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IN THE
SUPREME COURT OF MARYLAND

SEPTEMBER TERM, 2023

NO. 34

MARYLAND CHILD ALLIANCE, INC., et al.,

Appellants,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE, et al.,

Appellees.

ON APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY
(The Honorable John S. Nugent, presiding)

APPELLEES' BRIEF

EBONY M. THOMPSON
City Solicitor

MICHAEL REDMOND
Director, Appellate Practice Group

THOMAS P. WEBB
Chief City Solicitor

DEREK VAN DE WALLE
Assistant City Solicitor

BALTIMORE CITY LAW DEPARTMENT
100 Holliday Street
Baltimore, Maryland 21202
410-396-1231
Derek.Vandewalle@baltimorecity.gov

Counsel for Appellees, Mayor and City Council of Baltimore,
Michael Mocksten, and Robert Cenname

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STATEMENT OF THE CASE

The Charter of Baltimore City is a local constitution. Like any constitution, its sole purpose is to provide form and organization to City government. The Charter is separate and apart from the Baltimore City Council, which serves as the City's arena to debate and enact new public policy. While the voters of Baltimore have a constitutional right to amend their Charter via popular vote, a Charter amendment cannot go beyond the Charter's basic organizational function. It is not a vehicle for voter-initiated legislation.

The City Board of Elections certified the "Baby Bonus Amendment" for the November 5, 2024 General Election ballot. That Amendment, submitted through petition by the Maryland Child Alliance, Inc. (the "Child Alliance") would have permanently altered the City Charter and mandated that the City pay at least $1,000 to each parent of a new-born child who resides in Baltimore City. While the Baby Bonus Amendment is well-intentioned, there is no doubt that it is legislative in nature and therefore unconstitutional.

Appellees Mayor and City Council of Baltimore (the "City"), Michael Mocksten, and Robert Cenname filed a Complaint and Petition for Judicial Review in the Circuit Court for Baltimore City challenging the constitutionality of the Baby Bonus Amendment pursuant to Election Law §§ 6-209 and 6-210, Cts. §§ 3-401 to 3-415, and Md. Rule 15-701.

After substantial briefing and a hearing, the circuit court ruled that the Babby Bonus Amendment violates Article XI-A §§ 2 and 3 of the Maryland Constitution because it unlawfully infringes upon the police and general welfare powers and legislative authority of the City. The court provided its reasoning in a 17-page Memorandum Opinion and Order. E8-25. Based on well-established precedent of this Court, and looking at the plain language of the Amendment, the circuit court found that the Amendment does not address the form or structure of government, removes all meaningful discretion from the City to legislate in that area, and constitutes legislative material prohibited by Article XI-A § 3. This Court should affirm the well-reasoned judgment of the circuit court.

QUESTION PRESENTED

Did the circuit court correctly determine that, as a matter of law, the Baby Bonus Amendment violates Md. Const. art. XI-A §§ 2 and 3 because it is not limited to altering the form and structure of government, but is legislative in nature, unlawfully infringes upon the police and general welfare powers, and therefore is not proper charter material?

STATEMENT OF FACTS

After the Child Alliance gathered the requisite number of valid signatures for the Baby Bonus Amendment, the City Board certified the Amendment for the November 2024 General Election ballot. E49-56. The Baby Bonus Amendment

would add Section 20 to the Article I of the Baltimore City Charter to create the "Baltimore Baby Bonus Fund." The full text of the proposed amendment provides:

Article I – General Provisions

§ 20. Baltimore Baby Bonus Fund.

a. Fund established; provision of payments.

1. There is a continuing, nonlapsing Baltimore Baby Bonus Fund, to be used exclusively for the provision of Baby Bonus Payments to residents of Baltimore City.

2. A Baby Bonus Payment is a one-time payment to the birthing parent of a child, upon the birth of a child, unless the conditions in subparagraph (3) or (4) are satisfied.

3. By Ordinance, or by proper delegation of regulatory authority, the Mayor and City Council may set forth conditions in which the guardian of a child other than the birthing parent may receive the Baby Bonus Payment instead of the birthing parent.

4. By Ordinance, or by proper delegation of regulatory authority, the Mayor and City Council may set forth conditions in which an adopting parent or parent(s) may receive a single Baby Bonus Payment upon the adoption of a child.

5. A Baby Bonus Payment shall be at least $1,000.

6. A timely Baby Bonus Payment shall be made to all Baltimore City residents who meet the conditions set forth in subparagraphs (2), (3), or (4).

7. The Fund shall be administered in accordance with the following standards:

    1. to the maximum extent feasible, payments should be made within a reasonable time frame to ensure that parents can use the funds to assist with the costs of raising a newborn child;

2. to the maximum extent feasible surplus monies should be used to the purposes set forth in paragraph (a) subparagraph (1).

3. By Ordinance, or by proper delegation of regulatory authority, the Mayor and City Council shall determine the annual Baby Bonus Payment amount using all relevant data, including, but not limited to: surplus monies in the fund, historical birth rates, estimated future property values, etc.

b. *Revenue Source*.

The Baltimore Baby Bonus Fund shall comprise:

1. A mandatory annual appropriation in the Ordinance of Estimates of an amount equal to at least $0.03 on every $100 of assessed or assessable value of all property in the City of Baltimore (except property exempt by law); and

2. Grants and donations made to the Fund.

c. *Continuing Nature of the Fund*.

Notwithstanding any other provision of this Charter, unspent portions of the Baltimore Baby Bonus Fund:

1. remain in the Fund, to be used exclusively for its specified purposes;

2. do not revert to the general revenues of the City; and

3. their appropriations do not lapse.

d. *Implementation*. By Ordinance, the Mayor and City Council shall provide for the oversight, governance, and administration of the Baltimore Baby Bonus Fund, including:

1. methods and criteria for evaluating parental eligibility;

2. methods and criteria for determining the logistical distribution of the Fund; and

> 3. the establishment of any other legislative or administrative rules, regulations, or standards, consistent with this section, governing the Fund, its operations, and programs and services funded by it.

E9-11.

The Plaintiffs-Appellees filed a four-count Complaint against Defendants the City Board, Election Director Armstead B.C. Jones, President of the City Board Scherod C. Barnes, the State Board of Elections, Administrator of Elections for the State Board Jared DeMarinis, and Chairman of the State Board Michael G. Summers.[1] The Child Alliance was permitted to intervene as a Defendant.

No discovery was taken and the circuit court heard the matter on an expedited basis pursuant to Md. Code Ann., Election Law Article ("Elec."), § 6-209. All parties filed motions for summary judgment.[2] After a hearing, the circuit court, the Honorable John S. Nugent presiding, entered a Memorandum Opinion and Order granting Plaintiff-Appellees' Motion for Summary Judgment and declaring that the

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[1] Count I seeks judicial review of the City Board's decision pursuant to Elec. §§ 6-209 and 6-210. Count II requests a writ of mandamus pursuant to Md. Rule 15-701. Count III seeks a declaratory judgment pursuant to Md. Code Ann., Courts and Judicial Proceedings Article ("Cts."), §§ 3-401 to 3-415 and Elec. § 6-209(b) that the Baby Bonus Amendment is unconstitutional. Count IV seeks an injunction to remove the Baby Bonus Amendment from the ballot. E35-38.

[2] Defendants City Board, Director Jones, and Scherod C. Barnes moved to dismiss Plaintiffs' complaint or alternatively for summary judgment. The Child Alliance filed a separate motion to dismiss. The circuit court denied those motions. E2, E25.

Baby Bonus Amendment violates Art. XI-A, § 3 of the Maryland Constitution, and enjoining the Defendants-Appellants from placing the Baby Bonus Amendment on the November 2024 General Election ballot. E8-25.

Additional facts will be provided as needed.

STANDARD OF REVIEW

A party is entitled to summary judgment in its favor "if the pleadings, depositions, answers to interrogatories, admissions, and affidavits show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2–501(f). Because under Rule 2–501 the "trial court determines issues of law; it makes rulings as a matter of law, resolving no disputed issues of fact[,] . . . the standard for appellate review of a trial court's grant of a motion for summary judgment is simply whether the trial court was legally correct." *Beatty v. Trailmaster Prod., Inc*., 330 Md. 726, 737 (1993) (internal citations omitted); *see Dashiell v. Meeks*, 396 Md. 149, 163 (2006) ("With respect to the trial court's grant of a motion for summary judgment, the standard of review is de novo.").

Moreover, "[t]he interpretation of constitutional provisions is a question of law that we review without deference, and under the same canons of construction that we use in interpreting statutes." *Spiegel v. Board of Education of Howard County*, 480 Md. 631, 646 (2022) (internal citations omitted) (citing *Mahai v. State*,

474 Md. 648, 668 (2021)). This Court reviews legal determinations made by a local board of elections without deference. *See Griffith v. Wakefield*, 298 Md. 381, 382-83, 388-90 (1984).

ARGUMENT

This Court must affirm the circuit court because the Baby Bonus Amendment is legislative in nature and leaves no discretion to the City Council in violation of Md. Const. art. XI-A §§ 2 and 3.

I. A charter is a local constitution and amendments to a charter are limited to altering the form and structure of government. Amendments that attempt to legislate are prohibited.

A. Only the City Council has the authority to legislate under Md. Const. art. XI-A.

Article XI-A of the Maryland Constitution, often referred to as the "Home Rule Amendment," controls this case. As this Court succinctly stated in *Cheeks v. Cedlair Corp.*:

> Section 2 of Art. XI-A requires the adoption by the General Assembly of "a grant of express powers" for those counties adopting a charter and provides that the express powers so granted to the counties and "the powers heretofore granted to the City of Baltimore, . . . shall not be enlarged or extended by any charter formed under the provisions of this Article, but such powers may be extended, modified, amended or repealed by the General Assembly."
>
> Section 3 of Art. XI-A provides that any charter adopted under s 1 of Art. XI-A "shall provide for an elective legislative body in which shall be vested the law-making power of said City or County." This section further provides that, in the City of Baltimore, the lawmaking power shall be vested in the City Council of the City of Baltimore, and that after the adoption of a charter by the City, the Mayor of Baltimore and the Baltimore City Council

> "subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws . . . including the power to repeal or amend local laws of said City . . . enacted by the General Assembly, upon all matters covered by the express powers granted as above provided."
>
> *   *   *
>
> The express powers granted to the City in the 1898 charter were codified as Art. 4, s 6 of the Public Local Laws of Maryland[.] . . . **Also granted to the City was "full power and authority" to pass ordinances deemed expedient "in maintaining the peace, good government, health and welfare of the City of Baltimore**."

287 Md. 595, 598, 600 (1980) (emphasis added).

The *Cheeks* Court further observed that:

> The present City Charter provides in Article III, s 15 that "Every legislative act of the City shall be by ordinance or resolution."

287 Md. at 601.[3]

The Baltimore City Charter is "a local constitution," that "forms the framework for the organization of the local government." *Bd. of Election Laws v. Talbot County*, 316 Md. 332, 341(1988); *Cheeks*, 287 Md. at 606; *Ritchmount P'ship v. Bd. of Supervisors of Elections of Anne Arundel Cnty*., 283 Md. 48, 58 (1978). Like any other constitution, the Charter is a "permanent document" that establishes the "form and structure of government." *Cheeks*, 287 Md. at 607. The "basic

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[3] Now codified in art. III, § 14 of the Baltimore City Charter. *See also* BALTIMORE CITY CHARTER, art. III, § 11 ("The Mayor and City Council of Baltimore shall have power to pass all ordinances, not inconsistent with the Charter, necessary to give effect and operation to all powers vested in the City.").

function of a charter is to distribute power among the various agencies of government." *Save Our Streets v. Mitchell*, 357 Md. 237, 248 (1998). It "creates the body politic and corporate, contains the municipal powers and duties of the various departments, boards and officers, and provides the manner in which the several powers shall be exercised." *Cheeks*, 287 Md. at 607 (quoting 2 E. McQuillin, Municipal Corporations 9.03 (3rd ed. 1979)). The Charter's clear–and limited–function is to provide a stable and permanent foundation on which the City's powers are exercised.

As a permanent organizational document, the City Charter is not a vehicle for making legislation. The Maryland Constitution limits that power to a duly elected legislative body. Article XI-A directs that "[e]very charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said City or County." Md. Const. art. XI. This legislative body "shall have full power to enact local laws of said City or County." *Id.* In the City, that body is the Baltimore City Council, with approval, veto or abstention by the Mayor to enact a law. *See* CHARTER, art. III, § 1 ("The Legislative Department of the City shall be the City Council, which shall consist of a single chamber."). The power to legislate is exclusive to the Mayor and City Council, which is empowered by the City Charter to "exercise within the limits of Baltimore City all the power commonly known as the Police Power." CHARTER, art. II, § 27 (emphasis added). The Charter makes

clear that "every legislative act . . . shall be by ordinance or resolution" passed by the Baltimore City Council. CHARTER, art. III, § 14.

Under both the Maryland Constitution and the Baltimore City Charter, the ability to pass legislation, create new public policy, and exercise police and public welfare powers rest exclusively with the elected Baltimore City Council. The Charter is limited to creating the framework on which these powers are exercised.

B. Charter amendments are limited to the form and structure of government under *Ritchmount*, *Cheeks*, and their progeny.

The City Board of Elections takes the position that the case law on this issue is confusing and needs clarification. Meanwhile, the Child Alliance asserts that *Cheeks* and its progeny—holdings which work against their position—were incorrectly decided by this Court. *Cheeks* and the cases that follow clearly articulate the principles and standards needed to address this issue—ones properly relied on by the circuit court.

In *Ritchmount P'ship v. Bd. of Sup'rs of Elections for Anne Arundel County*, the Court held that Article XI-A, § 1 "conferred upon the citizens of Anne Arundel County the right to reserve unto themselves by express charter provision the power to refer legislation enacted by the Anne Arundel County Council." 283 Md. 48, 64 (1978); *see also Cheeks*, 287 Md. at 610 ("The question in [*Ritchmount*] was whether, under Art. XI-A, the people of a chartered county could constitutionally confer upon themselves the power of referendum over local legislative enactments,

where such power was neither delegated by act of the General Assembly, nor expressly reserved to the inhabitants of charter counties by the Maryland Constitution.”). While *Ritchmount* held that the people have a right of referendum, that is quite different that the power to *initiate* legislation. Voter-initiated legislation is unconstitutional, but is what the Baby Bonus Amendment attempts to do here. *Accord Cheeks*, 287 Md. at 609-10 (prohibiting voters from exercising legislative powers of City Council through charter amendment).

The Court had its first opportunity to review the *substance* of a proposed charter amendment in *Cheeks*, where it reviewed the legality of a proposal to amend the City Charter by establishing a system of rent control under Article XI-A. 287 Md. 595 (1980). The Court espoused several clear principles controlling here.

First, a charter amendment “is necessarily limited in substance to amending the form or structure of government[.]” 287 Md. at 607. Thus, a charter amendment “cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation.” *Id*. at 607.

Second, a charter amendment cannot “completely circumvent[] the legislative body.” *Id*. at 613. Indeed, a citizen-initiated charter amendment that “exercise[s] of the police power by plebiscite . . . [is] legally impermissible.” *Id*. at 604 (quoting the ruling of the circuit court).

Third, Section 2 of Article XI-A prohibits the voters from "exercise[ing] the City's police or general welfare powers" because it "would constitute an unlawful extension or enlargement of the City's limited grant of express powers and would violate the constitutional requirement that those powers be exercised by ordinance enacted by the City Council." *Id*. at 609. Phrased differently, "to allow the voters, through the charter initiative, rather than the legislative process, to exercise the full range of the City's express powers would plainly involve an excessive exercise of those precisely limited powers granted to the City, and specifically to the City Council in its representative capacity." *Id*. at 610.

On those principles, the Court invalidated the proposed amendment because it was "essentially legislative in character" and "[c]onsidered as a whole, the amendment is not addressed to the form or structure of government in any fundamental sense and is not, therefore, 'charter material[.]'" *Id*. at 608.

The Court reasoned that

> s 3 of Art. XI-A requires that the City Charter provide for an elected City Council in which is vested the City's "law-making power." Under s 3, the City Council, and not the City electorate, is specifically given "full power" to enact local laws upon "all matters covered by the express powers granted" by s 2 powers which under that section may not be "enlarged or extended" by charter provision. The power of the City voters under s 6 and its implementing legislation to change the powers of the City Council by charter amendment is restricted by the provision contained in s 6 that such authority may not be exercised in violation of other powers vested in the City under Art. XI-A. The voters' power under s 6 is further restricted by ch. 555 of the Acts of 1920, as amended by ch. 548 of the Acts of 1945, which together

> provide that the voters' powers under s 6 cannot be exercised to take away or limit any power vested in the City under any law existing prior to June 1, 1945. Section 6 cannot, therefore, limit the City Council's powers under s 3 or operate to extend or enlarge the express powers granted under s 2. Consequently, the proposed amendment cannot, by reason of s 6, divest the Council of its acknowledged police power to legislate on the subject of rent control.

Cheeks at 608-09 (internal citations omitted). As discussed more fully below, the analysis is nearly identical in this matter.

In *Griffith v. Wakefield*, the Court reiterated the principle espoused in *Cheeks* and held invalid a proposed amendment to the Baltimore County charter containing a comprehensive arbitration scheme. 298 Md. 381, 383 (1984). In doing so, the Court reasoned the proposed charter amendment provided "an entire system of arbitration for a select group of county employees" and left "nothing for the determination of the County Executive or the County Council." 298 Md. at 386 (footnote omitted). "When viewed as a whole," the Court found that the "amendment is not intended to, nor does it, alter the 'form or structure' of the Baltimore County government. . . . As in *Cheeks***,** the charter amendment proposed in Baltimore County is 'essentially legislative in character[.]'" *Id*. at 388. Because the proposal to amend the charter "attempt[ed] to circumvent the local legislative body and enact local law . . . [it was] impermissible under Article XI–A of the Maryland Constitution[.]" *Id*. at 388.

Griffith and *Cheeks* hold that, when determining whether a proposed amendment is proper charter material, the Court should look to the amendment "as

a whole" to determine if alters only the "form and structure" or if it is legislative in nature. *Griffith* added that a proposed charter amendment that "merely *authorized*" the legislative body to act "and if, pursuant to that authorization, the [legislative body] had exercised its discretion to enact *an ordinance* containing provisions similar to those in the proposed charter amendment . . . the present case would be distinguishable from *Cheeks*." *Id*. at 389-90 (emphasis in original). *Atkinson I*, discussed *infra*, showcases that grant of mere authorization for the legislative body to act.[4]

In *Save Our Streets v. Mitchell*, the Court invalidated a proposed charter amendment that limited Harford County's ability to install road safety devices. 357 Md. 237 (1998). Notably, the proposed charter amendment in *Save Our Streets* was more succinct than the Baby Bonus Amendment at issue here. The amendment proposed, in its entirety:

> County funds shall not be spent to install or maintain on any road or street any permanent physical obstacle to vehicular movement, which for purposes of this section means any speed bump or hump. Any such device previously installed shall be removed within twelve months after this section takes effect, unless the Council by an affirmative vote of

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[4] *Bd. of Sup'rs of Elections of Anne Arundel Cnty. v. Smallwood*, which came next, concerned proposals to place limits on tax rates and revenue in Baltimore County and Anne Arundel County. 327 Md. 220 (1990). Speaking on prior case law, the *Smallwood* Court observed that "both *Griffith v. Wakefield* and *Cheeks v. Cedlair Corp.* were concerned with attempts by the voters to initiate detailed legislation through the guise of charter amendments." 327 Md. 220, 239 (1990).

> seven members approves its continued use at that location, after a public hearing for which notice was posted at or near the location of the device.

Id. at 240, n. 2.

In declaring that amendment invalid, the Court reiterated the principles of *Cheeks* and *Griffith* in that proper charter material is limited to "the basic form and structure of the local government" while anything "legislative in nature" is unconstitutional. *Id*. at 250. Thus, the Court drew a line between "general and fundamental limitations on government power" and "specific legislative schemes." *Id.* at 253.

To determine on which side of the line a charter amendment fell, the *Save Our Streets* Court clarified that:

> the length and detail of a proposed charter amendment are not dispositive as to whether the proposed amendment constitutes legislation or proper charter material. An important consideration is the degree to which the county council retains discretion and control regarding an area under its authority pursuant to Article XI–A of the Maryland Constitution.

357 Md. at 253.

Thus, any charter amendment that would "completely remove any meaningful exercise of discretion" from the legislative body will be struck down. *Id*. Further, the Court again noted that "broad authorizations" are generally permissible. *Id*. at

255 (citing *Griffith*, generally).[5] As discussed in more detail below, the Baby Bonus Amendment does not merely authorize the City to provide for the welfare of newborn children. It **requires** the establishment of a **mandatory, non-lapsing fund** to make **direct payments**, and even specifies the minimum amount of those payments.

C. Binding arbitration is proper charter material under *Atkinson I.*

The most recent case delineating the proper boundaries of charter amendments is *Atkinson v. Anne Arundel Cnty.*, 428 Md. 723 (2012) ("*Atkinson I*").

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[5] The *Save Our Streets* Court also explained the limited holding of *Smallwood*:

> It is important to stress that our holding in *Smallwood* was precisely phrased. We did not state that any proposed charter amendment which is articulated as a limitation on governmental power is valid under Article XI–A. Nor did we state that the proposed amendments addressed in *Smallwood* were constitutional merely because they were expressed as limitations on governmental power.

Id. at 252 (footnote omitted). The Court went on to explain that:

> Virtually any legislative scheme could be phrased as a limitation on governmental power. For example, the proposed charter amendment which this Court invalidated in *Griffith* could have stated that Baltimore County would be prohibited from resolving contract disputes between the county government and the firefighters union by any means other than by the binding arbitration scheme set forth in the amendment. Merely expressing the binding arbitration scheme as a limitation on the County Council's power would not save it from being essentially legislative in nature.

Id. at 252 n. 9.

In *Atkinson I*, the Court espoused a specific, limited principle: a local charter may authorize a system of binding arbitration, so long as all the detail of that system is left to the legislature. This ruling was consistent with this Court's prior holdings that a general "authorization or preclusion of a county council's power to enact" serves to delineate the boundaries of government power, and therefore affects the form or structure of government. *Save Our Streets*, 357 Md. at 253

Under Appellants' reading, *Atkinson I* authorizes the voters to (1) enact specific public policy measures via charter amendment; and (2) mandate the exact amount of money that must be spent on those measures. Based on that incorrect interpretation, Appellants understand *Atkinson I* to be a radical departure from precedent and create a new and broader understanding of proper charter material. Appellants' reading and interpretation is untethered from the text of the *Atkinson I* opinion and its precedents.

Atkinson I concerned an amendment to the Anne Arundel County Charter, passed by the voters in 2002, mandating binding arbitration with law enforcement officers and firefighters. 428 Md. at 726. The following year, the County Council enacted an ordinance implementing the binding arbitration provision. In 2011, the Council amended the ordinance to provide "that binding arbitration did not require the Council 'to appropriate funds or enact legislation necessary to implement a final written award' in arbitration." *Id.* (citing amended ordinance). Members of

bargaining units brought suit, seeking a declaration that the amended ordinance violated the charter provision. The County counterclaimed and sought a declaration that the charter provision was unconstitutional. *Id*. at 737.

The Supreme Court upheld the charter amendment and struck the ordinance. The Court began from the limited premise that "binding arbitration is an appropriate subject matter for inclusion in a county charter." *Id*. at 745. The Court further recognized that binding arbitration can only be meaningfully implemented if the county is required to appropriate funds to satisfy the decision of the arbitrator. *Id.* at 748. The Court drew boundaries around this holding, however, noting that specific appropriations were not appropriate charter material. It made clear that only "the *method* or *system* for budgeting and appropriating revenues . . . constitutes proper charter material." *Id.* at 749 (emphasis added). The *Atkinson I* Court did not state, as Appellants suggest, that a charter can mandate the appropriation of a specific sum to advance a specific public policy goal. Instead, *Atkinson I* holds that the Charter may broadly authorize the legislature to create a system for budgeting and appropriating funds, so long as the legislature is given complete discretion to build that system.

Despite the Appellants' assertions that the *Atkinson I* charter amendment "included numerous policy specifications," Child Alliance Br. at 16, the Court found that the amendment was proper only because it would "leave *all the detail* of

implementation to the Council for the exercise of its Art. XI-A law-making power." *Atkinson I*, 428 Md. at 749-50 (emphasis added). More specifically, the Court emphasized that the county council was empowered to create every aspect of the arbitration system, including:

> possible mediation, each step in the selection of the neutral arbitrator, timing, the powers of the arbitrator, receipt of final offers of each party, ten factors to be considered by the arbitrator after receiving evidence, the final, binding award, possible revision thereof by agreement, post-hearing motion or court action, and implementation of the award as part of the budget process.

Atkinson I, 428 Md at 750. Only this near-complete legislative discretion saved the amendment from being overturned.

Appellants suggest that *Atkinson I* has created some confusion regarding the legal boundaries for charter amendments and the proper test for determining their validity. They are incorrect. This Court's precedent is clear: a charter amendment must address the form and structure of government.[6] This form and structure is a broad-based foundation on which the legislature builds the details of public policy. This foundation may draw the boundaries of government action, broadly authorizing certain types of action but generally precluding others. *Save Our Streets*,

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[6] Most recently, the Appellate Court of Maryland stated that "'[c]harter material,' . . . is shorthand for a provision that affects the structure and form of government and may be added to a municipality's governing charter without infringing on the local legislature's authority." *Atkinson II*, 236 Md. App. 139, 147 n. 6 (2018).

357 Md. at 255 (finding "broad authorizations" and "general limits" were proper charter material).

A charter amendment departs from the form and structure of government, however, when it removes "decision-making authority" from the legislature by mandating the specific details of a policy. *Griffith*, 298 at 390. It may, for example, authorize a system of rent control, but cannot dictate the specific details of that system. *See*, *generally*, *Cheeks*. *Atkinson I* does not depart from this precedent or create any new standard. *Atkinson I* holds that a charter may broadly authorize a method or system of binding arbitration, but may not specify the details of that system, including the amount of any necessary appropriation.

II. The circuit court correctly determined that, as a matter of law, the Baby Bonus Amendment violates Md. Const. XI-A §§ 2 and 3.

Although the Baby Bonus Amendment is well-intentioned, it is wholly legislative and thus improper charter material that violates the Maryland Constitution. The amendment does not implicate the form or structure of Baltimore City government. The amendment itself provides all the specifics of the policy, leaving no meaningful discretion to the legislature. It attempts to exercise police and welfare powers that are exclusive to the Mayor and City Council. While the City appreciates the public spirit of the Child Alliance, their proposed Amendment may only be implemented through the elected representatives of Baltimore City.

A. The Amendment leaves no meaningful discretion to the City Council.

The Baby Bonus Amendment is comprised of two specific, mandatory directives. First, the Amendment requires the establishment of a "Baltimore Baby Bonus Fund." The fund must be supported by a "mandatory annual appropriation in the Ordinance of Estimates of an amount equal to at least $0.03 on every $100 of assessed or assessable value of all property in the City of Baltimore." E9-11. Second, the Amendment specifies exactly how the Baby Bonus Fund will operate, directing that Fund "will send a one-time Baby Bonus Payment of at least $1,000 to each city resident who is the birthing parent of a child, upon birth of that child." *Id.* Again, this requirement is mandatory. The City Council cannot put the funds to a different purpose or opt to send less than $1,000 to a birthing parent. The only aspect left to the legislature by the Amendment are determining eligibility criteria and "[c]onditions . . . under which the guardian or the adopting parent(s) . . . may receive a Baby Bonus Payment instead of a parent." *Id.* Determining eligibility criteria grants no meaningful discretion, however, given that the amendment itself clearly describes who is eligible, mandating that at least $1,000 be given to "each city resident who is the birthing parent of a child." *Id.*

All Appellants agree that the City has no meaningful discretion regarding the amount of money that must be appropriated and to whom that money must be dispensed. The City Board Appellants acknowledge that determining eligibility

criteria offers only "limited discretion" to the City, given that money *must* be dispersed to *all* birthing parents. City Bd. Brief, at 20. Nonetheless, City Board Appellants argue that the Amendment here is analogous to *Atkinson I* because it leaves the "procedural . . . details" and "logistics" of how to practically manage the policy to the legislature. *Id.* Under their understanding of *Atkinson I*, a charter amendment may contain all the detail of a specific policy, including the exact amount of money that must be appropriated and exactly how it must be spent, so long as it leaves the administrative and logistical tasks of implementing that policy to the legislature.

Appellants' argument finds no support in *Atkinson I* or any other precedent. In *Atkinson I*, the charter amendment was a general authorization: the county must implement a system of binding arbitration for public employees. *See Griffith*, 298 at 389 (distinguishing "between authorization on the one hand and a detailed local enactment on the other . . ."). "All of the detail" regarding how that system must operate was left to the legislature. *Atkinson I*, 428 Md. At 749. That amendment did not specify a minimum amount that must be awarded in any given arbitration. Indeed, the arbitration system created by the legislature could result, in many cases, in a decision to issue no award. For the binding arbitration to have any meaning, if an award was issued, it must be funded by an appropriation. But the amount of that award would be determined by a neutral arbitrator, not dictated by

the amendment itself. In short, the legislature in *Atkinson* was not tasked simply with bureaucratic or administrative logistics, but with designing the *substance* of the policy.

Here, in contrast, the entire substance of the law is in the Amendment itself. The legislature is not tasked with building a system. It cannot exercise discretion or exert influence. It has no decision-making authority. It must simply dispense $1,000 to all birthing parents in Baltimore City. As the circuit court correctly found, the logistical details cited by Appellants are not "meaningful" discretion. E20-21; *accord Save Our Streets*, 357 Md. at 253. What Appellants describe as discretion is not meaningful because it is not *legislative* discretion: the power to "construct the technical specifics of the policy" and control its end result. *Atkinson II*, 236 Md. App. at 179.

Appellants argue that the *Atkinson I* Court determined that *any* public policy directive, no matter how specific, can be included and funded in a local charter amendment. Nowhere does *Atkinson* stretch its holding this far. Instead, the *Atkinson* decision is repeatedly limited to the context of binding arbitration. It begins with the premise that binding arbitration is proper charter material. *Atkinson I*, 428 Md. at 745. The Court clearly confines its holding to this context, stating that "whether 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." *Id*. at 748. Nowhere does the Court suggest that mandatory appropriations of a specific amount, to advance a specific public policy, are proper charter material.

Finally, because any public policy requires some level of administrative and logistical implementation, Appellants' broad interpretation of *Atkinson* erases any limit on what may be included in a charter. A local charter could include dozens of different specific policy directives, each containing a mandatory appropriation, so long as the administrative logistics of how to manage and implement these directives are left to the legislature. This understanding of *Atkinson* would effectively abrogate this Court's prior holdings in *Cheeks* and its progeny. This was certainly not the result the *Atkinson I* Court, which so carefully limited its holding, intended.

B. The Amendment imposes on the City's police and general welfare powers.

The Baby Bonus Amendment differs from *Atkinson I* not only in substance but also in intent. The amendment in *Atkinson I* was directed towards the local government's relationship with its employees. Here, in contrast, the amendment is an outward facing measure that dictates how the City must advance the health and safety of the general public. This distinction is meaningful because *Cheeks* and *Save Our Streets* make clear that a proposed amendment cannot intrude on the legislature's power to act for the betterment of the general public.

This Court in *Cheeks* held that "charter amendments that exercise the City's police or general welfare powers . . . violate the constitutional requirement that those powers be exercised by ordinance enacted by the City Council." *Cheeks*, 287 Md. at 609. The general welfare powers delegated exclusively to the legislature constitute a "broad scope of action" that embraces any action to protect "health, morals, peace and good order in the community." *City of Baltimore v. Sitnick*, 254 Md. 303, 325 (1969). The elected legislature is exclusively tasked with enacting laws to advance the public health and welfare. The *Atkinson I* amendment was proper charter material in part because it targeted the internal works of government and therefore did not intrude on the legislature's police powers. In contrast, this case falls more squarely under *Cheeks* and *Save our Streets*, both cases where a charter amendment attempted to regulate public health and welfare. In both of those cases, this attempt was rejected because it intruded on legislature powers.

Save Our Streets is squarely on point. Like the Baby Bonus Amendment, the speed bump amendment in *Save Our Streets* targeted the health and welfare of the public. As here, it was fairly short but contained all of the law on the subject. The entirety of the amendment was as follows:

> County funds shall not be spent to install or maintain on any road or street any permanent physical obstacle to vehicular movement, which for purposes of this section means any speed bump or hump. Any such device previously installed shall be removed within twelve months after this section takes effect, unless the Council by an affirmative vote of seven members approves its continued use at that location, after a

> public hearing for which notice was posted at or near the location of the device.

Save Our Streets, 357 Md. at 240, n. 2. That mandate was not a general authorization to act in the area of road safety. It required exactly the actions the county must take and "contain[ed] all of the . . . provisions concerning the subject." *Id.* at 254 (quoting *Griffith*, 298 Md. at 389). Like here, the logistical and procedural details of how to implement this public welfare policy were not specified in the brief amendment. This was not a grant of meaningful discretion, however, because amendment would "narrowly mandate that the County Council could not authorize new speed bumps and must remove existing speed bumps." *Id.* at 255.

The circuit court properly found that "certain powers are left to the discretion of the elective legislative body. This is especially true with respect to the City's police and general welfare powers." E23. Like in *Cheeks* and *Save Our Streets*, the Baby Bonus Amendment constitutes "a direct exercise by the voters of the City's police power by charter initiative[.]" *Cheeks*, 287 Md. at 609. The Charter amendment contains all the substance of a policy targeted at public health and welfare. The legislature is left no discretion to modify that policy. Even if well-meaning, any proposed charter amendment that attempts to make policy decisions such as these intrudes on legislative territory and violates Maryland law.

III. The Baby Bonus Amendment is invalid in its entirety and cannot be severed.

The Child Alliance takes the position that, if any portion of the Baby Bonus Amendment is found invalid, that the valid portions are severable. Yet, "T[t]he true test of separability is the effectiveness of an act to carry out, without its invalid portions, the original legislative intent in enacting it[.]" *Baltimore v. A. S. Abell Co*., 218 Md. 273, 290 (1958). Although "[i]t is sometimes possible for a court to strike down portions of an act and to uphold the remainder. It is never done, however, where the part of the act remaining after the invalid portions are removed, clearly presents a situation which could not have been intended by the legislature." *Maryland Theatrical Corp. v. Brenman*, 180 Md. 377, 386 (1942). "It is the duty of a court to separate the valid from the invalid provisions of an ordinance, so long as the valid portion is independent and severable from that which is void." *Balt. v. Stuyvesant Ins. Co.*, 226 Md. 379, 390 (1961) (severing licensing provisions from the regulatory provisions of the same ordinance). Then, "partial invalidity subjects the entire scheme to scrutiny." *O.C. Taxpayers for Equal Rights, Inc. v. Mayor and City Council of Ocean City*, 280 Md. 585, 597 (1977).

The Child Alliance does not describe how severability would work in this instance, nor does it identify which portions of the Amendment are severable. They cite to *Smallwood* as grounds for severability for the Baby Bonus Amendment. The comparison is unavailing. *Smallwood* concerned two separate type of tax provisions

included in the same ballot measure. 327 Md. at 229-230. Further, the *Smallwood* Court had already determined the facial validity of the tax cap provisions. *Smallwood*, 327 Md. at 246.

In contrast to the amendment in *Smallwood*, the Baby Bonus Amendment is not facially valid. Further, each subsection of the Amendment works in conjunction with the next: the requirement that payments of at least $1,000 be made (subsection (a)); how to fund the payments for all-time (subsections (b) and (c)); and infringing on the City's police and welfare powers (subsection (d)). The provisions of the Baby Bonus Amendment are so interwoven with one another because all provisions focus on payments and the funding source. Thus, "the whole must stand or fall with the part." *Maryland Theatrical Corp. v. Brenman*, 180 Md. 377, 387 (1942); *see also Curtis v. Mactier*, 115 Md. 386, 398 (1911) ("an entire act ought not to be stricken down because one or more provisions are void unless these are so connected together in subject-matter, meaning or purpose, that it cannot be presumed the legislature would have passed the one without the other."); *and see Schneider v. Duer*, 170 Md. 326, 184 A. 914, 921 (1936) ("Where the parts of the act held to be unreasonable within the constitutional meaning are so extensively controlling that those parts which might be held valid become so inoperative and inexplicable as to deprive the

act of its purposes and force, then it must be assumed that the Legislature could not have intended to pass an act that would be useless and unworkable.”).[7]

CONCLUSION

Appellees respectfully request that this Court affirm the judgment of the Circuit Court for Baltimore City.

Respectfully submitted,

EBONY M. THOMPSON, *Baltimore City Solicitor*

Michael Redmond (No. 0801030028)
Tom P. Webb (No. 1306190321)
Derek M. Van De Walle (No. 1712140237)
BALTIMORE CITY LAW DEPARTMENT
100 N. Holliday Street, Room 101
Baltimore, Maryland 21202
Tel: 410-396-1231
Fax: 410-547-1025
Derek.Vandewalle@baltimorecity.gov

Counsel for Appellees

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7 The Amendment was not drafted with a severability clause. Thus, it is not evident that the Child Alliance intended the Amendment to be severable. *See Smallwood*, 327 Md. at 246 (“Inclusion of a severability clause, like the clause inserted in the proposed charter amendment in Baltimore County, reinforces the presumption [that a charter amendment is severable].”).

CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112

I hereby certify that:

1. This brief contains 7,721 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.

Derek M. Van De Walle (AIS No. 1712140237)

TEXT OF PERTINENT AUTHORITIES

BALTIMORE CITY CHARTER, art. II

§ (27) Police Power

To have and exercise within the limits of Baltimore City all the power commonly known as the Police Power to the same extent as the State has or could exercise that power within the limits of Baltimore City; provided, however, that no ordinance of the City or act of any municipal officer, other than an act of the Mayor pursuant to Article IV of this Charter, shall conflict, impede, obstruct, hinder or interfere with the powers of the Police Commissioner.

BALTIMORE CITY CHARTER, art. III

§ 1. Legislative Department; Qualification and salary of members.

(a) *Legislative Department*.

The Legislative Department of the City shall be the City Council, which shall consist of a single chamber.

(b) *Qualifications*.

Members of the City Council, except the President whose qualifications are provided for in Section 3, shall be citizens of the United States, at least 18 years old, and registered voters of Baltimore City. They also shall be residents of the districts the members have been chosen to represent for at least 1 year next preceding their election, except as provided in Section 7(e), and during their term of office.

(c) *Salaries*.

The salary of each member shall be set as provided in Article VII, §§ 117 through 125 of this Charter.

§ 11. Legislative Powers.

The Mayor and City Council of Baltimore shall have power to pass all ordinances, not inconsistent with the Charter, necessary to give effect and operation to all powers vested in the City.

§ 14. Passage of ordinances and resolutions.

(a) *In general*.

Every legislative act of the City shall be by ordinance or resolution. No ordinance or resolution shall be passed by the City Council except by a majority vote of its members, and on its final passage the vote shall be taken by yeas and nays, and the names of members voting for or against the same shall be entered on the Journal.

(b) *Single-subject, title, and content requirements*.

Every ordinance enacted by the City shall embrace but one subject, which shall be described in its title, and no ordinance shall be revived, amended or enacted by mere reference to its title, but the same shall be set forth at length as in the original ordinance.

(c) *Readings and printing requirements*.

No ordinance shall become effective until it be read on three different days of the session, unless the City Council by a vote of three-fourths of its members shall otherwise determine by yeas and nays to be recorded on the Journal, and no ordinance shall be read a third time until it shall have been actually printed or engrossed for a third reading.

(d) *Oaths and witnesses*.

The City Council, by resolution, may authorize any standing or special committee to administer oaths and to summon witnesses as to any matters relevant to its investigation of any municipal agency.

Md. Code Ann., Election Law, § 6-210. Schedule of Process

Request for advance determination

(a)(1) A request for an advance determination under § 6-202 of this subtitle shall be submitted at least 30 days, but not more than 2 years and 1 month, prior to the deadline for the filing of the petition.

(2) Except as provided in paragraph (3) of this subsection, within 5 business days of receiving a request for an advance determination, the election authority shall make the determination.

(3) Within 10 business days of receiving a request for an advance determination of the sufficiency of a summary of a local law or charter amendment contained in a petition under § 6-202(b) of this subtitle, the election director shall make the determination.

Notice of advance determination

(b) Within 2 business days after an advance determination under § 6-202 of this subtitle, or a determination of deficiency under § 6-206 or § 6-208 of this subtitle, the chief election official of the election authority shall notify the sponsor of the determination.

Verification and counting of validated signatures

(c)(1) Except as provided in paragraph (2) of this subsection, the verification and counting of validated signatures on a petition shall be completed within 20 days after the filing of the petition.

(2) If a petition seeks to place the name of an individual on the ballot for a special election, the verification and counting of validated signatures on the petition shall be completed within 10 days after the filing of the petition.

Certification by appropriate election official

(d) Within 1 business day of the completion of the verification and counting processes, or, if judicial review is pending, within 1 business day after a final judicial decision, the appropriate election official shall make the certifications required by § 6-208 of this subtitle.

Judicial review

(e)(1) Except as provided in paragraph (2) of this subsection, any judicial review of a determination, as provided in § 6-209 of this subtitle, shall be sought by the 10th day following the determination to which the judicial review relates.

(2)(i) If the petition seeks to place the name of an individual or a question on the ballot at any election, except a presidential primary election, judicial review shall be sought by the day specified in paragraph (1) of this subsection or the 69th day preceding that election, whichever day is earlier.

(ii) If the petition seeks to place the name of an individual on the ballot for a presidential primary election in accordance with § 8-502 of this article, judicial review of a determination made under § 6-208(a)(2) of this subtitle shall be sought by the 5th day following the determination to which the judicial review relates.

(iii) If the petition seeks to place the name of an individual on the ballot for a special election, judicial review shall be sought by the 2nd day following the determination to which the judicial review relates.

(3)(i) A judicial proceeding under this subsection shall be conducted in accordance with the Maryland Rules, except that:

1. the case shall be heard and decided without a jury and as expeditiously as the circumstances require; and
2. an appeal shall be taken directly to the Supreme Court of Maryland within 5 days after the date of the decision of the circuit court.

(ii) The Supreme Court of Maryland shall give priority to hear and decide an appeal brought under subparagraph (i)2 of this paragraph as expeditiously as the circumstances require.

Md. Rule 2-501. Motion for Summary Judgment

(a) Motion. Any 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. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record. A motion for summary judgment may not be filed: (A) after any evidence is received

at trial on the merits or (B) unless permission of the court is granted, after the deadline for dispositive motions specified in the scheduling order entered pursuant to Rule 2-504(b)(1)(F).

(b) Response. A response to a motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

(c) Form of Affidavit. An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) Affidavit of Defense Not Available. If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

(e) Contradictory Affidavit or Statement.

(1) A party may file a motion to strike an affidavit or other statement under oath to the extent that it contradicts any prior sworn statement of the person making the affidavit or statement. Prior sworn statements include (A) testimony at a prior hearing, (B) an answer to an interrogatory, and (C) deposition testimony that has not been corrected by changes made within the time allowed by Rule 2-415.

(2) If the court finds that the affidavit or other statement under oath materially contradicts the prior sworn statement, the court shall strike the contradictory part unless the court determines that (A) the person reasonably believed the prior statement to be true based on facts known to the person at the time the prior statement was made, and (B) the statement in the affidavit or other statement under oath is based on facts that were not known to the person and could not reasonably have been known to the person at the time the prior statement was made or, if the prior statement was made in a deposition, within the time allowed by Rule 2-415(d) for correcting the deposition.

(f) Entry of Judgment. The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602 (b), the court may direct entry of judgment (1) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

(g) Order Specifying Issues or Facts Not in Dispute. When a ruling on a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court may enter an order specifying the issues or facts that are not in genuine dispute. The order controls the subsequent course of the action but may be modified by the court to prevent manifest injustice.

<table>
<tr><td>MARYLAND CHILD ALLIANCE, et al.,

Appellants,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE, et al.,

Appellees.</td><td>IN THE

SUPREME COURT

OF MARYLAND

SCM-REG-0034-2023

Appeal No. 34

September Term, 2024</td></tr>
</table>

CERTIFICATE OF SERVICE

I certify that on August 26, 2024, a copy of the Appellees' Brief in the captioned case was served via MDEC on and a paper copy was mailed the next business day to on all counsel.

Derek M. Van De Walle (No. 1712140237)