

**J.H. Snider's Testimony before the Maryland Senate's
Committee on Education, Health, and Environmental Affairs
Concerning Senate Bill 148, Anne Arundel County Board of Education,
Selection of Members**

Wednesday, January 29, 2014

Good afternoon. My name is J.H. ("Jim") Snider. My Ph.D. from Northwestern University is in American Government, but professionally I have worked in the related field of democratic reform. Since the formation of the School Board Nominating Commission (SBNC) in 2008, I have attended its meetings during every annual election cycle. I believe I have attended more SBNC meetings than not only any member of the public or the press but also any member of the SBNC, excluding its chair. I have also written at least twenty times more on the SBNC in various local media outlets, most recently *Eye On Annapolis*, than any other reporter. During the SBNC's first few years, the *Capital* would occasionally send a reporter to cover the SBNC's most important meetings. Later, the *Capital* reporter would skip the meetings and get a summary from the SBNC Chair. In the last several years, even that minimal level of reporting has been curtailed.

On the whole, this bill represents a slight improvement over the status quo. But I want to highlight three significant problems:

First, the bill specifies school board electoral districts based on legislative districts. But unlike districts for the Maryland General Assembly, which are apportioned equally by population, District 21 in Anne Arundel County has less than a third the population of the other four legislative districts. This not only violates the core democratic principal of political equality; I believe it also violates the 14th Amendment of the U.S. Constitution, which since the 1960s the courts have interpreted to require that election districts be drawn based on the principle of one person, one vote. Just as the U.S. Constitution has been interpreted to mandate the approximately equal population of General Assembly districts, public school districts must have approximately equal population. Using Legislative District 21 for an AACPS school board electoral district won't comply with the safe harbor provisions the courts have established. Fortunately, there is an easy solution to this problem: change the districts to councilmanic districts and thus piggy-back on the decennial councilmanic redistricting. Otherwise, Anne Arundel County would have to go to the expense and hassle of conducting separate school board redistricting.

Second, the bill allows the SBNC to nominate only one candidate for gubernatorial appointment to the school board. The law currently specifies that the SBNC must nominate "at least two names for each vacancy" and that the governor must choose from among multiple nominees. The practical effect of allowing the SBNC to nominate only one individual is to grant the SBNC the power to not only nominate but also choose school board members, thus taking this power from the governor. To the extent that the SBNC can effectively exercise this power, I consider it a democratic travesty because it would enhance the power of the highly undemocratic SBNC. The SBNC is undemocratic, for example, because it delegates electoral powers to representatives of five private organizations and allows four of those

representatives to veto any candidate by requiring an 8-3 supermajority to nominate any candidate. Until the undemocratic features of the SBNC are fixed, I remain strongly against this proposal.

Now let me acknowledge that the SBNC already has this power in a de facto rather than a de jure way. What I'm opposing here is the codification of this power. The way the law is currently written the SBNC is supposed to nominate two candidates to the Governor. But as a practical matter, this requirement has been unenforceable. The SBNC not only need not nominate two candidates, but it can take steps to greatly increase the likelihood that only one candidate will apply, which is what happened last year when two incumbent school board members sought to be renominated. I'd recommend not only keeping the current two nominee minimum but codifying the SBNC's electoral procedures so that it cannot stack the deck for and against the various candidates after they are known.

Third, the bill is exclusively focused on the general election system for school board candidates. Many political scientists today consider a well-designed nominating system as important if not far more important than a well-designed general election system. Consider Russia and Iran. Both have general elections but the ruling elite effectively controls who can run, which is why they are generally considered highly undemocratic countries despite the existence of a general election, which is a blatant violation of the core democratic principle in electoral design known as the "veil of ignorance."

Alas, for a giant school district such as AACPS, designing a good primary system is a nontrivial and potentially controversial issue. The primary method by which nominating systems are structured in U.S. elections with large jurisdictions is via the two-party system. Despite this, the public has been trained to take a highly condescending attitude toward partisan politics and, by extension, partisan school board elections. But without party competition, governments tend to be driven by narrow special interests.

Non-partisan elections may work fine for small jurisdictions, which constitute the vast majority of school districts in the United States. But this is decidedly not the case in Anne Arundel County, which is in the top 1% of school districts by size. Non-partisan school districts may also work reasonably well in large school districts with a strong civil society and a strong press. But alas, this is also not the case in Anne Arundel County, which has a daily newspaper with extremely weak education coverage.

Now don't get me wrong. There are other alternatives to party competition in the design of democratic nominating systems. For example, public financing of elections can help reduce special interest domination of the nominating system. But this alternative is considered politically unrealistic.

The current SBNC-based school board electoral system creates strong incentives to invert the process of democracy from one where representatives are supposed to hold the government to account. Alas, the bill in its current form doesn't adequately address that problem. Notwithstanding its potential illegalities, it does improve on the status quo. But it needs to be amended and strengthened before it's ready for prime time.

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