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August 14, 2024

The Honorable Charles E. Sydnor, III  
Maryland General Assembly  
216 James Senate Office Bldg.  
Annapolis, Maryland 21401  
*Via email*

Dear Senator Sydnor:

You asked for advice about the constitutionality of a provision in a Baltimore County bill. The bill, among other things, proposes a County Charter amendment to change the composition and number of members on the County Council. One provision appears to direct the General Assembly to amend the State law configuring the County Board of Education to align the elected school districts with the new council districts if voters approve the amendment. To be constitutional, the provision in question must be read as a non-binding request because the County has no authority to direct action by the General Assembly. I explain my reasoning below.

Under current State law:

The Baltimore County Board of Education consists of:

- (1) Seven nonpartisan elected members;
- (2) Four appointed members; and
- (3) One student member.

Education Article ("ED"), § 3-2B-01(a). The seven elected members are to be "elected from each of the seven councilmanic districts in the county, established by the County Council of Baltimore County, by the voters of that district." ED § 3-2B-01(b)(1)(i).

The Charter amendment in Bill No. 47-24 proposes to increase the number of council members from 7 to 9, beginning with the 2026 election cycle. Section 5 of the bill states that:

... the thirtieth day following the general election on November 5, 2024, the County Executive and County Council shall send written notification to the Baltimore County delegation to the Maryland General Assembly that § 9 3-2B-01 of the Education Article of the Annotated Code of Maryland relating to the composition and method of election of the Baltimore County Board of Education is to be amended to consist of: nine nonpartisan elected members, elected from the nine councilmanic districts of Baltimore County, as set forth in this Act, by the voters of that councilmanic district; two appointed members; and one student member.

Baltimore County has no authority, in its Charter or elsewhere, to bind the General Assembly to enact legislation. Should the voters approve the amendment, the General Assembly has authority to determine how—and if—the State provisions will be amended. “The Constitution does not confer a right to vote for ‘local officers’ such as county school board members. A school board is a ‘subordinate ... instrument[ ] created by the [s]tate to ... carry[ ] out ... state governmental function[s],’ and a state ‘has vast leeway in the management of its internal affairs.’” *Kim v. Board of Education of Howard Co.*, 641 F. Supp. 3d 223, 230 (2022) (citations omitted), *aff’d* 93 F.4th 733 (2024).

It is true that if members are to be elected from districts, each election district must be of equal size.

[W]henver a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

*Kim*, 93 F.4th at 741 (citation omitted). Thus, the General Assembly may want to keep the school board to 7 members, increase it to 9 members, or take a different approach altogether regardless of the approval of the amendment.<sup>1</sup>

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<sup>1</sup> If the legislature wants to keep the current 7 elected school districts, ED § 3-2B-01(b)(1)(i) should be amended to avoid confusion.

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Accordingly, Section 5 of Bill No. 47-24 must be read as non-binding on the General Assembly.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Benson Brantley". The signature is written in a cursive style with some stylized flourishes.

Sandra Benson Brantley  
Counsel to the General Assembly