

respondents' revised human sexuality lessons. Rule 7-205 states: "Upon motion and after hearing, the court may grant a stay, unless prohibited by law, upon the conditions as to bond or otherwise that the court considers proper." Petitioners seek a stay in order to maintain the status quo—which will be eviscerated by respondents' implementation of the revised human sexuality lessons.

On July 26, 2007, petitioners sought judicial review of Opinion No. 07-30, dated June 27, 2007, issued by the Maryland State Board of Education regarding the revised human sexuality lessons. The revised human sexuality lessons will be implemented district-wide during the fall 2007 semester in all eighth and tenth grade classes. This court should exercise its discretion and enter a stay of the implementation of the revised human sexuality lessons pending the final resolution of petitioners' appeal.

Respondents focus a substantial portion of their opposition brief arguing that petitioners have not carried their burden regarding possible success of their claim. However, petitioners assert that they have made the proper showing; therefore, petitioners will not rehash facts submitted or arguments made in their earlier motion to stay. The focus of this reply is respondents' Orwellian strategy of definition modification employed when the actual meaning of a particular word or phrase does not fit their arguments or positions. Accordingly, the focus of this reply is maintaining the actual status quo regarding respondents' health education curriculum.

Petitioners' goal in requesting a stay is to preserve the status quo during the pendency of an appeal. In November 2004, the Montgomery County Public Schools (MCPS) voted to approve certain changes to the health curriculum. These changes were

the predecessor to the revised human sexuality lessons. In May 2005, petitioners filed a lawsuit in the U.S. District Court for the District of Maryland, Case No. 8:05-CV-01194, to enjoin the MCPS Board from implementing the revised curriculum. That court granted an injunction and prevented respondents' implementation of their proposed curriculum. Since the 2005 federal injunction, save for limited field testing of the at-issue revised human sexuality lessons, the public school system has been presenting a district-wide health education program without teaching the revised human sexuality lessons. Accordingly, presentation of the health education program without the revised human sexuality lessons is the "status quo."

Respondents take a very interesting position regarding what the status quo is. Respondents' position is that their revised human sexuality curriculum—which they revised following an injunction prohibiting its presentation in original form and have never actually taught—can now be implemented because to do so will maintain the status quo. Apparently, this is based on the timing of administrative denials of petitioner's appeals by respondents and the fact that they are ready to begin teaching the revised lessons. However, the "status quo to be preserved by a preliminary injunction is the last actual, peaceable, uncontested status which preceded the pending controversy." Black's Law Dictionary, 6th Ed.

Even the word "revised," chosen by respondents to describe their human sexuality program, supports petitioner's assertion of what the status quo is here. Revised is defined as, "to prepare a newly edited version; to reconsider and change or modify; a proof made from an earlier proof on which corrections have been made." The American Heritage

College Dictionary, 4th Ed. Unfortunately for respondents, submitting a revised version of anything could never maintain the status quo, because to be revised, there must have been a change to the original form; therefore, there is no maintenance of an existing condition or state of affairs necessary to achieve status quo.

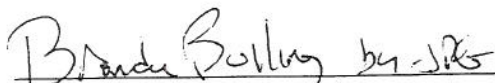
There are many other instances of Respondents bending language to suit their needs in their brief. For example, respondents argue that petitioners will not succeed because “where, as here, an administrative agency acting in a manner which may be considered legislative in nature (quasi-legislative),” [rather than quasi-judicial, as asserted earlier in their brief] “the judiciary’s scope of review of that particular action is limited to assessing whether the agency was acting within its legal boundaries.” Amazingly, in the next paragraph, respondents argue that “the only legal claim in Petitioners’ motion for a stay that is not subject to extreme deference—the contention that the revised lessons violate the Establishment Clause—is without merit, as **the State Board persuasively concluded**...Petitioners ignore **the State Board’s well-reasoned analysis** and, instead reassert before this Court their flawed argument that the revised lessons advance the religious views of secular humanism.” Apparently, a conclusion by an administrative board regarding an alleged constitutional violation is quasi-legislative, not quasi-judicial, and better handled by a State school board than a court. Respondents’ assertions regarding the status quo are similarly flawed.

The status quo in this case is the continued teaching of the “health education program” which the respondents have been doing for years. There is no reason for the school system to implement the “revised human sexuality lessons” during the short

period of time in which this appeal will take to reach a final resolution. Again, petitioners are not requesting that this court stay the entire health education program during the pendency of this appeal, but only stay the implementation of the small portion of the program that involves the revised human sexuality lessons. Petitioners have meritorious arguments to make on appeal, and they should be permitted to brief and argue their points before respondents implement the revised human sexuality lessons. The status quo—teaching the health education program without the revised human sexuality lessons—must be maintained. Status quo is not, *fait accompli* as respondents would have the Court believe.

By the issues raised in its motion for a stay, coupled with this reply, petitioners have made a showing that they can succeed in their appeal and deserve a stay while it is pending. Accordingly, for the above-stated reasons, the petitioners respectfully request that this court grant this motion and enter an order staying the implementation of the revised human sexuality lessons to preserve the status quo until the final resolution of this appeal.

Respectfully submitted,


Brandon M. Bolling
(Admission pro hac vice pending)
Thomas More Law Center
24 Frank Lloyd Wright Drive
P.O. Box 393
Ann Arbor, Michigan 48105
734-827-2001; Fax. 734-930-7160
Co-counsel for appellants/petitioners


John R. Garza
17 West Jefferson Street
Rockville, Maryland 20850
301-340-8200
Co-counsel for appellants/petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of September 2007, a true and correct copy of the foregoing was caused to be sent to the following by U.S. Mail, first-class postage prepaid:

Nancy S. Gransmick
Maryland State Department of Education
200 West Baltimore Street
Baltimore, Maryland 21201-2595

Nancy Navarro
President
Carver Educational Services Center
850 Hungerford Drive, Room 123
Rockville, Maryland 20850

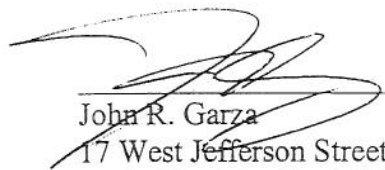
Jerry D. Weast
Superintendent
Office of the Superintendent of Schools
Carver Educational Services Center
850 Hungerford Drive, Room 122
Rockville, Maryland 20850

Attorney Deputy Jackie LaFiandra
Office of the Attorney General
200 St. Paul Place, 19th Floor
Baltimore, Maryland 21202

Edward L. Root
President
Maryland State Board of Education
200 West Baltimore Street
Baltimore, Maryland 21201-2595

Brian M. Simmonds
Ryan P. Phair
Wilmer Cutler Pickering Hale and Dorr LLP
1875 Pennsylvania Avenue, N.W.
Washington, DC 20006

Hayley Gorenberg
Lambda Legal
120 Wall Street, Suite 1500
New York, New York 10005



John R. Garza
17 West Jefferson Street
Rockville, Maryland 20850
301-340-8200
Co-counsel for appellants/petitioners