holding elections in this State, and of making returns thereof.”

The Election Law Article, which implements these constitutional provisions, *see County Council for Montgomery County v. Montgomery Ass’n, Inc.*, 274 Md. 52, 60 (1975), defines the word “election” broadly:

(1) “Election” means the process by which voters cast votes on one or more contests under the laws of this State or the United States.

(2) “Election” includes, unless otherwise specifically provided in this article, all general elections, primary elections, and special elections.

(3) “Elections” does not include, unless otherwise specially provided in this article, a municipal election other than in Baltimore City.

EL §1-101(v). The Court has treated the General Assembly’s implementing definition as a gloss on the Constitution’s use of the same term. *See Reeder*, 269 Md. at 263-64 (discussing prior version of statutory definition). Furthermore, the statutory definition is consistent with the State Board’s understanding, based on the plain language of *Capozzi*, that the requirements of Article I, § 1 apply to all contests “under the laws of this State or the United States,” including “all . . . primary elections, and special elections,” save “a municipal election [outside] Baltimore City.” EL §1-101(v)(1)- (3). By contrast, the circuit court’s understanding of Article I, § 1, based on its misreading of *Hanna*, excludes county school board elections and other elections that the Legislature deemed it appropriate to regulate when implementing the same constitutional requirements.

C. County School Board Elections Are Subject To Article I, § 1.

The circuit court's interpretive error is particularly clear in the context of the primary elections specifically at issue here: the races for board of education positions in Frederick County and Montgomery County. Although "creatures of the General Assembly" rather than the Maryland Constitution, "the county school boards have consistently been regarded as State . . . agencies." *Chesapeake Charter, Inc. v. Anne Arundel County Bd. of Educ.*, 358 Md. 129, 135, 136 (2000). In the language of the *Hanna* decision, members of a county board of education are "clothed with power [and] designated as [a] part of our state government." 84 Md. at 183. County school board elections have, accordingly, always been subject to the voter-qualification provisions of Article I, § 1.

As early as 1825, the General Assembly provided by legislation for the creation of local school boards, in the form of "commissioners" and "inspectors" of primary schools. *See McCarthy v. Board of Educ. of Anne Arundel County*, 280 Md. 634, 640 (1977). Under the 1864 Constitution, the "school commissioners" appointed in each county were given the status of constitutional officers. *See id.* Article VIII of the 1867 Constitution built on these provisions when it required the General Assembly to "establish throughout the State a thorough and efficient system of Free Public Schools." Md. Const. Art. VIII, § 1. Although local school offices were no longer expressly created by the Constitution, as they were in the 1864 Constitution, the framers of the 1867 Constitution surely contemplated the continued selection of local school boards.

This Court has recognized that the Legislature created county boards of education in satisfaction of the constitutional mandate of Article VIII, § 1. In *Chesapeake Charter, supra*, Judge Wilner noted for the Court that:

County school boards are considered generally to be State agencies because (1) the public school system in Maryland is a comprehensive State-wide system, created by the General Assembly in conformance with the mandate in Article VIII, §1 of the Maryland Constitution to establish throughout the State a thorough and efficient system of free public schools, (2) the county boards were created by the General Assembly as an integral part of that State system, (3) their mission is therefore to carry out a State, not a county, function, and (4) they are subject to extensive supervision by the State Board of Education in virtually every aspect of their operations that affects educational policy or the administration of the public schools in the county.

358 Md. at 136-37; *see also Hornbeck v. Somerset Co. Bd. of Ed., supra*, 295 Md. 597, 628 (1983) (“Following ratification of the Constitution of 1867, the provisions of Article VIII were implemented by ch. 407 of the Acts of 1868 Educational matters affecting a county were placed under the superintendence of Boards of County School Commissioners.”).

In 1951, the General Assembly created the first elected school board for Montgomery County, *see* Chapter 364, *Laws of 1951*, and in 1963 authorized their nomination at a primary election, *see* Chapter 813, *Laws of 1963*. At that time, the Fewer Elections Amendment – in particular, the provisions now found in §§ 2 and 3 of Article XVII – required the election of “State and County officers” for four-year terms, with their elections held on a uniform date. *See* Chapter 227, *Laws of 1922*, §§ 1, 2. Due to school boards’ established status as

State agencies, *see Chesapeake Charter*, 358 Md. at 136, these constitutional provisions had the effect of mandating school board elections every four years.

Apparently to allow greater flexibility in the holding of school board elections and the fixing of members' terms, the General Assembly in 1972 proposed a constitutional amendment to exempt those elections from certain provisions of the Fewer Elections Amendment. *See Chapter 370, Laws of 1972*. The exemption, now found in § 7(1) of Article XVII, states that "Sections 1, 2, 3 and 5 of this Article do not apply or refer to . . . members of any elected local board of education." The Legislature did not propose to exempt school board elections from any constitutional requirement other than the Fewer Elections Amendment. The 1972 amendment accordingly gave express constitutional recognition to school board elections, without suggesting that elections for this State office should be carved out from the universe of "all elections" under Article I, § 1.³

This history suggests a flaw inherent in the circuit court's decision. Between 1951 and 1972, the Fewer Elections Amendment mandated elections for State officers including the members of county boards of education. Even under the circuit court's requirement of a direct constitutional mandate, Article I, § 1 clearly applied to school board elections during this period. The circuit court's decision would suggest that the constitutional eligibility

³ In 1978, a constitutional amendment revised both Article I, § 1 and Article XVII, § 7. *See Chapter 681, Laws of 1978*. The amendment to Article I, § 1 authorized voting by 18-year olds, while the amendment to Article XVII, § 7 made technical changes. If the General Assembly had intended to exempt school board elections from Article I, § 1, it logically would have done so at this time, if not before.

requirements for school board elections that had applied for at least twenty years were lifted in 1972, despite any indication that the Legislature intended that fundamental change. This incongruity is an additional reason why the circuit court's reading of Article I, § 1 should be rejected.⁴

II. THE STATE BOARD APPLIED ARTICLE I, § 1 TO NONPARTISAN PRIMARIES AS REQUIRED BY CAPOZZI.

If, as shown above, the State Board was correct that Article I, § 1 applies to school board elections, then the State Board's policy of not allowing 17-year olds to vote in the school board primary contests is also correct. The circuit court recognized as much. (T. 70-71.)

Capozzi states that the Maryland Constitution limits the right to vote in primary elections to those who have the qualifications stated in Article I, § 1. *See Capozzi*, 396 Md. at 89. Among those qualifications is the requirement that the voter must be "of the age of 18 years or upwards." Md. Const. Art. I, § 1. As determined by the Attorney General and implemented by the State Board, there is an exception to this general rule that allows registered 17-year olds affiliated with the Democratic and Republican Parties to vote in their

⁴ As noted in the Statement of Facts, above, not all the February 12 elections addressed in the circuit court's Order are school board elections. The Washington County ballot question is a special election authorized by Article XI-A of the Constitution, which governs a decision by the voters to adopt a charter form of government. Article I, § 1 applies to that election for essentially the same reasons that it applies to county school board races. The City of Cumberland will have municipal elections on February 12, 2008. Although, under *Hanna*, these municipal elections are not subject to Article I, § 1, they have not been put at issue by appellees, who reside in Frederick and Montgomery Counties.

own party's primary elections. That exception is necessary to respect the parties' First Amendment associational rights, given that EL § 3-102 indicates the absence of any paramount state interest in excluding 17-year olds from voting.⁵

Because the political parties have no associational interest with respect to nonpartisan primary races, however, the general rule applies to those races. Accordingly, Article I, § 1 and *Capozzi* together dictate that all voters in nonpartisan primaries must be at least 18 years old. The State Board thus correctly decided that a voter must be 18 years old on primary day to vote in a nonpartisan primary race.

The school board primary elections in which Carl Snyder and Sarah Boltuck wish to vote are nonpartisan.⁶ With respect to these elections, the Attorney General's December 19, 2007, advice that an individual must be 18 to vote was clearly correct. *Capozzi* forecloses appellees' claim of an entitlement to vote in nonpartisan primaries.

⁵ The exception recognized by the State Board should not be considered in this case because the parties agree that Carl and Sarah may vote in their party's primary elections; the issue was not briefed or argued in the circuit court; it was not decided by the circuit court; and the political parties, whose associational rights are directly at issue in the partisan primaries, are not before the Court.

⁶ EL § 8-802(a)(1)(i) provides that members of boards of education are elected on a nonpartisan basis. Any registered voter of the county may vote regardless of party affiliation or lack of party affiliation. *See* EL § 8-802(a)(1)(ii). Candidates for a county school board therefore are certified, appear on the ballot, and are nominated and elected without regard to party affiliation or lack thereof. *See* EL §8-802(a)(2).

CONCLUSION

For the reasons stated, the decision of the Circuit Court for Anne Arundel County should be reversed.

Respectfully submitted,

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February 5, 2008

Pursuant to Md. Rule 8-504(a)(8), this brief has been printed with proportionally spaced type: Times New Roman - 13 point.

APPENDIX:

PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, § 1 of the Maryland Constitution provides:

All elections shall be by ballot. Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in this State.

Election Law Article § 3-102 provides:

(a) Except as provided in subsection (b) of this section, an individual may become registered to vote if the individual:

- (1) is a citizen of the United States;
- (2) is at least 18 years old or will be 18 years old on or before the day of the next succeeding general or special election;
- (3) is a resident of the State as of the day the individual seeks to register; and
- (4) registers pursuant to this title.

(b) An individual is not qualified to be a registered voter if the individual:

- (1) has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment, including any term of parole or probation, for the conviction;
- (2) is under guardianship for mental disability; or
- (3) has been convicted of buying or selling votes.

**IN THE
COURT OF APPEALS OF MARYLAND**

September Term, 2007

No. 122

STATE BOARD OF ELECTIONS,

Appellant,

v.

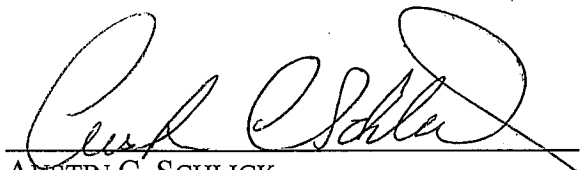
**CLIFFORD E. SNYDER, JR.,
on behalf of Carl Philip Snyder, his son, et al.,**

Appellees.

On Appeal from the Circuit Court for Anne Arundel County
(Paul A. Hackner, Judge)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of February, 2008, two copies of the Brief of Appellant and Record Extract were mailed, first class mail, postage prepaid to Clifford E. Snyder, Jr, Esquire, 4964 Flossie Avenue, Frederick, Maryland 21703 and to Jonathan S. Shurberg, Esquire, 8720 Geogia Avenue, Suite 703, Silver Spring, Maryland 20910, Attorney for Appellee Boltuck. In addition, copies of the Brief of Appellant were delivered by email in accordance with the Order of the Court of Appeals in this case.


AUSTIN C. SCHLICK