

**KEITH BRADFORD, et al.,**

*Plaintiffs,*

v.

**MARYLAND STATE BOARD  
OF EDUCATION, et al.,**

*Defendants.*

\* IN THE  
\* CIRCUIT COURT  
\* FOR  
\* BALTIMORE CITY, PART 23  
\* Case No.: 24-C-94-340058

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**MEMORANDUM OPINION**

This matter comes before this Court on Keith Bradford’s, et al. (“Plaintiffs”) *Motion for Summary Judgment* (docket#00250000), filed August 12, 2022, Maryland State Board of Education’s (“MSBE”) *Motion for Summary Judgment* (docket#00246000), filed on August 12, 2022, the Mayor and City Council of Baltimore’s (the “City”) *Third-Party Defendant Mayor and City Council of Baltimore’s Motion for Summary Judgment* (docket#00249000), filed August 12, 2022, MSBE’s *Opposition to the Private Plaintiffs’ Motion for Summary Judgment and for Further Orders Pursuant to the Declaratory Judgment Act* (docket#00250001), filed October 4, 2022, MSBE’s *Opposition to Third Party-Defendant Mayor and City Council of Baltimore’s Motion for Summary Judgment* (docket#00249003), filed October 4, 2022, Plaintiffs’ *Opposition to MSBE’s Motion for Summary Judgment* (docket#00249002), filed October 4, 2022, MSBE’s *Reply in Further Support of its Motion for Summary Judgment* (docket#00261001), filed October 28, 2022, the City’s *Reply in Support of the City’s Motion for Summary Judgment* (docket#00249004), filed October 27, 2022, Plaintiffs’ *Reply in Support of Their Motion for Summary Judgment and for Further Order Pursuant to the Declaratory Judgment Act* (docket#00250002), filed October 28, 2022, Plaintiffs’ *Proposed Conclusions of Law* (docket#00270000), filed January 13, 2023, MSBE’s *Proposed Conclusions of Law as to*

*the Pending Motions for Summary Judgment* (docket#00250004), filed January 13, 2023, the City's *Proposed Conclusions of Law* (docket#00250003), filed January 13, 2023, and arguments presented at the hearing held before the undersigned on December 14, 2022 (docket#00266000).

## I. FACTS & PROCEDURAL HISTORY

This Court incorporates by reference its August 13, 2021, Memorandum Opinion which describes the history of this case. *See* Aug. 13, 2021, Mem. Op. at 1-10 (docket#00172000).

After this Court denied MSBE's first *Motion to Dismiss Plaintiff's Petition for Further Relief* (docket#00105000), MSBE filed a second motion to dismiss in November 2021 which the Court denied in March 2022 (docket#00189000). MSBE appealed this second denial and moved to stay proceedings. This Court denied the motion to stay (docket#00195000; 00199000). MSBE sought a stay in the Appellate Court of Maryland which was denied. *Maryland State Bd. of Educ. v. Bradford*, Case No. CSA-REG-0201-2022 (Md. Ct. Spec. App. May 11, 2022). MSBE's writ of certiorari with the Supreme Court of Maryland was also denied. *Maryland State Bd. of Educ. v. Bradford*, Case No. CSA-REG-0201-2022 (Md. Ct. Spec. App. July 8, 2022).<sup>1</sup>

On August 12, 2022, Plaintiffs and MSBE filed cross-motions for summary judgment in this matter based on Plaintiffs' petition for further relief which alleged violations of the Maryland Constitution, failure to comply with the Consent Decree and this Court's prior declarations, and for further relief pursuant to the Maryland Declaratory Judgments Act ("Declaratory Judgments Act"). *See* MD. CONST., ART. VIII, § 1 ("The General Assembly...shall by law establish throughout the State a thorough and efficient System of Free Public

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<sup>1</sup> Effective December 14, 2022, the Court of Special Appeals is now named the "Appellate Court of Maryland" and the Court of Appeals is now named the "Supreme Court of Maryland." *See* News Release, Maryland Courts, Government Relations and Public Affairs, Voter-approved constitutional change renames high courts to Supreme and Appellate Court of Maryland (Dec. 14, 2022), <https://www.courts.state.md.us/media/news/2022/pr20221214>.

Schools[.]”); Md. Courts & Judicial Proc. Code, § 3-412(a) (“[f]urther relief based on a declaratory judgment or decree may be granted if necessary or proper”); Plaintiffs’ *Motion for Summary Judgment* (docket#00250000); MSBE’s *Motion for Summary Judgment* (docket#00246000).

Plaintiffs now argue that MSBE has underfunded the Baltimore City Public School System (“BCPSS”) in violation of the Maryland Constitution, the Consent Decree, and prior orders of this Court and seek both declaratory relief affirming these violations and further relief, including additional monetary funding from MSBE to fill an alleged funding adequacy gap and development of a comprehensive plan to comply with the Maryland Constitution and this Court’s prior orders, among other requests. Pl. Mot. SMJ at 2-5.

MSBE argues that they have not violated the Consent Decree or the Court’s declarations and that no constitutional violations exist. MSBE Mot. SMJ at 33-36. MSBE states that: (1) Plaintiffs lack standing; (2) Plaintiffs cannot obtain the sought-after relief under the Declaratory Judgments Act; (3) the Court does not have grounds for continuing jurisdiction under the Consent Decree; (4) Plaintiffs’ petition is moot because of the Maryland General Assembly’s passage of the Blueprint for Maryland’s Future Act, Built to Learn Act of 2020, and the allocation of federal funding; and (5) the requested relief presents a non-justiciable political question. MSBE Mot. SMJ at 1-2.

On August 12, 2022, the City filed a motion for summary judgment regarding their claim with Third-Party Plaintiff, MSBE. The City claims that MSBE’s 1995 Third-Party Complaint filed against it is moot, and that no fresh claims or allegations have been brought against it. City Mot. SMJ at 1-2.

## II. ANALYSIS

### A. Summary Judgment

Maryland Rule 2-501(a) provides, in relevant part: “[a]ny party may file a written motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact *and* that the party is entitled to judgment as a matter of law.” Md. Rule 2-501 (emphasis added). “A material fact is a fact the resolution of which will somehow affect the outcome of the case.” *Grimes v. Kennedy Krieger Inst., Inc.*, 366 Md. 29, 72 (2001) (quoting *King v. Bankerd*, 303 Md. 98, 111 (1985)). “If the pleadings, depositions, admissions, and affidavits, if any, show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law, then summary judgment should be granted.” *Rooney v. Statewide Plumbing & Heating-Gen. Contractors, Inc.*, 265 Md. 559, 563 (1972). “The purpose of summary judgment is to determine whether there are facts in dispute that must be resolved through a more formal resolution process, such as a trial on the merits. Thus, in order to defeat a motion for summary judgment, the party opposing the motion must present admissible evidence demonstrating the existence of a dispute of material fact.” *Hines v. French*, 157 Md.App. 536, 549 (2004).

“In granting or denying a motion for summary judgment a judge makes no finding of fact.” *King*, 303 Md. at 110-111. It is not the Court’s endeavor to resolve disputes of fact but to determine whether they exist and are sufficiently material to be tried. *Newell v. Runnels*, 407 Md. 578, 607 (2009). “[M]ere general allegations or conclusory assertions which do not show facts in detail and with precision will not suffice to overcome a motion for summary judgment.” *Educational Testing Service v. Hildebrant*, 399 Md. 128, 139 (2007). Any inferences that are to

be reasonably drawn from the facts should be construed in favor of the party opposing summary judgment and against the moving party. *Gourdine v. Crews*, 405 Md. 722, 735 (2008); *Frederick Rd. Ltd. Partnership v. Brown & Sturm*, 360 Md. 76, 94 (1995).

A trial court may grant a declaratory judgment at the summary judgment stage. *Pine Orchard Community Ass'n, Inc. v. Piney Pad A, LLC*, 221 Md. App. 196, 206 (2015). But, “granting summary judgment in a declaratory judgment action is the exception rather than the rule, circumstances may warrant the entry of a full or partial summary judgment in such a context.” *Messing v. Bank of America, N.A.*, 373 Md. 672, 684 (2003); see *Dart Drug Corp. v. Hechinger Co.*, 272 Md. 15, 29 (1974) (“[w]hile a declaratory decree need not be in any particular form, it must pass upon and adjudicate the issues raised in the proceeding, to the end that the rights of the parties are clearly delineated and the controversy terminated[.]”). Where a controversy in a declaratory judgment action can be appropriately resolved through summary judgment, “the court must define the rights and obligations of the parties or the status of the thing in controversy,” in separate writing. *Allstate v. State Farm*, 363 Md. 106, 117 (2001); *Lovell Land, Inc. v. State Highway Admin.*, 408 Md. 242, 256 (2009).

### **1. City’s Motion for Summary Judgment**

In support of their Motion for Summary Judgment, the City claims that they should be dismissed as a third-party to the present litigation because the Consent Decree entered into by the parties moots any original claim brought against the City in 1995 and no new claims have been brought or presented against the City since the original third-party complaint. City Mot. SMJ at 1-2. The City argues the original third-party complaint alleged four reasons why the City had been responsible for the inadequacies in BCPSS, including failing to implement management

reforms, failing to properly utilize fiscal resources, failing to meet state standards, and failing to implement uniform curriculum. City Mot. SMJ at 13. The City argues the facts alleged in this complaint all relate to action that occurred prior to 1995 and were then mooted by the adoption of the Consent Decree. City Mot. SMJ at 14. Through the adoption of the Consent Decree the City argues it had relinquished control of BCPSS management in lieu of a city-state partnership. City Mot. SMJ at 14-16. Although, the City concedes that this Court's August 13, 2021 decision places it into a position of responsibility when it comes to exerting control over the New School Board of Commissioners established by the Consent Decree, the City reasons the current claims have no relation to the third-party complaint which they argue is now moot. City Mot. SMJ at 15-16; *see* Aug. 13, 2021, Mem. Op. at 20 (docket#00172000).

Further, the City claims no new third-party complaint has been brought against them under Md. R. 2-332(a). City Mem. Op. 16; Md. R. 2-332(a) (setting out requirements for a defendant to bring a third-party defendant into an action). The City also argues there is no claim for derivative liability as there is no connection between the City's conduct as alleged in 1995 and the Plaintiffs' current claims of constitutionality. City Mot. SMJ at 17-20. The City claims they cannot be found liable or answerable in any part to Plaintiffs because the claims are only alleging MSBE's funding of BCPSS, of which the City plays no role. City Mot. SMJ at 19-21.

In opposition, MSBE claims that according to Md. R. 2-211(a) the City is a necessary party and should not be dismissed from the action. MSBE Opp. to City at 8-11; Md. R. 2-211(a) (requiring a person to be joined as a party to an action where complete relief cannot be afforded without the party or disposition of the action without the party would impede the person's ability to protect a claimed interest at stake). MSBE argues because the City is a party to the Consent

Decree any outcome from this action that clarifies the parties' obligations under the Consent Decree may impact the City indirectly or directly. MSBE Opp. to City at 10-11. It contends that the City is obligated to appropriate substantial funding to BCPSS on an annual basis and owns the facilities in which BCPSS inhabits, therefore the City may be subject to an order impacting its rights as "landlords" of the property. MSBE Opp. to City at 11. Lastly, MSBE claims the City has been an active participant in this litigation after entering into the Consent Decree and should continue as such. MSBE Opp. to City at 11-12.

The City's Motion for Summary Judgment is granted because no allegations have been made against the City. Maryland Rule 2-305 provides that a pleading "shall contain a clear statement of the facts necessary to constitute a cause of an action and demand for judgment for the relief sought." In the case of third-party practice, Maryland Rule 2-332(a) requires a defendant to serve a summons and complaint, as well as all other pleadings and papers, on a party they wish to bring into an action as a third-party defendant. Md. R. 2-332(a). These rules serve the purpose of preparing a defendant to reasonably raise a defense.

At this juncture, the City has not been presented with a claim against it. This Court's holding that the City must participate in discovery does not affect the finding that it has not been provided with a claim related to the Plaintiffs' Petition for Further Relief. August 13, 2021, Mem. Op. (docket#00172000).

MSBE's claim that the City is a necessary party pursuant to Maryland Rule 2-211 is not persuasive. MSBE Opp. to City at 8-11. Holding the City is a necessary party on the basis of it potentially being affected by the outcome of this case, either through its involvement with the Consent Decree or as a partial funder of the school system, is contrary to the record. The claims

presented in this matter fall squarely between MSBE and the Plaintiffs. To hold the City hostage as a necessary party because of an eventuality is an unconvincing argument.

There is no genuine dispute as to any material fact related to the City. The City is entitled to judgment as a matter of law.

## **2. Plaintiffs' Motion for Summary Judgment**

In their Motion for Summary Judgment Plaintiffs make two claims: (1) They are entitled to a declaratory judgment concluding that MSBE is in violation of ART. VIII, § 1 of the Maryland Constitution for underfunding BCPSS; and (2) relief pursuant to the Declaratory Judgments Act. Pl. Mot. SMJ at 35-50.

The Plaintiffs support their argument through the use of reports and studies alleging an adequacy gap in illustration of MSBE's constitutional violation. Notably, the Plaintiffs argue that based on Maryland Department of Legislative Services ("DLS") analysis, a substantial "adequacy gap" has existed between funding and the funding needed to provide an adequate education. Pl. Ex. 8, DLS Follow-up (2019). Last analyzed in 2017, the funding gap was calculated at \$342.3 million per year for BCPSS students. Pl. Mot. SMJ at 43; Pl. Ex. 8. Since this last analysis, the Plaintiffs claim the Maryland General Assembly has continuously failed to close the funding gap despite the passage of further legislation, including the Blueprint for Maryland's Future Act, arguing the Act's funding has yet to be realized. Pl. Mot. SMJ at 11; Pl. Ex. 12; 2021 Md. Laws Ch. 36 ("Blueprint Act").

Plaintiffs assert MSBE has violated the Maryland Constitution based on the disrepair of school facilities, alleging they have a constitutional duty to provide sufficient resources and adequate facilities. Pl. Mot. SMJ at 38-40; Pl. Ex. 65, Adequacy Standards & Facility



Assessment for IAC; Pl. Ex. 51, IAC Public School Construction (2013). In alleging violations of ART. VIII, § 1, Plaintiffs interpret the prior rulings of this Court to conclude the applicable standard in deducing a constitutional violation is whether the State has “established a right of all children in Maryland to an adequate education by contemporary educational standards[.]” Pl. Mot. SMJ at 43.

Plaintiffs’ Motion for Summary Judgment is denied.

### **3. MSBE’s Motion for Summary Judgment**

As noted before, MSBE puts forth several arguments in their claim for summary judgment. MSBE argues Plaintiffs lack standing because (a) they are not aggrieved and are not parties under the Consent Decree; (b) they have not shown that the adequacy of education or the quality of facilities have hindered the ability to learn; and (c) the Consent Decree should be interpreted as applying only to the children who attended BCPSS in 1994. MSBE Mot. SMJ at 30-33.

MSBE maintains that further relief under the Declaratory Judgment Act is unavailable because Plaintiffs: (a) do not allege violations under the Consent Decree or subsequent orders, and, even if violations were alleged under these mechanisms; (b) MSBE has fulfilled all of its obligations. MSBE Mot. SMJ at 33-36. Additionally, MSBE states this Court no longer has jurisdiction under paragraph 68 of the Consent Decree as “good cause” does not exist. MSBE contends that for “good cause” to exist, as held in the August 20, 2004 Order, there must be a question of compliance with this Court’s June 30, 2000 Order. MSBE Mot. SMJ at 36-37; Aug. 20, 2004, Mem. Op. at 68 (docket#00050000). They argue, the Plaintiffs’ claims relating to ART. VIII, § 1 are unrelated to the original basis for “good cause” of continuing jurisdiction as set out

in this Court's earlier orders and this Court may not proceed with jurisdiction over Plaintiffs' claims. MSBE Mot. SMJ at 37-38; *see generally* June 30, 2000, Mem. Op.; June 25, 2002, Mem. Op.; Aug. 20, 2004, Mem. Op.

MSBE argues that the relief requested by Plaintiffs has already been provided through the Blueprint Act, the Built to Learn Act, and enhanced federal funding through coronavirus disease relief legislation,<sup>2</sup> therefore the petition and Plaintiffs' claims are moot. *See* 2021 Md. Laws Ch. 36 ("Blueprint Act"); 2020 Md. Laws Ch. 20 ("Built to Learn Act"); Pub. Law 116-136 ("CARES Act"); Pub. Law 116-260 ("CRRSAA"); Pub. Law 117-2 ("ARP"). MSBE rejects Plaintiffs' claims that the Blueprint Act funding is not guaranteed and argue that the passage of legislation since the 2019 Petition has mooted any claims under the Declaratory Judgment Act. MSBE Mot. SMJ at 42-45.

Lastly, MSBE argues the relief requested to fulfill alleged funding mandates of this Court's prior orders raise non-justiciable political questions. In support of their claim, MSBE argues that under the two-part inquiry set out in *Estate of Burris* the requested relief is non-justiciable because the question of funding appropriations relies solely in the political branches of government as instructed by the Maryland Constitution and the Supreme Court of Maryland's prior holding in *Hornbeck*. MSBE Mot. SMJ at 44-50; *see Estate of Burris v. State*, 360 Md. 721 (2000); *Hornbeck v. Somerset County Bd. of Educ.*, 296 Md. 597 (1983).

For the reasons as stated herein MSBE's Motion for Summary Judgment is granted.

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<sup>2</sup> The federal government passed several pieces of legislation in response to the coronavirus disease ("COVID-19") pandemic. Coronavirus Aid, Relief and Economic Security Act of 2020, Pub. Law 116-136 ("CARES Act"); Coronavirus Response and Relief Supplemental Appropriations Act of 2021, Pub. Law 116-260 ("CRRSAA"); American Rescue Plan Act of 2021, Pub. Law 117-2 ("ARP"). A portion of the funding provided by these pieces of legislation was allocated towards local education agencies and state agencies to address impacts from COVID-19 on elementary and secondary school education. *Id.*

## B. The Declaratory Judgments Act

The Declaratory Judgments Act states, “[f]urther relief based on a declaratory judgment or decree may be granted if necessary or proper.” Md. Courts & Judicial Proc. Code, § 3-412(a). The crucial question to whether an action is appropriate for a declaratory judgment is “whether the declaratory judgment would terminate the controversy and whether there are actual, concrete, and adverse claims or interests” between the parties. *DeWolfe v. Richmond*, 434 Md. 403, 433 (2012); § 3-409(a)(1). Generally, a declaratory judgment is a discretionary type of relief and “when a declaratory judgment action is brought and the controversy is not appropriate for resolution by declaratory judgment, the trial court is not compelled, nor expected, to enter a declaratory judgment.” *Converge Services Group, LLC v. Curran*, 383 Md. 462, 477 (2004) (citing *Popham v. State Farm Mut. Ins. Co.*, 333 Md. 136, 140-41 (1993)).

Under the Act, where a party’s rights under a previous declaratory judgment have been violated a party may return to court to seek enforcement of those rights. *DeWolfe v. Richmond*, 434 Md. 403, 419-20 (2012); *Nova Research, Inc. v. Penske Truck Leasing Co.*, 405 Md. 435, 458 (2008) (“The statutory scheme expressly permits further relief based on a declaratory judgment if necessary or proper, either in a separate action or by application by a court who retains jurisdiction.”). Further ancillary relief may only be granted where it is “necessary to implement a declaratory judgment” and a proceeding is held in which “the scope of such relief is determined.” *Falls Rd. Community Ass’n, Inc. v. Baltimore County*, 437 Md. 115, 148 (2014) (citing *Bankers and Shippers Ins. Co. v. Electro Enterprises, Inc.*, 287 Md. 641, 653 (1980)). “If the issue raised in a declaratory judgment action is not justiciable because it has become moot, is purely abstract, or will not serve a useful purpose or terminate a controversy if resolved, the

complaint should be dismissed.” *Stevenson v. Lanham*, 127 Md.App. 597, 613 (1999) (citing *Post v. Bregman*, 349 Md. 142, 159 (1998)).

Plaintiffs request this Court provide a declaratory judgment finding that MSBE has violated ART. VIII, § 1. Pl. Mot. SMJ at 35-41. MSBE argues the claims for further relief under the Declaratory Judgments Act do not survive here because the court only holds the power to provide further relief to implement prior decrees or declarations of the court. MSBE Mot. SMJ at 34; Md. Crts. & Jud. Proc. § 3-409. Even if Plaintiffs are requesting further relief based on violations of the Consent Decree or this Court’s prior orders, MSBE argues, they still fail because MSBE has complied with all of its obligations through the Maryland General Assembly’s allocation of funding and passage of recent legislation. MSBE cites to funding allocations made between 1998-2002 as well as other legislation passed in 1997. MSBE Mot. SMJ at 34-35. MSBE argues that since 2004, per-pupil funding for BCPSS students has exceeded the range offered by this Court’s June 30, 2000 Order, as adjusted to account for inflation. MSBE Mot. SMJ at 35; MSBE Ex. N.

The prior orders of this Court do not provide a final declaratory judgment under which the Plaintiffs may seek further relief. In 1996, the Consent Decree was entered into by the parties to resolve the claims revolving around underfunding of Baltimore City Schools. In the following years Judge Kaplan provided several subsequent orders pursuant to the continuing jurisdiction of the Consent Decree. On June 30, 2000, Judge Kaplan entered an order in response to a request for additional relief under the Consent Decree which merely suggested additional funding as recommended by the Metis Report. *See* June 30, 2000, Mem. Op. at 15 (adopting the findings of independent evaluators hired by MSBE and the Baltimore City Board of School Commissioners,

referred to as the “Metis Report”). Judge Kaplan concludes by stating that, “the Court trusts that the State will act to bring itself into compliance with its constitutional and contractual obligations under the Consent Decree for the Fiscal Years 2001 and 2002 without the need for Plaintiffs to take further action.” June 30, 2000, Mem. Op at 26.

In August of 2004, the Court once again suggested increased funding for the BCPSS but did not provide a final judgment. *See* Aug. 20, 2004, Mem. Op. On appeal, the Supreme Court of Maryland overturned much of Judge Kaplan’s 2004 Order and Opinion. In its holding it found that there was no final judgment in the case at that time. *Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353, 385 (2005). It held that the directives of the August 20, 2004 Order to increase funding to ensure constitutional adequacy “do not order anyone to do anything.” *Bradford*, 387 Md. at 386. Accordingly, when “a court, in the course of its continuing jurisdiction in a case, makes pronouncements or declarations of one kind or another does not, of itself, imbue those final pronouncements or declarations with the status of final judgments.” *Bradford*, 387 Md. at 385.

Without a final judgment, this Court cannot issue “further relief” under the Declaratory Judgments Act. *Falls Rd.*, 437 Md. at 148; *see Bradford*, 387 Md. at 385 (“There clearly has been no final judgment in this case.”). Additionally, the Plaintiffs have not alleged any other specific violation of the Consent Decree or any of this Court’s subsequent orders, therefore this Court has no basis to grant further relief for alleged violations of ART. VIII, § 1.

### **C. Consent Decree**

“A consent judgment or consent order is an agreement of the parties with respect to the resolution of the issues in the case or in settlement of the case, that has been embodied in a court

order and entered by the court, thus evidencing its acceptance by the court.” *Long v. State*, 371 Md. 72, 82 (2002). Consent judgments hold dual attributes of contracts and judicial decrees and should normally be given the same force and effect as any other judgment. *Jones v. Hubbard*, 356 Md. 513, 532 (1999). Differing from a settlement agreement, “a consent decree adds a critical element to the contractual act – judicial conclusiveness.” *Kirsner v. Fleischmann*, 261 Md. 164, 170 (1971). The consent decree is a “judgment and an order of court. Its only distinction is that it is a judgment that a court enters at the request of the parties.” *Jones v. Hubbard*, 356 Md. 513, 528 (1999). It is a “well-established principle that a trial court retains jurisdiction to enforce consent decrees[.]” *Beckett v. Air Line Pilots Ass’n*, 995 F.2d 280, 286 (D.C. Cir. 1993).

The consent decree memorializes the agreement of the parties and it is the parties’ agreement that defines the scope of the decree. *Long v. State*, 371 Md. 72, 83-84 (2002). It is important that “the scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purpose of one of the parties to it.” *Long v. State*, 371 Md. 72, 83 (2002). “[T]he instrument must be construed as written...not as it might have been written had the plaintiff established his factual claims and legal theories in litigation.” *Id.* (quoting *United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971)).

MSBE claims in arguing the Plaintiffs cannot seek further relief under the Declaratory Judgments Act that Plaintiffs have failed, through written discovery and written argument, to show they seek relief under the Consent Decree or through one of this Court’s prior subsequent orders. MSBE Mot. SMJ at 33. They argue Plaintiffs’ petition concerns only the violation of ART. VIII, § 1 of the Maryland Constitution. MSBE Mot. SMJ at 33; MSBE Ex. L, at 11-12.

Plaintiffs respond that they have consistently argued that MSBE's violations of the Consent Decree and the Court's subsequent orders establish this Court's jurisdiction to hear the petition and the cause of the existing alleged adequacy gap. Pl. Opp. at 16.

This Court has repeatedly held that it retains jurisdiction under the terms of the Consent Decree to monitor and enforce compliance with its terms. *See generally* June 30, 2000, Mem. Op.; June 25, 2002, Mem. Op.; Aug. 20, 2004, Mem. Op.; Jan. 16, 2020, Mem. Op. at 9-10 (docket#00105008). Although this Court does have jurisdiction to hear claims regarding a violation of the Consent Decree, here no allegations have been articulated that identify any specific violations. The Plaintiffs only allege general violations of the Consent Decree and this Court's subsequent orders based on violations of ART. VIII, § 1.

#### **D. Article VIII, § 1 of the Maryland Constitution**

Article VIII of the Maryland Constitution states the Maryland General Assembly shall establish "a thorough and efficient System of Free Public Schools[.]" ART. VIII, § 1. The nature of the right to education and the role this right plays in funding of schools has been espoused in limited capacity, with the most prominent case being *Hornbeck v. Somerset County Bd. of Educ.*, 296 Md. 597 (1983).

In *Hornbeck*, the Supreme Court of Maryland reviewed a challenge to the constitutionality of Maryland statutes that governed the financing of public schools and the wide disparities that existed regarding taxable wealth and how that affected the fiscal capacities of poorer districts. *Id.* In its interpretation of the constitutionality of the statutory school funding schemes, it traced the history of ART. VIII, § 1. It noted the departure of the provision from its predecessor to lack any clear directive to the legislature in how funds should be apportioned or

provided. *Id.* at 630-32. It interpreted the provision to leave the matter for legislative determination and to at most provide a “basic” public school education. *Id.* at 632.

In support of its conclusions, the decision in *Hornbeck* proceeded to compare ART. VIII, § 1, to similar provisions in Maryland’s sister states. Drawing contrast to successful constitutional challenges in New Jersey and West Virginia, it identified the comprehensive statewide qualitative standards that were established in Maryland and that were absent in those other suits.<sup>3</sup> *Id.* at 639. The *Hornbeck* Court stated, “[s]imply to show that the educational resources available in the poorer school districts are inferior to those in the rich districts does not mean that there is insufficient funding provided by the State’s funding system.” *Id.* The lack of evidence to support whether qualitative standards have not been met, or that efforts have not been made “to minimize the impact of undeniable and inevitable demographic and environmental disadvantages on any given child[,]” led the Court to the determination that the Maryland public education financing system had met the “thorough and efficient” test provided in ART. VIII, § 1. *Id.*

Plaintiffs claim that MSBE is in violation of ART. VIII, § 1 of the Maryland Constitution for failure to adequately fund BCPSS and failure to comply with this Court’s prior orders. The Plaintiffs rely on this Court’s June 30, 2000 and August 20, 2004 decisions, as well as *Hornbeck*, to argue ART. VIII, § 1 provides a right to education that is adequate when measured by “contemporary educational standards.” Pl. Mot. SMJ at 36. They claim that MSBE has been in

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<sup>3</sup> Both the New Jersey and West Virginia Constitutions provide for “thorough and efficient” system of free public schools. *Robinson v. Cahill*, 62 N.J. 473 (1973) (holding wealth-based spending disparities among school districts were unconstitutional because no statewide standards, creating a minimum mandated education, were provided); *Pauley v. Kelly*, 255 S.E.2d 859 (W.Va. 1979) (remanding a declaratory judgment action regarding secondary education funding disparities for the development of educational qualitative standards consistent with the constitutional directive).



repeated violation of this mandate as measured by this Court's August 20, 2004 opinion and order in relation to the Maryland Department of Legislative Services' adequacy gap calculations and will continue to violate the constitution unless the judiciary interferes. Pl. Mot. SMJ at 36-38; Pl. Ex. 8, DLS Follow-up (2019).

Further, they advance that the Blueprint Act is not guaranteed to be fully funded and that MSBE's failure to fully fund the recommendations made by the Thornton and Kirwan Commissions in light of a budget surplus demonstrate a failure to cure the alleged constitutional violations. Pl. Mot. SMJ at 38; Pl. Ex. 5, Comm'n on Educ., Finance, Equity & Excellence, Final Report (Jan. 18, 2002); Pl. Ex. 11, DLS, Maryland Comm'n on Innovation & Excellence in Educ., *Blueprint for Maryland's Future, Final Report* (Dec. 2020). Lastly, Plaintiffs argue ART. VIII, § 1 includes consideration of funding of safe and suitable educational facilities, in which case MSBE is in violation of the constitution for failing to fund the facilities at an adequate level. Pl. Mot. SMJ at 38-40.

MSBE argues in response that the correct reading of *Hornbeck* is that ART. VIII provides a standard which does not require specific appropriation of funds by the legislature but only that it provides a basic public-school education. MSBE Opp. at 9-10; 23-24. MSBE argues the Plaintiffs have misconstrued *Hornbeck* and attempt, through the use of the term "adequate" within their own reports and evaluations, to require more than a basic education. MSBE Opp. at 23-24. Moreover, MSBE contends that the Plaintiffs have failed to demonstrate that the threshold of required state education is higher than that of what is provided to BCPSS. MSBE Opp. at 25-26. MSBE argues that the reports and studies cited to by Plaintiffs in their argument do not use a standardized methodology or definition to find an adequacy gap for BCPSS students or facilities.

MSBE Opp. at 25. This, MSBE suggests, is why the prayer for relief of Plaintiffs includes a vast range for payment in relief for fiscal year 2023. MSBE Opp. at 27.

This Court finds that the correct guidance in interpreting ART. VIII, § 1 is that the development of a statewide education system is up to the legislature's determination, and, at most, the legislature is commanded to "to establish such a system, effective in all school districts, as will provide the State's youth with a basic public school education." *Hornbeck v. Somerset County Bd. of Educ.*, 295 Md. 597, 632 (1983).

The holding in *Hornbeck* concludes that ART. VIII, § 1 of the Maryland Constitution represents a floor for a basic education. It held "education need not be 'equal' in the sense of mathematical uniformity, so long as efforts are made...to minimize the impact of undeniable and inevitable demographic and environmental disadvantages[.]" This holding explicitly recognizes that although a system may be imperfect, the Maryland Constitution only requires an effort by the State to at most provide a basic education. *Hornbeck*, 295 Md. at 632.

The record in this case shows no material dispute of fact. Basic education for the students at BCPSS is provided. Plaintiffs' claim of a constitutional violation is denied as a matter of law.

#### **E. Non-justiciability**

The inquiry into whether a particular claim is non-justiciable, or better decided by the political branches of government, was considered by the undersigned through the lens of MSBE's Motion to Dismiss Plaintiff's Petition for Further Relief (docket#00105000). This Court concluded that although "review of adequacy of funding of public education in Maryland is within the purview of the Maryland Judiciary...the actual appropriation of funds is the duty of the other branches of government." Jan. 16, 2020, Mem. Op. at 11 (docket#00105008).

Today's analysis is different. This matter is before the Court on motions for summary judgment. No dispute of material fact exists here regarding the adequacy of funding provided by MSBE. MSBE is entitled to judgment as a matter of law on the issue of adequacy of funding.

The resolution of whether the appropriation of funds presents a non-justiciable political question involves a consideration of “whether the claim presented and the relief sought are of the type which admit of judicial resolution” and “whether the structure of government ‘renders the issue presented a ‘political question’—that is, a question which is not justiciable in federal [or State] court because of the separation of powers provided by the Constitution.” *Estate of Burris v. State*, 360 Md. 721, 745 (2000) (citing *Powell v. McCormack*, 395 U.S. 486, 516–17 (1969); *Lamb v. Hammond*, 308 Md. 286, 293 (1987)). The Supreme Court of Maryland has made it clear that the appropriation of funds and determinations as to the quantity and quality of education opportunities made available in public schools is squarely within the authority of the legislature. *Hornbeck*, 295 Md. at 658-59 (“The quantity and quality of educational opportunities to be made available to the State’s public school children is a determination committed to the legislature[.]”).

The inquiry is whether the “duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded.” *Baker v. Carr*, 369 U.S. 186, 198 (1962). Additionally, as presented in the landmark decision *Baker v. Carr*, an analysis into whether there exists:

“a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the

impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.”

396 U.S. at 217.

In opposition to Plaintiffs' claim for relief in the form of immediate funding to fill the alleged adequacy gap for BCPSS, MSBE contends that this claim presents a non-justiciable political question that remains solely within the powers of the political branches of government. In analyzing the question of justiciability MSBE makes several claims. MSBE offers analysis of ART. VIII, § 1 arguing the language of the provision, as well as its interpretation in *Hornbeck*, points to a constitutional commitment of state education funding to the political departments of government. MSBE Mot. SMJ at 47; see *Hornbeck v. Somerset County Bd. of Educ.*, 296 Md. 597 (1983).

Additionally, MSBE argues the appropriation of funds and enacting of state budgets are prescribed to the General Assembly and Governor through ART. III § 52 of the Maryland Constitution. MSBE Mot. SMJ at 48-49. Therefore, the unilateral direction of funds to a specific school system by the judiciary in this case would substantially interfere with the authority of

those branches of government presenting a non-justiciable political question. MSBE Mot. SMJ at 50; see *Estate of Burris v. State*, 360 Md. 720, 751 (2000).

Plaintiffs respond by arguing that MSBE has consented to this Court's power to manage funds by entering into the Consent Decree as well as through its conduct before the Court. Pl. Opp. at 43-44. Plaintiffs claim that MSBE's justiciability argument has been rejected in this Court's January 18, 2020 decision and by entering into the Consent Decree MSBE has consented to this Court making a determination on the constitutionality of state funding. Pl. Opp. at 44.

Plaintiffs cite to *Ehrlich v. Perez*, to argue that the judiciary does hold the power to direct appropriation of funds despite ART. III § 52 of the Maryland Constitution which provides a budgetary procedure for the legislature to appropriate monies. Pl. Opp. at 44-45; *Ehrlich v. Perez*, 394 Md. 691 (2006). In this holding the Plaintiffs suggest where the legislature appropriates funds in violation of a constitutional right, the judiciary may assert itself to comply with the Maryland Constitution. Pl. Opp. at 45; *Ehrlich*, 394 Md. at 736. They reject MSBE's argument that education funding is constitutionally committed to the political departments arguing that neither *Hornbeck* nor the language of ART. VIII, § 1 preclude judicial review or intervention. Pl. Opp. at 46-48.

*Ehrlich* upheld a reinstatement of benefits through the use of a preliminary injunction based on the determination that the State's actions were likely unconstitutional. *Ehrlich*, 394 Md. at 735. *Ehrlich* distinguished the injunction from an appropriation of funds and interpreted it as a preservation of the status quo to not undermine the final disposition of the case. *Ehrlich*, 394 Md. at 735. Here, Plaintiffs are not asking this Court to reinstate or reappropriate funds that were already allocated to preserve a status quo, they are asking the Court to direct a specific amount of

state funding, to be determined by this Court, to remedy the alleged constitutional violation. An appropriation of this kind would work directly in opposition to the authority set out within Maryland Constitution, ART. III § 32 and 52 which provides the framework for a comprehensive budgetary scheme dedicated to the political branches of government. *Ehrlich*, 394 Md. at 735-36; *see* Md. Const. ART. III §§ 32, 52 (setting out requirements for appropriations and creation of the state budget).

This Court finds that the appropriation of funds as requested by Plaintiffs would interfere directly with the authority of the political branches of government to provide funding for education.

Plaintiffs contend this case is similar to that presented in *Hoke Cnty. Bd. of Ed. v. State*, 879 S.E. 2d 193 (2022). This case differs from *Hoke*, which involved a state-wide challenge to the constitutionality of the North Carolina education system. In *Hoke*, the trial court had exhausted all other avenues and afforded significant deference prior to invoking its powers to order legislative authorities to appropriate state monies in pursuit of funding a court-approved comprehensive remedial plan. *Hoke*, 879 S.E. 2d. at 241-43.

Unlike in *Hoke*, the same extraordinary circumstances do not exist for the Plaintiffs today. Without a court-directive the state legislature has passed several bills that attempt to improve the state's education system including the Blueprint Act and the Built to Learn Act. 2021 Md. Laws Ch. 36; 2020 Md. Laws Ch. 20. This Court will not enter orders that will "substantial[ly] interfere[] with the authority and discretion vested in the other two branches of government." *Estate of Burris*, 360 Md. at 751.

The relief requested fails both steps of the two-part justiciability inquiry and presents a non-justiciable political question which this Court will not entertain. Additionally, this Court has already held in its January 16, 2020 decision that although courts hold the power to review the adequacy of public education funding, "the actual appropriation of funds is the duty of other branches of government." Jan. 16, 2020, Mem. Op. at 11 (docket#00105008).

### III. CONCLUSION

For the foregoing reasons, and in accordance with the associated Order issued by this Court on even date, it is hereby **ORDERED** that the Plaintiffs' *Motion for Summary Judgment* (docket#00250000), filed August 12, 2022, is hereby **DENIED**.

For the foregoing reasons, and in accordance with the associated Order issued by this Court on even date, it is hereby **ORDERED** that MSBE's *Motion for Summary Judgment* (docket#00246000), filed August 12, 2022, is hereby **GRANTED**.

For the foregoing reasons, and in accordance with the associated Order issued by this Court on even date, it is hereby **ORDERED** that the City's *Motion for Summary Judgment* (docket#00249000), filed August 12, 2022, is hereby **GRANTED**.

**IT IS SO ORDERED**, this 3<sup>rd</sup> day of March, 2023.

**AUDREY J.S. CARRION**

Part 23

**Judge's Signature appears on the original document**

\_\_\_\_\_  
Judge Audrey J.S. Carrion  
Circuit Court for Baltimore City  
Case No.: 24-C-94-340058

CC:

Elizabeth McCallum, Esq.  
Danyll Foix, Esq.  
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**TRUE COPY  
TEST**

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\_\_\_\_\_  
Xavier A. Conaway, Clerk of the Circuit Court



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