

**J.H. Snider's Testimony before the Maryland Senate's
Committee on Education, Health, and Environmental Affairs
Concerning Senate Bill 194, Anne Arundel County Board of Education,
Student Member (SMOB) Voting Rights**

Wednesday, January 29, 2014

Good afternoon. My name is J.H. ("Jim") Snider. Since 2008, I have written extensively about the nominating process for the adult school board members of the AACPS Board of Education. This past year I have also written about the student board member, popularly known as the SMOB for student-member-of-the-board.

With the exception of this school year, my children for more than a decade have been actively involved in CRASC, the student organization with statutory responsibility for electing the SMOB. Two of my children have served as SMOB, and I have served as chair of the Countywide Citizen's Advisory Committee, an institution originally designed to represent the parents on behalf of the citizen's advisory committees at the more than 120 local schools in AACPS.

I would encourage you to read my commentary on the need to enhance the accountability of the SMOB electoral process. It was published in *Eye On Annapolis* and is attached to my written testimony. My comments here will supplement, not repeat, my comments there.

The gist of my comments is that the democratic purpose of having elections and elected representatives is to hold the government to account rather than vice versa, and that the SMOB electoral process, despite its admirable ideals, has in practice come to subvert that purpose.

As a point of reference, please reflect on all the safeguards that have been implemented to protect the integrity of the adult elections with which you have been a part in your political career. Those electoral safeguards have been worked out over many decades and are hundreds of pages in length. Perhaps most important, many of them have credible independent enforcement mechanisms.

There are also many civil society safeguards to complement the government ones. We have a vigorous political party system with the motive and resources to point out electoral shenanigans, and we have a press, flawed as it may be, that nevertheless takes your elections seriously enough to do more than merely report the post-election results.

Now with the SMOB, we have a so-called elected representative responsible for spending more than \$1 billion dollars on behalf of more than 10,000 employees and 78,000 students. The SMOB has the same voting rights as the eight adult members. But the law, as it is currently written, does nothing more than delegate the SMOB election to CRASC, the Chesapeake Regional Association of Student Councils, an organization that, like the Countywide CAC, has been ingeniously co-opted by AACPS administrators. The difference is that the SMOB has the full powers of the Board of Education, whereas the Countywide CAC is merely advisory.

Imagine, now, that your elections were conducted like the SMOB elections. Imagine that in the primary elections for the General Assembly the independent State Board of Elections and State Ethics Commission were abolished. Imagine, too, that the Speaker of the House was given the following powers over the nominating system. He would appoint and pay the chair of the nominating committee and that person would report to him. The chair would then recruit candidates for nomination. If more than five candidates submitted applications to the chair for nomination, the chair would convene a nominating committee of three individuals, including the chair and two individuals dependent on the Speaker's goodwill, who would meet in secret and choose the three candidates eligible to run in the general election. No investigative reporter would ever cover the elections.

Now I'm confident that you will recognize that with such an electoral system it wouldn't matter that the Speaker or the nominating chair professed humble allegiance to democratic values. It wouldn't matter if they were careful to maintain plausible deniability so that in response to their democratic claims you couldn't provide smoking gun evidence of electoral corruption—or at least not without subpoena power. You wouldn't need that type of evidence because you'd immediately know that that type of electoral system has intrinsic incentives for corruption and is thus fatally flawed. You'd never allow it in the first place.

I'm confident that if anyone proposed such an electoral system for your seat in the General Assembly, you would immediately react in horror and recognize that this would be the type of system one might envisage in a country such as Russia or Iran but not here in the U.S.A. But this is the type of system—and in some respects far worse—that we have to elect the SMOB in Anne Arundel County.

The former AACPS superintendent has responded that he has a First Amendment right to express his opposition or support for particular candidates for public office. I agree with the superintendent that the First Amendment protects his right to express and act on his views—but with the important caveat that it be done without the use of public facilities and staff. Government ethics laws are built on the assumption that First Amendment rights must be balanced with the core democratic principle of political equality and that when government resources are used for political purposes the First Amendment right to free political speech no longer controls. Last year, for example, the former county executive was convicted and forced to leave office in part because of allegations that he misused public resources for political purposes. If he were a private citizen, the court would have thrown out his case.

If it ever thought about it, which I'm sure it hasn't, the Public Integrity Section of the U.S. Department of Justice would probably classify the type of election integrity problem highlighted here as vote buying. But whereas vote buying is illegal in many electoral contexts, it is legal in this context. Nevertheless, legal or not, vote buying is clearly wrong. Think about it: the Public Integrity Section will prosecute a public official for attempting to buy the votes of less than 1% of the voters. But here, where a public official has at least one third of the nominating election votes in his pocket, should he want to use that power, and arguably can use his patronage power to secure a majority, the reigning incentives in Anne Arundel County among those in a position to oversee this process have heretofore been to see no evil, hear no evil, and speak no evil. With voting rights must come voting responsibility; you cannot have one without the other. I therefore hope you will agree that the present SMOB electoral system must be reformed and that its problems must be addressed in a credible way. Senator Reilly's bill does that.

**Supplement to J.H. Snider's Testimony before the Maryland Senate's
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Anne Arundel's Next Superintendent Should Restore Integrity to SMOB Elections

J.H. ("Jim") Snider, PhD | June 27, 2013

In 2012, the Anne Arundel County Public School System spent more than \$1 billion, employed more than 10,000 individuals, and taught more than 75,000 students—and its student member of the Board of Education (known as the “SMOB”) had the same voting rights as the adult board members.

Unfortunately, due to deficient electoral safeguards, elections for SMOB bristle with temptations for corruption. Anne Arundel's student election system presumes that the adults who oversee it will not abuse their power. But for high stakes student elections, that assumption is unreasonable.

As the only school district in the United States that grants the SMOB full voting rights, student organizations throughout the country hail Anne Arundel County's SMOB as a model. But under the public radar, its SMOB election process has become deceptive, with the original bottom-up vision of student democracy transformed into top-down, superintendent control.

Nominally, members of the County's student organization, known as “CRASC,” continue to elect the SMOB. But like elections in Russia, appearances can deceive. The nomination process was restructured to give administrators a veto. If more than five students submit applications to run for SMOB (an easy number for administrators to recruit), the nomination process is taken from students and given to three individuals: the SMOB, CRASC's president, and CRASC's adult coordinator (who reports to the superintendent).

The coordinator only has one of three votes but may have great hidden leverage. For example, the SMOB and CRASC president may compete for a scholarship administered by a foundation that claims to be independent but is located at school board headquarters, is perceived to be highly influenced by school administrators, and awards scholarships *after* the SMOB nomination. The coordinator also oversees all CRASC elections and can leverage students' fears of a powerful adult's disapproval. Since the coordinator is in the room with the other two interviewers during the private SMOB interview process, his or her power may intimidate the student leadership and keep them from speaking and voting honestly.

Having a SMOB with full voting rights can strengthen the Board of Education—but only if the SMOB election process cannot be corrupted by adults acting improperly. Otherwise, it will be necessary to reduce the SMOB's powers. Advocates of preserving the current power of the SMOB should recognize that with adult-like power comes adult-like responsibility. Accordingly, school board electoral safeguards should apply equally to adults and students.

The superintendent shouldn't be allowed to take surreptitious control of the SMOB nominating process. School system employees shouldn't be allowed to administer SMOB elections without independent, outside supervision. No SMOB should be eligible to receive a scholarship that a reasonable person would believe induces a conflict of interest. Any violation of the above rules should be subject to prosecution by Maryland's state prosecutor. It is a blatant conflict of interest to expect the superintendent and school board to police themselves on such issues.

I recommend a SMOB electoral system for Anne Arundel County and elsewhere structured as follows: students would get on the ballot by getting a minimum number of signatures from fellow high school students. The local board of election would administer the voting by emailing electronic ballots to students just as they now do to overseas citizens and military personnel. The ballots would include electronic links to candidate websites, including resumes and position statements. They would also incorporate ranked choice voting, an advanced voting system facilitated by modern technology. Independent civic organizations would conduct and webcast candidate debates, just as they do for adult elections.

More generally, it is necessary that Hatch Act like safeguards regarding public employee political activities apply to school systems with non-partisan elections. Simply because school elections are non-partisan shouldn't give them immunity from such safeguards. An independent investigation of comparable thoroughness to the one that brought down County Executive John Leopold might reveal that the county government was a model of ethical probity compared to the county school system. A good place to start might be the relatives of school board members who work for the school system.

If we don't tolerate corrupt electoral systems for adults, we shouldn't tolerate them for students.

—J.H. Snider is president of iSolon.org and a non-residential fellow at the Edmond J. Safra Center for Ethics at Harvard University. Two of his children have served as SMOB to the Anne Arundel County Board of Education.