

IN THE COURT OF APPEALS OF MARYLAND

No. 122, September Term, 2007

State Board of Elections v. Clifford E. Snyder, Jr., on behalf of
Carl Philip Snyder, his son

State Board of Elections v. Richard D. Boltuck, on behalf of
Sarah Elizabeth Boltuck, his daughter

On Appeal from the Circuit Court for Anne Arundel County (Paul A. Hackner,
Judge), Cases 02-C-08-128760 and 02-C-08-128755

MEMORANDUM OF APPELLEE CLIFFORD E. SNYDER, JR.

A. Preliminary Matters

The Appellant's "Statement of the Case" is acceptable. The Appellant's "Question Presented" is objectionable only because it mentions this Court's decision in Capozzi; as will be argued below, Capozzi is irrelevant to the issue of voting age. The Appellant's "Statement of Facts" is unsatisfactory because, largely in its sections A and B, it presents motivations and legal theories rather than facts; the essential facts are presented in its sections C and D and appear to be correct.

B. Restatement of Arguments Advanced Below

My Brief to the Court, submitted to the Circuit Court, presented six arguments in favor of my son Carl's right to vote at age 17 in the Board of Education primary election on February 12, 2008 in Frederick County: (1) According to the relevant provisions of the Election Law Article, Carl was

properly registered to vote and is entitled to vote. (2) The State Board of Elections has applied a view of the law unsupported by any judicial determination of the issue of minimum age for voting in Maryland in derogation of Carl's right to vote; in so doing, it has violated the separation of powers required by Article 8 of the Declaration of Rights. (3) The State Board of Elections has stripped Carl of his right to vote without providing prior notice and a hearing, in violation of the right to due process established by Article 24 of the Declaration of Rights. (4) Article I, § 1 of the Maryland Constitution cannot be used to prohibit Carl from voting because it has no prohibitory language from which one could reasonably infer prohibitory intent as to persons under the age of 18 years. (5) In order to conform to the federal Constitutional requirement that persons 18 years old be permitted to vote, Maryland must register persons under age 18; having been registered, such persons, including Carl, are entitled to vote by Article I, § 2 of the Maryland Constitution. (6) This Court's Capozzi opinion does not control the outcome of this dispute because voting age was not in dispute in Capozzi.

In oral argument before the Circuit Court, I noted that this Court's desire to find in the Maryland Constitution something that prohibits voting by persons under age 18, a desire inferable from the Capozzi dicta (the hypothetical 12 year-old, non-U.S. citizen, residing in Virginia), is of questionable validity in view of the fact that the United States Constitution has no language prohibiting voting by persons under the age of 18. I pointed out the unfairness of using the

Capozzi hypothetical against Carl, who has been a Maryland resident since birth, who is 17 years old now and will be 18 by the time of the next general election, and who is, after all, a registered voter. I do not argue that the United States Constitution, by itself, creates a right to vote in persons under age 18; I argue instead that the lack of such a prohibition in the Maryland Constitution should not trouble this Court so much that this Court feels compelled to find in the Maryland Constitution a prohibition where there is none. However, if the Court believes that the Maryland Constitution must, in Article I, § 1, establish a minimum voting age related in some way to the age of 18 years, it should interpret that provision to mean, “at least 18 years old . . . on or before the day of the next succeeding general or special election,” as excerpted from § 3-102 of the Election Law Article.

I stand by these arguments. I also endorse arguments previously made by attorneys Jonathan Shurberg and Jamin Raskin on behalf of Richard Boltuck in the case with which this one has been consolidated.

C. Appellant’s Brief Reveals the Weakness of Its Case

Appellant’s brief to this Court does not fairly confront the arguments enumerated above as (1) to (5); remarkably, it has not even addressed the issues of violations of Articles 8 and 24 of the Declaration of Rights. Instead, the State Board’s case rests entirely on its reading of this Court’s opinion in Capozzi, a case in which the validity of statutory changes in date and location of voting

were at issue but minimum age of voting was not in dispute. Note well that Appellant's brief, at page 4, says, "Historically, the State Board understood that . . . 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." This was the state of the law in Maryland before Capozzi and it remains the law. Surely, this Court did not intend to use its opinion in Capozzi to change Maryland election law on voting age. Such action would have been manifestly unjust, since voting age was (i) not at issue in Capozzi and (ii) persons who would be affected by such a change had no opportunity to defend their rights. However, even if this Court so intended, it need not, and should not, persist in its view, now that valid countervailing arguments have been presented for its consideration.

D. Article I, § 1 Does Not Govern the Board of Education Primary Election

The Circuit Court has discovered a different, independent, basis supporting Carl's right to vote in the primary election for Board of Education candidates: Article I, § 1 relates only to elections which the Maryland Constitution itself requires to be held. See Hanna v. Young, 84 Md. 179, 35 A. 674 (1896). The Circuit Court found nothing in the Maryland Constitution that requires Board of Education members to be elected. The Baltimore County and Anne Arundel County boards, for example, are appointed; see § 3-109 and § 3-110 of the Education Article, respectively. Thus, since the Maryland

Constitution does not require board of education members to be elected, Article I, § 1 cannot be used to prohibit Carl from voting for Frederick County Board of Education members in the non-partisan primary election on February 12, 2008. Appellant's brief presents no reason to believe that the Circuit Court's analysis was incorrect; on page 20, it says that Article I, § 1, "clearly applied to school board elections during this period" (between 1951 and 1972). Evidently, the State Board is reluctant to use "clearly apply" to the present day. The State Board goes on to say, in pages 20-21 of its brief, "The circuit court's decision would suggest that the constitutional eligibility 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." The State Board presumably means, "absence of any indication." This is interesting language, indeed, for the State Board, since the essence of its case is that eligibility to vote, in terms of minimum age, has changed in the absence of any legislative intent.

In oral argument, I took the Circuit Court's analysis one step further and noted that, to my knowledge, party primary elections are not mandated by the Maryland Constitution and thus Article I, § 1 does not relate to either partisan or non-partisan primary elections. The Circuit Court did not go as far as I did in removing primary elections from the sphere of human activity regulated by Article I, § 1 of the Maryland Constitution; this Court may wish to consider my point, but

it need not do so in order to assess the validity of the Circuit Court's analysis.

Conclusion

There are two independent reasons to affirm the judgment of the Circuit Court: (1) Whether or not Article I, § 1 of the Maryland Constitution governs primary elections for Board of Education candidates, it does not require that a person have reached the age of 18 years in order to vote in such elections; or (2) Article I, § 1 does not govern primary elections for Board of Education candidates. I have focused my attention on reason (1). The Circuit Court has, by citing reason (2), charted a course that this Court may follow without traversing the waters of minimum age for voting. Such a course would disappoint those who want this Court to say something definitive about voting age. It would, however, produce an entirely satisfying result: Maryland would keep faith with Carl, and others like him, who took Maryland at its word when she encouraged them to register and, until very recently, vote.

For the reasons stated above, the judgment of the Circuit Court should be AFFIRMED.

Respectfully submitted,

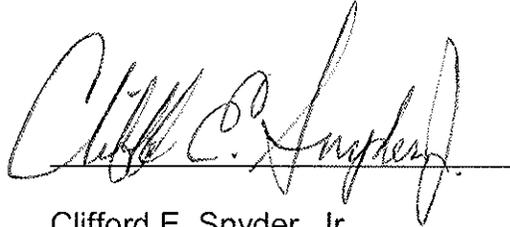
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Appellee
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CERTIFICATE OF SERVICE

I hereby certify that on this day, February 7, 2008, I mailed, postage prepaid, a copy of the foregoing to Mark J. Davis, Esquire, Office of the Attorney General, 200 Saint Paul Place, Baltimore, MD 21202 and provided him a copy by e-mail.

A handwritten signature in black ink, appearing to read "Clifford E. Snyder, Jr.", is written over a horizontal line. The signature is cursive and somewhat stylized.

Clifford E. Snyder, Jr.