IN THE
SUPREME COURT OF MARYLAND

SEPTEMBER TERM, 2023

NO. 34

SCM-REG-0034-2023

BALTIMORE CITY BOARD OF ELECTIONS, *et al.*

Appellants,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE, *et al.*

Appellees.

On Appeal from the Circuit Court for Baltimore City
(Before the Honorable Judge John S. Nugent)

BRIEF OF APPELLANT MARYLAND CHILD ALLIANCE, INC.

H. Mark Stichel
(AIS No. 8312010443)
RKW, LLC
10075 Red Run Blvd.
Owings Mills, Maryland 21117
443-379-4013
hmstichel@rkwlawgroup.com

Attorney for Appellant Maryland
Child Alliance, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF THE CASE

In March 2023, Appellant Maryland Child Alliance, Inc. began collecting signatures for a proposed charter amendment called the Baltimore Baby Bonus ("Baby Bonus"). The amendment, if approved, would establish the outline of a system for the Mayor and City Council of Baltimore to issue one-time payments to Baltimoreans welcoming a new child. During 16 months of engagement with City voters, a teacher-led group of volunteers collected the requisite 10,000 validated signatures.[1] On July 1, 2024, the Baltimore City Board of Elections ("City BOE") certified the petition for inclusion on the November 2024 General Election ballot, confirming that it "satisfied all requirements established by law." E. 49.

On July 11, 2024, the Mayor and City Council of Baltimore brought suit against the Baltimore City Board of Elections, asserting that the Baby Bonus amendment violated the Constitution of Maryland. E. 26. The Maryland Child Alliance filed a timely Motion to Intervene as Defendant, which was granted on July 18, 2024. E. 39; E. 59. In the circuit court, all parties agreed that the facts of the case were not in dispute and moved for summary judgment. The circuit court held a hearing on the motion and cross-motions for summary judgment on August 7, 2024. In an order dated August 9, 2024, the Honorable John S. Nugent granted the Mayor and City Council's motion and enjoined the City Board of Elections from including the Baby Bonus amendment on the November

[1] Pursuant to Article XI-A, § 5 of the Maryland Constitution, charter amendment petitioners must collect valid signatures equaling the lesser of 10,000 or 20 percent of the registered voters in the jurisdiction.

2024 general election ballot, ruling that the proposal violates Art. XI-A, § 3 of the Maryland Constitution. E. 8.

Pursuant to Maryland Code, Election Law Article, § 6-209(a)(3)(ii), both the City BOE and Maryland Child Alliance noticed direct appeals to the Supreme Court of Maryland within 5 days of the circuit court's ruling. E. 4; E. 6.

QUESTIONS PRESENTED

1) What limitations, if any, does Art. XI-A, § 3 of the Maryland Constitution place on voters' ability to amend local charters in ways that do not conflict with State law?
2) Does the Baltimore Baby Bonus proposed charter amendment violate any such limitations?
3) If any provision of the Baby Bonus is unconstitutional, is the remainder severable such that the primary purpose of the proposal would remain intact?

STATEMENT OF FACTS

The facts of this case are not in dispute. The following short summary provides some useful context in addition to what was noted above in the Statement of the Case.

Appellant Maryland Child Alliance is a 501(c)(4) organization fighting to reduce and eventually eliminate child poverty in the state of Maryland and beyond. On February 22, 2023, the Maryland Child Alliance submitted a draft petition for a proposed charter amendment to the City BOE. After revisions, the City BOE, by and through Election Director Armstead Jones, determined the formatting to be sufficient and the summary to be an accurate representation of the proposed text. E. 48.

The proposed charter amendment would establish the Baltimore Baby Bonus Fund. E. 54. Monies in the fund, tied to annual assessed property values, would be used to provide one-time payments of at least $1,000 to parents upon the birth of a child. *Id.* The sparse language of the amendment would allow the Mayor and City Council to fill in numerous gaps and determine how best to implement the system. Outstanding questions include, but are not limited to: how the fund would be administered and by whom, who else may be eligible for payments, the amount of the payment subject to the $1,000 floor, and the method and timing of delivery.

Volunteers and organizers working with the Maryland Child Alliance collected nearly 14,000 total signatures in support of the Baby Bonus amendment. For more than a year, these canvassers were a constant presence at festivals, farmers markets, and other gatherings across the city.

ARGUMENT

The circuit court incorrectly determined that the Baby Bonus amendment violates Article XI-A, § 3 of the Maryland Constitution. Over the last half-century, Maryland appellate courts have struggled to articulate clear substantive limitations on local charter amendments. The primary cause of this confusion is that the Home Rule Amendment, Article XI-A of the Maryland Constitution, represented an effort to delineate the powers of the State and the powers of the local government. The precise division of power *within* jurisdictions was only cursorily addressed, and so the appellate courts have been repeatedly called upon to determine whether charter amendments that do not conflict with State law (an express prohibition in Article XI-A, § 3) nevertheless violate the Maryland

Constitution. When faced with such questions, this Court has examined how much discretion a charter amendment vests in the local legislative body and, at times, whether an amendment addresses the "form and structure" of local government.

The Baby Bonus amendment leaves significant discretion the Mayor and City Council of Baltimore. While the amendment creates the outline of an anti-poverty program and obligates the city to fund that program at a minimal level, critical questions regarding the fund's administration and implementation must be answered by the government.

The fact that the Baby Bonus mandates an appropriation does not, contrary to the Mayor and City Council's assertion, remove it from the ambit of permissible charter material. Across multiple decisions, including its most recent foray into this field, this Court has unequivocally stated that "taking fiscal power away from the county council is bedrock charter material that alters the form and structure of government … in a most fundamental way." *Boards of Sup'rs of Elections of Anne Arundel Cnty. v. Smallwood*, 327 Md. 220, 239 (1990) (internal quotations omitted); *see also Atkinson v. Anne Arundel Cnty.*, 428 Md. 723 (2012) (upholding a charter amendment that bound the county council to accept and fund arbitration awards reached during labor impasses with the certain county employees). Even under the amorphous test that Appellees urged the circuit court to apply, the Baby Bonus qualifies as acceptable charter material.

Additionally, the instant case provides an appropriate opportunity for this Court to re-examine precedent and clarify what, if any, precise limitations the Maryland Constitution places on charter amendments that do not conflict with State law. As

discussed at length in the pages that follow, this Court's oft glossed-over requirement that charter amendments address the "form and structure" of government is a creature of judicial creation with no basis in the text of the Maryland Constitution or the legislative history of the Home Rule Amendment.

A. Standard of Review

The underlying facts of this case are not at issue. Argument in the circuit court addressed only the constitutionality of the Baby Bonus amendment.

The issue before this Court is thus a question of law which is reviewed *de novo*. *Prince George's County v. Thurston*, 479 Md. 575, 585 (2022) (citation omitted). On appeal, this Court should give no deference to the circuit court's entry of summary judgment or its declaratory judgment regarding the constitutionality of the Baby Bonus amendment. *Id.* (citing *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 432 Md. 292, 311 (2013)).

B. Legal Background – Maryland Home Rule

The following is a brief overview of the constitutional provision and previous appellate decisions relevant to the instant case.

The early twentieth century witnessed a "national movement" which sought to "restore and revitalize local government by giving citizens of counties and municipalities the power to legislate as to local matters free from undue encroachment by state legislatures." *Ritchmount P'ship v. Bd. of Sup'rs of Elections for Anne Arundel Cnty.*, 283 Md. 48, 55 (1978). "It was this popular demand for increased local autonomy that led ultimately to the ratification of Article XI-A at the general election of November

1915." *Id*. at 56. The primary purpose of this constitutional amendment, colloquially known as the "Home Rule Amendment," was to establish a charter adoption and amendment procedure that "from beginning to end … is an act of the people, an expression of the local popular will." *Id*. at 57.

A charter adopted under Article XI-A functions as the county's (or Baltimore City's) highest law, analogous to a constitution. *See Smallwood*, 327 Md. at 236. Sections 1 and 1A of Article XI-A establish the processes by which charters may be adopted. Md. Const., Art. XI-A, § 1, § 1A. Section 5 details the procedure for amending established charters. *Id.* at § 5. The remaining sections flesh out the confines of charter home rule. Most relevant to this case, § 3 requires that the "law-making power" of a county shall be vested in the legislative body and that the executive and council have the "full power to enact local laws."

It is important to keep in mind the context out of which Home Rule arose. Prior to the adoption of Article XI-A, the State legislature passed laws for Maryland's counties and Baltimore City. "The purpose of the Home Rule Amendment was to provide for the distribution of power between the Legislature and the political subdivisions of the State." *Cheeks v. Cedlair Corp.*, 287 Md. 595, 636 (1980) (Cole, J., dissenting). The limitations on charter amendments found within Article XI-A "are aimed at preventing the political subdivision (the City) from attempting to use the charter amendment process to authorize legislation over subject matter areas beyond those which the State has expressly granted the City and they are in no sense aimed at restricting the people's right in relation to their own legislative body." *Id.* at 635. In reading in implicit limitations on the substance of

charter amendments, this Court has lost sight of the historical roots of home rule and substituted its own judgment as to what belongs in a local charter.

***Ritchmount P'ship v. Bd. of Sup'rs of Elections for Anne Arundel Cnty.*, 283 Md. 48 (1978)**

In *Ritchmount*, appellants challenged the validity of a charter amendment that permitted voters to veto legislation adopted by a county council. *Id.* at 51. The Court acknowledged that, for the most part, the Home Rule Amendment was not self-executing. *Id.* at 57. For "legislative power," the Court explained that Section 2 "mandates that the General Assembly expressly enumerate and delegate those powers." *Id.* In contrast, "the power to form and establish local government" required no such express grant and was inherent in the delegation of authority to create a charter. *Id.* at 59.

Of particular importance to the instant case, the Court firmly rejected the County's argument that legislative power was *exclusive* to the Council. *Id.* at 62. In interpreting Section 3, the Court found that the council's "full power" did not mean "exclusive power." *Id.* The Court observed that "[n]o attempt was made by the framers to confine the power to legislate exclusively to the council. There is nothing in [Section 3] which would purport to prohibit the exercise of some portion of [legislative] power by the people." *Id.* at 62. While the Court acknowledged that Section 3 designated the council as the "primary legislative organ," it emphasized that this "does not altogether preclude the existence of other entities with coordinate legislative powers." *Id.* at 63.

***Cheeks v. Cedlair Corp.*, 287 Md. 595 (1980)**

Two years later, in *Cheeks*, the Court was asked to determine the constitutionality of a proposed amendment that would have added a new rent control article to the Baltimore City Charter. *Id.* at 597. The proposal was, as frequently described by the Court, "comprehensive," spanning more than 18 pages of the published court reporter opinion. *See id*. at 615–33.

The Court began its discussion by likening charters, as the supreme law of local authority, to local constitutions. *Id.* at 606. The Court then distinguished charter material that went to "form and structure" from that which was "legislative in character," finding the former proper and the latter not. *Id.* at 608. The Court did not attempt to tether this distinction not to any textual limitation in Article XI-A. Instead, it imported its own view that charters, as repositories of supreme law, should speak only to the form and structure of government. *Id.* at 607–08.

In ruling the amendment unconstitutional, the Court primarily emphasized the exacting level of detail in the proposal; it did not "simply … create a new City agency with authority over matters pertaining to landlords and tenants" but instead established a "comprehensive system for regulating rents within the City's residential housing market." *Id.* at 608.

The *Cheeks* Court then analyzed the proposal against the lawmaking requirements of Section 3. In line with *Ritchmount*, the Court agreed that Section 3 did not require the Council retain exclusive lawmaking authority but only that it remain the "primary legislative organ of the county." *Id*. at 612–13. The Court reiterated that its primary

concern was the "comprehensive system" which was to be formed by the amendment. Because of the level of detail in the proposal, the Court explained that the amendment would fully "divest the Council of its acknowledged police power to legislate on the subject of rent control." *Id.* at 609. The Court distinguished the referendum authority upheld in *Ritchmount* from the rent control amendment by noting that the latter "completely circumvents the legislative body" while the former did not. *Id.* at 613.

Thus, the *Cheeks* Court created two requirements of charter material: (1) an implicit requirement that charter material speak to "form and structure" of government rather than be "legislative in character" and (2) a prohibition, tied to Section 3 of Article XI-A, on detailed provisions that entirely usurp lawmaking discretion from the Council.

The dissent in *Cheeks*, however, recognized that the majority was "inserting its own limitations" upon the voters right to amend their charter. *Id*. at 632 (Cole, J., dissenting). In doing so, the dissent asserted that the Court had "violate[d] the basic democratic principle that the people have the right to determine for themselves by what rule of conduct they shall be governed, so long as that rule does not conflict with some higher authority such as federal or state law." *Id*. at 635. The dissent accused the majority of misconstruing the Home Rule amendment, which it saw as solely concerned with the division of power between the State and the local government. *Id.*

***Griffith v. Wakefield*, 298 Md. 381 (1984)**

In *Griffith*, the Court considered the constitutionality of a detailed charter amendment that required resolution of labor disputes involving county firefighters through binding arbitration. *Id.* at 382. As in *Cheeks*, the Court struggled to even summarize the proposal succinctly. *Id.* at 386. The amendment set fort "in minute detail, the composition, function and powers" of the arbitration board it mandated. *Id.* These details were quite granular: one member of the board was to be selected by the County Executive, a second by the certified fire fighters organization, and a third by the other two members from a list of candidates furnished by the American Arbitration Association. *Id*. at 386–87. The amendment specified particular timelines, factors to be considered by the board in making their decision, and other particulars. *Id*.

The Court's analysis again took issue with the "lengthy detail" of a "comprehensive system" that left "nothing for the determination" of the Council." *Id.* at 386. Ultimately, the Court found the amendment in violation of Section 3 because, like in *Cheeks*, the proposal was an attempt by the electorate "to circumvent the local legislative body and enact local law." *Id*. at 388.

The *Griffith* Court spoke of "form and structure" only in conclusion. Even here, however, the Court was focused on detail and discretion, finding the amendment not to alter form and structure because its core was "a comprehensive system of binding arbitration concerning a single group of county employees." *Id*. at 388. Instead, it was "essentially legislative in character" because it was "a complete and specifically detailed legislative scheme." *Id.*

Board of Supervisors of Elections of Anne Arundel County v. Smallwood

At issue in *Board of Supervisors of Elections of Anne Arundel County v. Smallwood*, 327 Md. 220 (1990), were two charter amendments that sought to cap county property tax rates. *Id.* at 229.

The *Smallwood* Court turned first to the implicit requirement. The Court looked to other documents of supreme law in its inquiry as to what might constitute valid "charter material," a term it largely used interchangeably with the "form and structure" requirement. *Id*. at 237–38. The Court surveyed county charters and the federal and state constitutions, noted that they were replete with similar provisions to the tax cap proposal, and therefore concluded that the proposed amendments were "at the heart of the form and structure of our government and thus … proper charter material." *Id*. at 238.

The Court's analysis focused on whether the proposal resembled legislation, drawing a clear distinction from the proposals in *Griffith* and *Cheeks*. *Id*. at 239–40. Unlike those cases, the Court emphasized that these amendments "were not back-door attempts by the voters of Baltimore and Anne Arundel Counties to enact detailed legislation." *Id*. at 240.

The Court explicitly stated that amendments with budgetary impacts were within the bounds of charter material. *Id*. at 238–39. Quoting the dissent in *Griffith* approvingly, the court held unequivocally that "taking fiscal power away from the county council is 'bedrock charter material' that 'alters the form and structure of government ... in a most fundamental way.'" *Id*. at 240. Again looking to charters themselves, the Court

was clear that a holding to the contrary would put many charter provisions across the state and the entire budget process of many counties in jeopardy. *Id*. at 239–40.

***Save Our Streets v. Mitchell*, 357 Md. 237, 240–46 (1998)**

In *Save Our Streets*, the Court was confronted with challenges to two amendments, one that would have forbidden the county from constructing speed bumps and required it to remove all existing ones and another that set forth restrictions on development until certain and specific adequate public facilities were ensured. *Id.* at 240–46.

The *Save Our Streets* Court largely blurred the analysis into a single question as to "whether the proposed amendment constitutes legislation or proper charter material." *Id*. at 253. Specifically, the Court assessed "the degree to which the county council retains discretion and control." *Id*. at 253. The Court emphasized that "length and detail … are not dispositive." *Id*. at 253. However, the proposals would have "completely remove[d] any meaningful exercise of discretion from the County Councils" and were "as such … legislative in nature." *Id*. at 253; *Id*. at 255. For this reason, the Court concluded that the proposals unconstitutional usurped the lawmaking authority of the Councils.

***Atkinson v. Anne Arundel County*, 428 Md. 723 (2012)**

In 2012, the Court furnished its first major decision on Article XI-A charter amendments in 14 years. At issue in *Atkinson* was a voter-approved amendment requiring the use of binding arbitration to resolve collective bargaining disputes between the county and law enforcement and firefighters. *Id.* at 726. The proposal, among other things, required the County to use a third-party neutral arbiter to negotiate all of the "terms and

conditions of employment" and to appropriate the exact amount necessary to fund the arbiter's decision in the following year's budget. *Id*. at 735–36.

Similar to other cases, the Court nodded to the implicit "form and structure" criteria but gave it little breath. Instead, the Court accepted as "settled" that binding arbitration was "charter material," relying on case law that held so because the use of an arbiter redistributed fiscal authority and therefore went to form and structure. *Id.* at 745. Going further, however, the Court seemed to dispense with the implicit requirement entirely, adding "[t]he whole point in placing [the charter amendment] before the voters was to obtain authorization for including [the charter amendment] in the County's 'constitution.'" *Id*.

Turning to the issue of legislative discretion, the Court then referenced language from *Griffith* to the effect that amendments containing only authorizing language were clear charter material while those containing "all of the law on the subject" were not. *Id.* at 747. The Court recognized the case before it as one of first impression, in which the amendment at issue fell between these well-defined poles. *Id.* at 747. In upholding the proposal, the Court set forth a new and clear guiding principle—voters could provide a "policy decision" so long as the "all of the detail of implementation" was left to the Council. *Id.* at 749–50. Consistent with *Smallwood*, the Court also stated that amendments could constitutionally affect the budget or, in this case, mandate specific appropriations. *Id.* at 749. To hold otherwise, the Court explained, would disempower voters of their constitutionally granted authority to set policy directives. *Id.* at 748.

The *Atkinson* majority did not frame its decision as a break from precedent, instead gleaning from *Cheeks* and its progeny that the primary focus of the Court's inquiry is the amount of discretion left to the legislative council. *See id.* at 745–50. The dissent, however, believed that the majority had "uprooted three decades of our jurisprudence regarding the constitutionality of charter amendments" and wrote that under the majority opinion "citizens of a county could divest the legislative body of budgetary authority without constitutional violation." *Id.* at 760 (Battaglia, J., dissenting).

Atkinson has now been the governing precedent for more than a decade. In a 2018 case by the same name, the Court of Special Appeals relied heavily on the Maryland Supreme Court's opinion in *Atkinson*, stating again that "the proper focus when deciding whether a charter amendment is impermissibly legislative 'is the degree to which the county council retains discretion and control.'" *Atkinson v. Anne Arundel Cnty.*, 236 Md. App. 139, 177 (2018) (hereinafter "*Atkinson II*") (quoting *Save Our Streets*, 357 Md. at 253). Applying that standard, the Court of Special Appeals concluded that including some specifications, such as requiring the Council to bargain over health insurance and other terms and conditions of employment, "does not turn an otherwise permissible charter provision into an impermissible legislative scheme." *Id.* at 180. The Maryland Supreme Court subsequently denied a petition for writ of certiorari. *Anne Arundel, Co. v. Atkinson*, 460 Md. 5 (2018).

C. The Baby Bonus is Permissible Charter Material under the Relevant Case Law.

Consistent with the Court's interpretation of the bounds of Article XI-A, the Baby Bonus leaves sufficient discretion to the City Council and alters the form and structure of government.

1. Consistent with the Court's interpretation of Section 3, the Baby Bonus is not impermissibly legislative because it leaves sufficient discretion to the City Council.

The Supreme Court of Maryland has most recently explained that whether a charter amendment crosses the line into improper legislation in violation of Section 3 is "a question of degree." *Atkinson*, 428 Md. at 747. A charter amendment is not impermissibly legislative so long as it leaves sufficient discretion to the local legislative body. *See id.* A charter amendment leaves insufficient discretion if it is "a complete and specifically detailed legislative scheme," *Griffith*, 298 Md. at 388, or if it "completely remove[s] any meaningful exercise of discretion" from the Council. *Save Our Streets*, 357 Md. at 253. Ultimately, voters may make a policy decision so long as "all of the details of implementation" are left to the Council. *Atkinson*, 428 Md. at 749–50. Post *Atkinson*, therefore, discretion is the guiding principle of the Section 3 analysis.

a. <u>The Baby Bonus constitutionally includes some policy specifications but otherwise leaves all of the details of implementation to the City Council.</u>

Atkinson is instructive as to the level of discretion that must be left to the Council. In that case, the Court upheld a proposal that went far beyond simply mandating binding arbitration for labor disputes with county law enforcement employees. The amendment

included numerous *policy* specifications regarding the arbitration process.[2] The Court, nonetheless, noted that the amendment left "all of the detail of *implementation*" to the Council. 428 Md. at 726–28 (emphasis added). Recognizing the distinction between *policy* specifications and *implementation* details, the Court of Special Appeals held that the inclusion of some such *policy* specifications "does not turn an otherwise permissible charter provision into an impermissible legislative scheme." *Atkinson II*, 236 Md. App. at 180.

Consistent with *Atkinson*, the Baby Bonus sets forth a simple policy directive: a minimum of $1,000 payments to parents of newborns. The Baby Bonus amendment is otherwise replete with deference and says nothing at all as to how its policy directive is to be implemented. E. 54. If passed, the Mayor and City Council would need to determine which new or existing agency is tasked with administering the payments, how and when those payments are to be distributed, and all sorts of other important matters. *See* App'x A: Implementation Questions for the Baby Bonus.[3] E. 96. In fact, during signature

[2] These policy specifications include that (1) it applies only to uniformed officers and firefighters of certain agencies; (2) binding arbitration may occur only between the Council and specific representatives authorized by the appropriate employee bargaining unit; (3) the chosen arbiter is required to consider both "the financial condition of the County and the reasonable interests of the law enforcement employees and the county relating to the terms and conditions of employment;" (4) implementation legislation must prohibit strikes and work stoppages for covered employees; and (5) the Council accept and fund the arbitrator's decision in the following year's budget—the Council is without any discretion to adjust the amount.

[3] A non-exhaustive list of questions to be determined by the City Council if the Baby Bonus were to be added to the Charter may be found in the Appendix A to Maryland Child Alliances's Opposition to the City's Motion for Summary Judgment. E. 96.

collection, City voters were acutely aware of the sparse details of the Baby Bonus, frequently asking canvassers questions about where the money would come from, how the fund would be administered, and who would conduct residency verification.[4] These details of implementation, in line with the case law, were intentionally left out of the proposed amendment in deference to the City Council.

Additionally, unlike the proposed amendments in *Cheeks*, *Griffith*, and *Save Our Streets*, the Baby Bonus does not fill the field or contain "all of the law on the subject." *Atkinson*, 428 Md. at 747. The Baby Bonus establishes one vehicle of support for families. It does not operate to the exclusion of any other legislation in this area nor does it require the City to review or repeal any existing ordinances or decisions. The City is free to continue to legislate in this area, and the amendment does not "amount to an entire statute" in the charter. *Id.* at 746.

Therefore, under the precedent endorsed and expanded upon by *Atkinson*, the Baby Bonus is a proposed policy decision by the voters that otherwise leaves the details of implementation to the City Council.

b. <u>The Baby Bonus need not provide the City unfettered discretion over every aspect of its policy directive.</u>

The appellate courts have made clear that the local legislature need not have such unlimited discretion that it could, in effect, erase the voters' policy directive. In attacking

---

[4] *See, e.g.*, *Reader Commentary*, *How would Baltimore pay for baby bonus?* THE BALTIMORE SUN (July 6, 2024), https://www.baltimoresun.com/2024/07/06/how-to-pay-for-baby-bonus/.

its constitutionality, Appellees frequently complain of a lack of discretion regarding eligibility in the Baby Bonus. Limited discretion over this single part of the policy alone, however, does not render the proposal unconstitutional.

Atkinson II involved a similar complaint regarding a lack of discretion over an element of the policy directive. In that case, the County Council passed an ordinance excluding employee health insurance benefit options and plans from "terms and conditions of employment" as set forth in the amendment upheld in *Atkinson*. *Atkinson II*, 236 Md. App. at 142–144. Members of the relevant unions sued, and the County filed a counterclaim asserting that it must retain discretion over the terms and conditions subject to the amendment in order for it to remain constitutional. *Id*. In rejecting the Council's argument, the Court wrote that the charter's mandate to bargain the terms and conditions of employment collectively "would have little effect if the County Council retained carte blanche authority to define the subject matter of negotiations so narrowly that the right to bargaining and arbitration becomes *de minimis*." *Id*. at 170. As such, the Council was not required to have the discretion to essentially erase the directive of the voters. *Id*. at 180.

Atkinson II, therefore, made clear that the Council need not retain unfettered discretion over every aspect of the voters' directive. Just as the inability of the Council to set the bounds of "terms and conditions of employment" in that case did not render the amendment unconstitutional, the City's alleged limited discretion on eligibility likewise does not make the Baby Bonus unconstitutional.

c. The Baby Bonus is not made unconstitutional by the inclusion of a mandate or by affecting the budget.

In the circuit court, Appellees repeatedly argued charter material can only authorize certain legislation and that it cannot affect the county budget. Both arguments directly contradict express language in *Atkinson* and other cases.

The *Atkinson* Court explained that rather than merely authorizing legislation, charter material may impose mandates on the legislative body. The Court first found that the amendment at issue fell between the two poles established in *Griffith*. *Id*. at 747–48. At one end was broad authorization language clearly suitable for charter material; at the other was an amendment containing "all of the law on the subject," like those the Court had previously struck down. *Id.* at 747; *see also Griffith*, 298 Md. at 390. Recognizing that it was examining this middle ground for the first time, the *Atkinson* Court determined that requiring the Council to engage in binding arbitration, rather than merely authorizing it, did not render the amendment unconstitutional. *Atkinson*, 428 Md. at 747–48. Instead, the Court articulated that voters can mandate a "policy decision" so long as they leave its "fleshing out" to the Council. *Id.* at 748. As the Court explained, "[t]o say that the voters of a county, exercising their power to amend the Charter, cannot direct that their policy decision be implemented by the County Council would be to hold that only the County Council can ultimately decide whether binding arbitration is County policy." *Id.* at 748. That, the Court found, was inconsistent with precedent. *See id*.

The Supreme Court of Maryland has also made clear that charter amendments may constitutionally affect a county budget without improperly impeding on the Council's

Section 3 lawmaking authority. The *Atkinson* Court stated expressly that "voters' directive … for the Council to implement [a policy decision] in the budget process[] does not implicate … the lawmaking power of the Council" and is proper charter material. 428 Md. at 748. The Court has *never* held that charter amendments may not, directly or indirectly, affect the City's budget. To the contrary, Maryland's appellate courts have, on multiple occasions, upheld amendments with fiscal implications.

Notably, the *Smallwood* Court, which emphasized that "taking fiscal power away from the county council is 'bedrock charter material,'" also saw "practical difficulties" with the assertion that charter amendments could not impact county budgets. *Id.* at 240. The Court elaborated that "[a]cceptance of the plaintiffs' arguments that limits cannot be placed on the budgetary and fiscal authority of county councils would result in the invalidation of many existing provisions in county charters." *Id*. at 240–41. These potentially invalidated provisions would include both mandatory special funds, as here, as well as fundamental parts of some county governments, such as the executive budget system. *Id*.

In *Atkinson*, the Court upheld an amendment that completely removed budgetary discretion from the Council over the salary and benefits of firefighter and law enforcement personnel. These amount to a large proportion of the county budget. In 2025 Anne Arundel County appropriated $197 million for police salaries and $178 million for firefighter salaries, a total of $375 million, or roughly 16 percent of total

appropriations.[5] The Baby Bonus, meanwhile, would amount to just 0.2 percent of the Baltimore City budget.[6]

Most recently, not even the appellants in *Atkinson II* challenged the authority of voters to use their constitutionally granted charter amendment authority in manners that affected the budget. In fact, recognizing such authority to be settled law, appellants asked the court to read the amendment at issue "so that its effect is limited to budgetary issues and not legislative issues." 236 Md. App. at 147.

If Baltimore City voters approve the Baby Bonus, they can constitutionally mandate its policy directive and appropriate funds within the Baltimore City budget.

2. The Baby Bonus alters the form and structure of City government.

Since *Cheeks*, the Maryland Supreme Court has drawn a line between amendments that alter the "form and structure" of government and those that are "legislative in character." *Cheeks*, 287 Md. at 608. In applying "form and structure," the Court has interpreted the term to include provisions that distribute power within government or

[5] In 2025 Anne Arundel County appropriated $197,292,900 for police salaries and $177,975,900 on firefighter salaries for a total of $375,268,800. This represents more than 16% of the $2,312,436,300 in total appropriations. *See* Approved Current Expense Budget and Budget Message https://www.aacounty.org/sites/default/files/2024-07/fy2025-approved-budget-and-message.pdf?1&fbclid=IwY2xjawEwN9FleHRuA2FlbQIxMAABHWagP3bQnGzRVMvdAEanYV3pN2BamCRc0ojtigPi9H6sNWBZKVz0KyMkIA_aem_9OVuDwFN-ZaBPCIb3gVKkg (last accessed Aug. 20, 2024).

[6] The Baby Bonus would cost an estimated $7 million if $1,000 payments were dispersed. E. 31. The total budget for Baltimore City in 2024 was $4.7 billion. *See* Baltimore City Bureau of the Budget and Management Research, Budget Publications (2024), https://bbmr.baltimorecity.gov/budget-publications (last accessed Aug. 20, 2024).

between government and the people. *Smallwood*, 327 Md. at 237. In line with this interpretation, the Court has been unequivocal that a provision that distributes fiscal authority is "bedrock charter material" that "alters the form and structure of government. *Id.* at 239. When looking for additional guidance on what is valid "charter material," the Court has surveyed other charters and constitutions. *See id*. at 237–38. Because the Baby Bonus redistributes fiscal authority and is similar to provisions in supreme law across the country, it alters the form and structure of government and is valid charter material.

a. Because the Baby Bonus distributes fiscal authority, it is "bedrock charter material" that "alters the form and structure of government."

The Baby Bonus fits within the "form and structure" criteria as articulated by this Court over time. *Smallwood* is instructive. There, the Court noted that it is a basic function of supreme law, such as local charters, "to distribute power among the various agencies of government, and between the government and the people who have delegated that power to their government." *Smallwood*, 327 Md. at 237. Quoting the *Griffith* dissent approvingly, the Court held "that taking fiscal power away from the county council is 'bedrock charter material' that 'alters the form and structure of government ... in a most fundamental way.'" *Id.* at 239. The Court concluded that, "a provision in a county charter placing restrictions upon the county council's revenue raising authority is a fundamental aspect of the form and structure of government and thus is proper charter material." *Id.* at 241.

The *Atkinson* Court likewise read "form and structure" expansively and accepted that distributions of fiscal authority fit firmly within its bounds. The Court took it as "settled that binding arbitration is an appropriate subject matter for inclusion in a county charter." *Atkinson*, 428 Md. at 745. In doing so, the Court pointed to the "teaching" of a trio of past cases on the subject. *Id*. at 745. The *Atkinson* Court agreed with the logic undergirding these cases, writing "[w]hether some portion of the County Council's role in the budget process is to be transferred to a neutral arbitrator, in the event of an impasse in collective bargaining with public safety employees, affects the form and structure of government." *Atkinson*, 428 Md. at 748.

The logic of *Smallwood* and *Atkinson* applies with equal force to the Baby Bonus. The *Atkinson* Court allowed voters to transfer authority regarding a narrow slice of the budget from the Council to a third-party, private actor (the neutral arbiter). This transfer of authority was a requirement of their policy directive, and the Court held that to hold it impermissible would be to deny voters their ability to determine who has certain budgetary powers in the county, a fundamental question regarding the "form and structure" of the government they established. *Atkinson*, 428 Md. at 748. So, too, would the Baby Bonus redistribute a small portion of budgetary authority away from the Mayor and City Council for a specific purpose—in this case to support families of newborns or others welcoming a child. In doing so, the proposal clearly intends to "tak[e] fiscal power away from the county council," which is "'bedrock charter material' that 'alters the form and structure of government ... in a most fundamental way.'" *Smallwood*, 327 Md. at 239.

In its written opinion, the Circuit Court found that the Baby Bonus is "less directed to the form and structure of government than the proposal … in *Cheeks* … because the proposal in *Cheeks* sought to create a Tenant-Landlord Commission." E. 21. This logic is entirely inconsistent with the Court's precedents. Rather than mandate the establishment of some sort of Baby Bonus Commission, the Baby Bonus proposal, consistent with *Atkinson*, leaves the discretion of how and via what existing or new agency the policy is to be implemented to the City Council. This additional discretion certainly does not make the proposal *less* constitutional nor does it have any impact on the form and structure analysis.

b. Looking elsewhere in the Baltimore City charter and to other supreme law documents, the Baby Bonus is charter material.

Since its inception in *Cheeks*, the "form and structure" requirement has remained tethered to the idea that charters, being similar to constitutions, should only hold substance similar to that traditionally found in supreme law. The Court's analysis has, therefore, frequently used "charter material" interchangeably with "form and structure," and looked to other repositories of supreme law for guidance. *See Smallwood*, 327 Md. at 237–38.

A survey of local charters, the Maryland constitution, and other statewide constitutions demonstrates that the Baby Bonus is valid "charter material" under this standard.

The Baltimore City Charter is replete with limitations on the Council's budgetary authority and other special funds.

- Art. I, General Provisions § 14 creates the Affordable Housing Trust Fund, mandates revenues from payments made pursuant to the development policies and a portion of the tax increment financing revenues to be deposited into the Fund, requires that monies in the Fund do not lapse, sets forth specifics on a mandated Commission, and limits eligibility for assistance to "very low income" individuals.
- Art. II, General Powers § 42 mandates that certain transferred employees from the Police Department to the Department of Transit and Traffic retain their specific pension fund memberships and benefits, including future proportional pension increases—without any discretion for City Council over these matters.
- Art. II, General Powers § 71 requires the creation of a "Commission to Restore Trust in Policing" and requires commissioners to be reimbursed exactly in accordance with a specified state formula.
- Art. II, General Powers § 40 mandated that from 1997 to 2022, the City was required to allocate at least 40 percent of hotel room tax proceeds to Visit Baltimore for Convention Center operations and tourism promotion (notably, Section 40 was added to the Charter by the General Assembly, indicating that state legislators also saw specific and mandatory appropriations to be proper charter material).

The Children and Youth Fund

The most direct analogue is the Children and Youth Fund. Enumerated as General Provisions § 13 in the Baltimore City Charter, the Children and Youth Fund is a dedicated, non-lapsing Fund to be used solely to support and enhance programs and services for children and youth. Baltimore City Charter, General Provisions § 13. Appropriations into the Fund are mandatory and must be equal to at least $0.03 on every $100 of assessable value—exactly the same funding structured, *verbatim*, used by the Baby Bonus. *Id*.

The Children and Youth Fund was added to the Charter through City Council resolution and voter ratification.[7] The resolution was sponsored by then-City Councilman, now Appellee Mayor Brandon Scott, as well as other councilmembers who now challenge the Baby Bonus amendment.[8] For the last eight years, appropriations to the Children and Youth Fund have been incorporated into the City budget as mandated by the amendment.[9]

When Appellee Mayor Brandon Scott and others sponsored the Children and Youth Fund, they sought guidance from the Department of Law on any potential legal problems. *See* E. 94. While the Department of Law highlighted contradictions with existing City law and some minor language clarity concerns, it otherwise held that, if the clarity issues were resolved, "the Law Department could approve [the proposed amendment] for form and legal sufficiency." E. 95. Notably, the Department of Law found *no constitutional problems* with the Children and Youth Fund proposal—failing to

---

[7] *See* Md. State Bd. Elec., Official 2016 Presidential General Election results for Baltimore City, Question E, https://elections.maryland.gov/elections/2016/results/general/gen_qresults_2016_4_03_1.html (last accessed August 20, 2024); *see also* Baltimore Children & Youth Fund, Our History (2022), https://bcyfund.org/our-story/ (last accessed Aug. 20, 2024).

[8] *See* Baltimore City Council, Legislation, *Charter Amendment - Children and Youth Fund FOR the purpose of establishing a continuing, non-lapsing Children and Youth Fund*, https://baltimore.legistar.com/LegislationDetail.aspx?ID=2467751&GUID=E3C85E85-5D61-47D1-854B-813E8A07CED1&Options=&Search= (last accessed Aug. 20, 2024).

[9] *See* Baltimore City Bureau of the Budget and Management Research, Budget Publications (2024), https://bbmr.baltimorecity.gov/budget-publications (last accessed Aug. 20, 2024).

mention at all any alleged usurpation of legislative or police powers that it now claims with the Baby Bonus. *Id*.

Provisions in Other Maryland Local Charters

County charters throughout Maryland feature provisions affecting the budget and directing appropriations for certain purposes. Examples include:

- Anne Arundel County Charter § 814, which mandates pension benefits for certain County employees and requires that pension benefit to be calculated using an actuarial reserve plan.
- Baltimore County Charter § 1013, which establishes the Citizens' Fair Election Fund, deposits monies collected from specific charter-mandated fines and other revenues into the Fund, and sets forth specific details about permissible uses, eligibility, and public match formulas for varying levels of contributions.
- Howard County Charter § 907, which establishes a similar "Citizens Election Fund system."
- Frederick County Charter § 514, which mandates broadly that monies from special services, taxes, assessments, and other dedicated revenues must be deposited into and appropriated from dedicated special funds and can only be used for the specific purposes for which each fund was created.

State Constitutions

Nearly every state constitution impacts the budget through the creation of special funds and mandated appropriations into those funds, frequently through specified revenue sources. *See* App'x B: Funds and Appropriations in State Constitutions. E. 98. Of particular note, Article XIX of the Maryland Constitution allows the General Assembly to grant up to five video lottery operation licenses. Md. Const. Art. XIX. Though disbursement of the licenses is discretionary, use of the revenues, which must be used to foster the education of K-12 students or for the construction of public schools, is not.

Md. Const. Art. XIX § (f)(2). Further limiting the General Assembly's budgetary authority, the Article forbids the legislature from replacing any existing funding with these additional revenues. *Id.* Examples from other states include:

- Article VIII, Section 12 of Delaware's constitution, which creates the Transportation Trust Fund, requires certain revenues to be deposited into the Fund, and mandates the monies be spent on certain transportation-related purposes. Del. Const., Art. 8, § 12.
- Article XII, Section 1 of Hawaii's constitution, which establishes the Hawaiian Rehabilitation Fund, appropriates "thirty percent of the state receipts derived from the leasing of lands cultivated as sugarcane lands," and mandates spending be in accordance with the federal Hawaiian Homes Commission Act. Haw. Const. Art. 7, § 1.
- Article VII Section 9 of Iowa's constitution, which appropriates "[a]ll revenue derived from state license fees for hunting, fishing, and trapping" into the Fish and Wildlife Protection Fund and requires monies in the Fund to be used for certain wildlife regulation and preservation purposes. Iowa Const. Art. 7, § 9.
- Article VIII Section 7 of New Jersey's constitution, which requires gas tax revenues to be used for certain purposes, specifies that a portion of sales tax revenue must be spent on conservation of agricultural lands, and mandates other appropriations. N.J. Const. Art. 8, § 7; id., Art. 8, § 4; id., Art. 8, § 6.

The Baby Bonus shares key similarities with these special funds established in state constitutions and county charters. Like many of these provisions, the Baby Bonus creates a dedicated fund for a specific purpose.[10] Additionally, the Baby Bonus leaves implementation details to the legislative body (the City Council), just as many state constitutional funds allow the legislature to determine specifics within the broader mandate. These parallels demonstrate that the Baby Bonus follows a well-established

[10] While many of these provisions offer dedicated revenue sources, the Baby Bonus expressly leaves how to fund its appropriation (and in what amount, subject to the floor) to the discretion of the City Council.

pattern of using supreme law documents to create dedicated funding mechanisms for specific public purposes.

D. The Implicit "Form and Structure" Requirement Imposed by Cheeks Should Be Overturned.

The Maryland Supreme Court has held that stare decisis is "the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles." *State v. Waine*, 444 Md. 692, 699–700 (2015). The Court's devotion to stare decisis, however, is "not absolute." *State v. Stachowski*, 440 Md. 504, 520 (2014). The Court will overturn precedent if it is found to be "clearly wrong and contrary to established principles" or when "there is a showing that the precedent has been superseded by significant changes in the law or facts." *Meyer v. State*, 445 Md. 648, 669 (2015) (citations and quotations omitted).

Though the Baby Bonus fits comfortably within the limitations established by the relevant case law, the *Cheeks* Court was "clearly wrong" in reading an implicit requirement that charter material must speak to the "form and structure" of government into the Home Rule Amendment. Additionally, the Court's decision in *Atkinson* may be viewed as a significant change in the law since *Cheeks*. The principles of stare decisis thus are inapplicable and this requirement should be overturned.

1. The Cheeks form and structure requirement was clearly wrong.

Proper construction of Article XI-A does not include any restriction on the substance of charter material that would require it to speak to "form and structure" of

government. Article XI-A, subject to its narrow express provisions, leaves to the voters to decide what is suitable for their charters.

In interpreting the state constitution, this Court has generally used the same principles that it applies to statutory construction. *See Brown v. Brown*, 287 Md. 273, 277 (1980). Because "[t]he Maryland Constitution was carefully written and solemnly adopted by the Constitutional Convention of 1867, and approved by the people of the State," *Buchholtz v. Hill*, 178 Md. 280, 285–86 (1940), the Court has noted that it is "not at liberty to search for its meaning beyond the Constitution itself." *Reed v. McKeldin*, 207 Md. 553, 560 (1955). Instead, the Court has remained focused on the plain language of the text and emphasized its particular importance in constitutional matters. *See Buchholz* at 286 ("While statutes are sometimes hastily and unskil[l]fully drawn, a Constitution imports the utmost discrimination in the use of language.").

Still, like with statutes, the interpretation of the plain language of a provision is read with the context and structure of the larger scheme. *See Bernstein v. State*, 422 Md. 36, 53 (2011). Provisions "on the same subject are 'read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory.'" *Id*. (quoting *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 303 (2001)).

Finally, ambiguous constitutional text should be interpreted so as to "discern and then give effect to the intent of the instrument's drafters and the public that adopted it." *State Bd. of Elecs. v Snyder*, 435 Md 30 (Md. 2013) (citing *Fish Market Nominee Corp. v. G.A.A., Inc.*, 337 Md. 1, 8–9 (Md. 1994)). In attempting to ascertain this intent, "the

courts may consider the mischief at which the provision was aimed, the remedy, the temper and spirit of the people at the time it was framed, the common usage well known to the people, and the history of the growth or evolution of the particular provision under consideration." *Johns Hopkins Univ. v. Williams*, 199 Md. 382, 386–87 (1952).

In applying these principles, the Court has previously been wary of reading any inherent powers or limitations into the text. In *Buchholtz*, for example, the Court rejected the claim that the Governor had some "inherent power" to appoint the Clerk to the County Commissioners of Allegany County. *Buchholtz*, 178 Md. at 285-86. Instead, the Court noted that the powers of the Governor are expressly enumerated in the Constitution and it is not for the courts to grant additional powers beyond those so enumerated. *Id*.

Here, neither the plain language, its surrounding context, nor the drafters' intent point to any implicit limitation on the substance of charter material or amendments. The plain language of Sections 1 and 5 set forth the procedures for adopting and amending charters. *See* Md. Const., Art. XI-A, §§ 1 and 5. They make no mention of any substantive limitations on the material other than that it may not conflict with state law. *Id*. There is nothing about "form and structure" in the text nor anything requiring material to be similar to what is found in other constitutions or documents of supreme law. *Id*.

The surrounding provisions also offer no reason to believe that county charters are inherently limited in some way. The drafters did include some substantive limitations on the content of county charters: Section 1 prohibits charter material from conflicting with state law, Section 2 forbids counties from using charters to expand their authority beyond

that expressly granted, and Section 3 mandates that the lawmaking power must be vested in legislative body. These provisions demonstrate that the drafters were willing to and did expressly include some limitations but chose not to include any requirement that charter material alter the form and structure of government or anything of that sort. Thus, just as the *Buchholtz* Court declined to read into the state constitution any inherent powers of the Governor, so, too, should this Court refuse to read into Article XI-A any implicit or inherent restrictions on "charter material."

The intent of the drafters leads to the same conclusion. The history surrounding the ratification of Article XI-A is particularly instructive on this point. The early twentieth century witnessed a "national movement" which sought to "restore and revitalize local government by giving citizens of counties and municipalities the power to legislate as to local matters free from undue encroachment by state legislatures." *Ritchmount*, 283 Md. at 55. "It was this popular demand for increased local autonomy that led ultimately to the ratification of Article XI-A at the general election of November 1915." *Id*. at 56. The primary purpose of the Home Rule Amendment was, therefore, establish a charter adoption and amendment procedure that "from beginning to end … is an act of the people, an expression of the local popular will." *Id*. at 57.

The "mischief at which the provision was aimed," therefore, was an intrusive state government meddling in what were properly local affairs. The "remedy" was the establishment of a charter system that allowed the people of Maryland counties to exercise or decide who might exercise on their behalf the powers expressly granted to them by the General Assembly. And "the temper and spirit of the people" at the time of

adoption was one of empowerment of themselves as the citizenry of their respective counties. Nothing in this history suggests any implicit limitation on the ability of the people to determine what is and is not material suitable for their charter. In fact, a narrow reading of Article XI-A would contradict this historical intent and undermine the very purpose of charter amendments, which are meant to be "an act of the people, an expression of the local popular will." *Ritchmount*, 283 Md. 48 at 57.

Finally, this construction is in line with the interpretation of state courts in Ohio—whose similar Home Rule Amendment inspired Maryland's.[11] Part of the same national movement towards local control, Ohio adopted charter home rule for its municipalities in 1912. Ohio Const. Article XVIII, Section 9. As in Maryland, either the county legislative body or the voters by petition may submit a proposed charter amendment to the electorate. *Id*. Rather than place any implicit limitations on the material of these charters, Ohio courts have largely left voters to determine the substance of their high law. In 2021, for example, the Supreme Court of Ohio upheld an amendment that established an "Affordable Housing Trust Fund" and required the city to appropriate at least $50 million to the fund annually. *State ex rel. Cincinnati Action for Hous. Now v. Hamilton Cnty. Bd. of Elections*, 164 Ohio St. 3d 509, 173 N.E.3d 1181 (2021). The court did not consider any form and structure or other *substantive* limitation, instead focusing solely on whether all *procedural* requirements had been followed. *Id*. The Ohio courts have taken

[11] *Genuine Home Rule Proposed by Trippe: Speaker Will Introduce Constitutional Amendment This Week*, THE BALTIMORE SUN (Mar. 8, 1914).

issue with charter substance only when the proposal conflicts with state law. *See State ex rel. Twitchell v. Saferin*, 155 Ohio St. 3d 52, 119 N.E.3d 365 (2018).

Therefore, under proper construction, Article XI-A does not include any implicit restriction as to what is or is not allowable "charter material" and *Cheeks* was clearly wrong to impose its form and structure requirement.

2. The Court's opinion in Atkinson may be viewed as a significant change in the law

While the majority in *Atkinson* seemingly viewed their decision to be consistent with the Court's precedents, the dissent saw the opinion as having "uprooted three decades of our jurisprudence regarding the constitutionality of charter amendments." *Atkinson*, 428 Md. at 760 (Battaglia, J., dissenting). Viewed this way, the Court's opinion in *Atkinson* represents a significant change in law necessitating a re-examination of the precedents upon which it stood.

While *Atkinson* remained, like its predecessor cases, focused almost exclusively on detail and discretion, the Court was disinterested in rigorously applying or even applying at all the implicit form and structure requirement. The Court said first that it was "settled that binding arbitration is an appropriate subject matter for inclusion in a county charter." *Atkinson*, 428 Md. at 745. This in itself was a departure from the *Griffith*, which was decided just four years after *Cheeks* and held that an amendment similarly requiring binding arbitration for certain public employees failed to go to the form and structure of government. *See Griffith*, 298 Md. at 388.

The *Atkinson* Court, however, went one step further. The Court stated explicitly that "[t]he whole point in placing [the proposed amendment] before the voters was to obtain authorization for including provision for binding arbitration in the County's 'constitution.'" *Atkinson*, 428 Md. at 745. This nod to democratic principles aligned with the dissenting opinion from *Cheeks*, which asserted that the majority opinion "violate[d] the basic democratic principle that the people have the right to determine for themselves by what rule of conduct they shall be governed." *Cheeks*, 287 Md. at 632 (Cole, J., dissenting).

The *Atkinson* Court dispensed with the form and structure criteria from *Cheeks* in just two sentences before proceeding to its Section 3 analysis. Rigid application of the form and structure limitation always conflicted with home rule's original deference to local voters' preferences regarding the content of their own charters. *Atkinson*'s expansion of the realm of permissible charter material is the type of significant change in the law (though really a return to the original understanding of home rule) that justifies finally overruling *Cheeks*--something the *Atkinson* dissent accused the majority of doing *sub silentio*. 428 Md. at 760 (Battaglia, J., dissenting).

3. The implicit form and structure requirement from Cheeks has led to muddled and inconsistent case law.

Far from predictability, the implicit "form and structure" requirement of *Cheeks* has created a muddied and sometimes inconsistent case law. Beginning with *Cheeks* itself, the Court never rigorously defined or applied the "form and structure" element of the binary it set forth, instead focusing more on whether the amendment was "legislative

in character." *See Cheeks* at 607–609. *Griffith* followed suit, mentioning form and structure only in passing and instead striking down the proposal because it sought "to circumvent the local legislative body and enact local law." 298 Md. at 388. Both *Cheeks* and *Griffith* involved comprehensive and detailed legislation, and this was the primary focus of the Court in each case.

Smallwood further highlighted the difficulty of applying the "form and structure" requirement. The *Cheeks* Court had said that supreme law usually speaks to form and structure and thus required charter material to do so. *See Cheeks*, 287 Md. at 607. Unsure how something like a tax cap proposal might fit into this idea of "form and structure," the *Smallwood* Court worked in reverse, looking to supreme law elsewhere to determine its bounds. *See Smallwood*, 327 Md. at 237–38. This circular approach evidences the difficulty in consistently applying the form and structure requirement.

The conflicting outcomes from *Griffith* and *Atkinson* also illustrate the inconsistency in application of the implicit forma and structure requirement. As discussed above, both cases involved amendments requiring binding arbitration for firefighter personnel. The Court, however, reached opposite results not just on the amount of discretion but on the threshold question as to whether binding arbitration for firefighters was implicitly valid charter material.

Ultimately, in deferring to the voters to decide whether the amendment was fit for their local charter, the *Atkinson* Court recognized the weakness and difficulty of the form and structure implicit requirement. *See Atkinson*, 428 Md. at 745. These difficulties and

inconsistency are contrary to the principle of stare decisis and further indicate that the *Cheeks* form and structure requirement should be overturned.

4. Without the form and structure requirement, the Court's central focus should be the discretion retained by the Council.

Without the form and structure requirement, the Court should focus solely on the discretion left to the local legislature when faced with a policy decision supported by the voters. Unlike "form and structure," the prohibition on impermissibly legislative charter material is tethered to the text adopted by Maryland voters in Article XI-A—the Section 3 requirement that the Council have the "full power to enact local laws. Consistent with *Atkinson*, therefore, voters would retain the authority to direct their legislative bodies through policy decisions, so long as the detail of implementation is left to the council. This approach would maintain a balance between the electorate's right to shape broad policy and the Council's role in determining the specifics of implementation.

Should the people of Maryland and their elected representatives seek to add different or additional requirements, they may do so through the proper channels of amending the state constitution. Article XI-A has been amended eight times since it was ratified in 1915,[12] and there are currently efforts underway to do so again.[13]

---

[12] *See* Acts 1955, c. 557, ratified Nov. 6, 1956; Acts 1963, c. 192, ratified Nov. 3, 1964; Acts 1972, c. 371, ratified Nov. 7, 1972; Acts 1977, c. 681, ratified Nov. 7, 1978; Acts 1982, c. 849, ratified Nov. 2, 1982; Acts 1992, c. 207, ratified Nov. 3, 1992; Acts 1996, c. 81, § 1, ratified Nov. 5, 1996; Acts 2014, c. 261, § 1, ratified Nov. 4, 2014.

[13] Members of the Montgomery County Council are asking the General Assembly to revisit the signature requirement thresholds. *See* https://x.com/EvanMGlass/status/1815823886908563570.

Amendments would also remain subject to the primary limitation on charter material—the strict procedural processes of Article XI-A. After 16 months of engagement through a grassroots, teacher-led campaign, more than 10,000 voters in Baltimore City have proclaimed their desire for the Baby Bonus to be on the ballot, and the electorate of Baltimore City should have the opportunity to decide if this policy is suitable for their Charter.

E. If Any Provision of the Baby Bonus Is Found Invalid, that Provision Should Severed and the Remainder of the Proposal Should Be Included on the Ballot.

Maryland case law has established "a settled principle that '[w]hen the dominant purpose of an enactment may largely be carried out notwithstanding the [enactment's] partial invalidity, courts will generally hold the valid portions severable and enforce them.'" *Smallwood*, 327 Md. at 246 (quoting *O. C. Taxpayers For Equal Rts., Inc. v. Mayor & City Council of Ocean City*, 280 Md. 585, 601 (1977)). This applies equally to charter amendments as it does state bills or local ordinances. *Id*. at 245. Additionally, "[t]here is a strong presumption that if a portion of an enactment is found to be invalid, the intent [of the drafters] is that such portion be severed." *Smallwood*, 327 Md. at 245. This presumption remains even in the absence of an express severability clause. *Id*.

Applying these principles, the Court in *Smallwood* found it had a "duty" to sever invalid roll back provisions from the enforceable tax rate caps the same amendments. *Id*. at 246. In doing so, the Court held that such severance would not destroy the dominant purpose of the amendments and that the invalid portions were not "so inseparable from the remainder that [their] invalidity makes the whole invalid." *Id*. at 248 (quoting

Schneider v. Lansdale, 191 Md. 317, 323 (1948)). Notably, the Court ordered the Board of Elections to include the amendment on the ballot but without the invalid portions. *Id*. at 224–26.

The dominant purpose of the Baby Bonus is to provide support to Baltimore families welcoming a new child. Should any specific aspects of the Baby Bonus amendment be found invalid, severance would not destroy this purpose and therefore the remaining provisions should be included on the November 2024 General Election ballot.

CONCLUSION

For the foregoing reasons, Appellant Maryland Child Alliance respectfully requests that this Honorable Court reverse the decision of the Circuit Court and instruct the Circuit Court to enter an order forthwith directing the Baltimore City Board of Elections to place the proposed Baby Bonus amendment on the General Election ballot.

/s/ *H. Mark Stichel*
H. Mark Stichel
(AIS No. 8312010443)
RKW, LLC
10075 Red Run Blvd.
Owings Mills, Maryland 21117
443-379-4013
hmstichel@rkwlawgroup.com

Attorney for Appellant Maryland Child Alliance, Inc.

CERTIFICATION OF WORD COUNT

AND COMPLIANCE WITH RULE 8-112

1. This brief contains 10872 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ *H. Mark Stichel*
H. Mark Stichel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 2024, a copy of the foregoing Appellant Brief and Record Extract were sent via the courts MDEC electronic filing system to all counsel of record.

/s/ H. Mark Stichel
H. Mark Stichel (# 8312010443)