

**IN THE  
SUPREME COURT OF MARYLAND**

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SEPTEMBER TERM, 2023

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**NO. 35**

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**BENEDICT J. FREDERICK, III, et al.,**

**Appellant,**

**v.**

**BALTIMORE CITY BOARD OF ELECTIONS, et al.,**

**Appellees**

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**ON APPEAL FROM THE CIRCUIT COURT OF BALTIMORE  
(The Honorable Althea M. Handy, Judge).**

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**BRIEF OF APPELLEE MAYOR AND CITY COUNCIL OF BALTIMORE**

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**BRIEF OF APPELLEE MAYOR AND CITY COUNCIL OF BALTIMORE**

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**STATEMENT OF THE CASE**

Renew Baltimore (“Renew”) (an organization run at least in part by the Appellants in this case<sup>1</sup>) submitted a petition to amend the Baltimore City Charter to enact a legislative scheme. The petition seeks to cut the property tax rate in Baltimore for each of the next seven years until it is almost cut in half from the current rate of 2.248% to just 1.2% in 2031, and then to freeze the tax rate “for

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<sup>1</sup> The organization’s website, [renewbaltimore.org](http://renewbaltimore.org), list Appellant Matthew Wyskiel as their treasurer and lists both him and Appellant Benedict Frederick III as members of the organization’s advisory committee.

each and every fiscal year thereafter.” E.77. Appellee the Baltimore City Board of Elections (“Board”), under the guidance of the Office of the Attorney General of Maryland, rejected Renew’s proposed amendment because, under the binding holdings of this Court’s precedents in *Hertelendy v. Board of Educ. of Talbot Cnty.*, 344 Md. 676, 683 (1995) and *Board of Supervisors of Elections of Anne Arundel Cnty. v. Smallwood*, 327 Md. 220, 242 (1990), the amendment would conflict with state law. E.96-97.

The Board correctly determined that the petition amendment would effectively allow the electorate to set the property tax rate in Baltimore City by lowering the maximum allowable rate below the current rate, just as the amendments in *Hertelendy* and *Smallwood* did, in violation of Maryland Code, Tax-Property Article (“TP”), § 6-302(a), which requires that “in each year the Mayor and City Council of Baltimore City or the governing body of each county annually shall set the tax rate for the next taxable year on all assessment of property subject to that county’s property tax.” *Id.* Indeed, the amendments in those cases violated TP § 6–302(a) only indirectly because, by cutting revenue, they effectively cut (and thereby set) the property tax rate. Renew’s amendment would directly violate TP § 6–302(a) by directly cutting the property tax rate, without any need to calculate that requiring a revenue cut also requires a rate cut as well. This violation of TP § 6–302(a) is that much more obvious. In other words,

the amendment proposed by Renew and Appellants goes drastically farther than the amendments that were struck down in *Hertelendy* and *Smallwood*.

Appellants sought judicial review of the Board's determination, and Appellee Mayor and City Council of Baltimore ("City") intervened as a defendant because the petition amendment (if made law), would precipitate a fiscal crisis in the City. The parties exchanged dispositive motions and oppositions thereto, wherein the City presented multiple additional reasons why Renew's petition amendment was impermissible under Maryland law. After a hearing, the circuit court issued its order affirming the Board's determination and granting dispositive motions filed by both the Board and the City. E.534-37. The circuit court expressly found that Renew's "petition is not proper Charter material because it is in violation of [TP] § 6-302(a) and allows the citizens of Baltimore to establish the tax rate, leaving nothing for the City Council to legislate because they would be required to lower the tax rate every year" thereby "not leav[ing] any discretion in the hand of the City Council." E.542 (citing both *Smallwood* and *Cheeks v. Cedlair Corp.*, 287 Md. 595 (1980)). As these determinations were dispositive, the circuit court did not address the City's remaining arguments.

Before this Court, Appellants misrepresent the holdings of the relevant precedent, misrepresent the nature and probable effects of their own petition, and fail to even maintain a logical consistency within their own arguments. Contrary to

Appellants’ assertions, Renew’s petition amendment would conflict with the requirements of TP § 6-302(a) even more directly, and to an even greater extent, than the amendments struck down in *Hertelendy* and *Smallwood*. Likewise, because Renew’s amendment would completely remove the City’s discretion and control to set property tax rates legislatively, the amendment is legislative in nature and thus not proper charter material. Moreover, the Maryland General Assembly expressly limited the right of the voters of Baltimore City to amend their charter by ballot petition to exclude any amendments “relating to the classification and taxation of real and personal property,” *see* 1920 Md. Laws, ch. 555 (codified at BALTIMORE CITY CHARTER, art. II, § 49); *see also* *Cheeks*, 287 Md. at 600-01 (explaining how Chapter 555 expressly granted, but also limited, the powers set forth in Article XI-A of the Maryland Constitution to Baltimore City), such that Baltimore City voters do not have the legal power to make any change to their charter even *relating* to property taxes. In addition, the Renew petition amendment, if enacted, would force the City to cut taxes so drastically that approximately one-fourth of the City’s annual revenue (*i.e.*, roughly half a billion dollars) would disappear from the City’s budget, making it nearly impossible for the City to continue to perform its statutory and contractual obligations under Maryland law – a scenario that the *Smallwood* Court explained would require invalidation of such an amendment. *See* 327 Md. at



243-44. Each of these points requires that Renew's petition amendment be rejected, and each is independently sufficient to require that the Board and the circuit court's determinations doing exactly that be affirmed.

### QUESTIONS PRESENTED

1. Was the circuit court correct when it ruled that, under the binding precedents of *Smallwood* and *Hertelendy*, the Renew amendment would violate the requirement in TP § 6-302(a) that local governing bodies set local property tax rates annually because the Renew amendment would force the City to cut its tax rates?
2. Was the circuit court correct when it ruled that, under *Cheeks* and its progeny, the Renew amendment is not proper charter material because it is legislative in nature and does not effectively leave any discretion to the City in the area of legislating property tax rates?
3. Should the Renew amendment also be rejected because the General Assembly limited the power of Baltimore City's voters to amend their charter in Chapter 555 of the 1920 Laws of Maryland, expressly excluding from them any right to initiate a change to the law regarding taxation of real property?
4. Should the Renew amendment also be rejected because it would jeopardize the City's ability to perform its duties required by law?

## STATEMENT OF FACTS

After acquiring the requisite signatures, Renew submitted a proposed charter amendment that would drastically and permanently cut the City's property tax rate by 46%. The Board denied certification of this amendment for the November 5, 2024, ballot, and Renew (through Appellants) sought judicial review. The City intervened as a defendant and, as part of its dispositive motions, provided the circuit court with an analysis of the impacts of the amendment's proposed tax cuts in "City of Baltimore, BBMR Management Research Report, Analyzing the Impact of the 2024 'Renew Baltimore' Charter Amendment Proposal on Property Tax Rates" (hereinafter the "BBMR Analysis"). E.193-212. This analysis was done by the City's Department of Finance, Bureau of Budget and Management Resources office ("BBMR"), before the litigation in this matter began and was posted online on May 8, 2024. *See* E.213 (Affidavit of Robert Cennane, Deputy Director, Baltimore City Department of Finance).

The BBMR Analysis used conservative assumptions rather than doomsday scenarios or overly wishful thinking. The BBMR Analysis started from the same place as every budget analysis: the most recent General Fund outlook that projects ten years forward. E.199 ("Baseline Forecast"); E.214 (Cennane Affidavit, ¶ 8). The outlooks take care to balance expected expenditures with expected revenues as required by the City Charter. BALTIMORE CITY CHARTER, art. VI, § 7(c). This is

important because the Maryland Constitution has always prevented the City from pledging credit to meet anticipated expenditures. Md. Const., art, XI, § 7.

The BBMR Analysis noted that more than half of the City's annual two-billion-dollar budget is made up of fixed costs that include the state statutory requirement to fund city schools (\$396M) and the contractual requirements for debt service (\$105M), and pension contributions (\$215M). Md. Code, Education Art., §5-101, *et. seq.* (2019 Md. Law, ch. 771 (Blueprint for Maryland's Future)); E.200; E.214 (Cenname Affidavit, ¶ 7). The remaining fixed costs are various other expenditures, including retiree health costs, workers compensation, insurance premiums and energy costs. E.199-200; E.214 (Cenname Affidavit, ¶ 7)

Using assumptions of future revenue and cost growth taken from sources such as the state's Board of Revenue Estimates and its Department of Legislative Services, as well as the actuarial reports provided by the City's pension systems, the BBMR Analysis found that even at the current property tax rate, the City's budget cannot be balanced without taking one of three actions: raising additional revenue, making service reductions, or finding efficiencies within the current budget. E.199-200 (projecting increasing deficits each of the next nine years); E.214 (Cenname Affidavit, ¶ 8-10).

If the Renew amendment is implemented, the BBMR Analysis showed that the 46% tax rate reduction would impact the real property tax revenue (which is

about 49% of City's total revenue) and the personal property tax revenue, which is set by state law at 2.5 times the real property tax rate. E.201; TP §6-302(b)(1)(ii). Since the City's property tax rate would be reduced by Renew's amendment and the local income tax is already at the highest allowed by state law, the City's revenue reduction would be staggering because those two sources make up about seventy percent of the City's General Fund revenue. E.214 (Cenname Affidavit, ¶ 12). The City would need to generate over a half a billion dollars *outside of* property and income tax if the Renew amendment became effective. E.201; E.214 (Cenname Affidavit, ¶ 12). "By Fiscal 2032, the year that the tax rate levels out at \$1.20, the City would be losing nearly a quarter of its current revenues or an equivalent of \$627.3 million annually." E.201. The City's General Fund deficit would reach \$891 million by 2034. *Id.*

If the Renew amendment was implemented, the City would not be able to balance its budget with traditional budget cuts or by finding the half billion needed in new revenues. E.214 (Cenname Affidavit, ¶ 13). Instead, the City would be forced to make unprecedented service reductions in every City agency that will impact those residents that rely most on City services. *Id.* The "City would need, in Fiscal 2025 dollars, a total of \$537 million worth of budget cuts by 2032 to make up for the lost revenue." *Id.* at ¶ 11.

Renew also submitted to the circuit court a report that purported to analyze the future effects of Renew’s proposed tax cuts. *See* E.338-353 (“Renew Report”). The report did not actually provide any explanation for how its “analysis” reached the numbers that it did, but instead made the dubious promise that Baltimore would get more revenue by charging lower tax rates. *Id.* The Renew Report provided narrative tales of other jurisdictions at other times in history that prospered after cutting taxes sharply, *see* E.347-49, without acknowledging any additional factors that contributed to those supposedly happy results (like California’s state government providing additional funds to local governments and assuming local costs to make up for lost property tax revenue, as well as a development boom in San Francisco that began long before the tax cuts in question, *see* E.208) and without acknowledging that there are counter examples where sharply cutting taxes led to lower revenues and fiscal disasters (most notably, Kansas from 2012 to 2016, where drastic tax cuts did not pay for themselves in the way economists promised they would, and instead led to cuts in spending on education, *see id.*).<sup>2</sup> Indeed, the Renew Report appears to work backward from the fact that the

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<sup>2</sup> *See also* Michael Mazerov, *Kansas Provides Compelling Evidence of Failure of “Supply-Side” Tax Cuts*, Center on Budget and Policy Priorities, January 22, 2018, available at <https://www.cbpp.org/research/kansas-provides-compelling-evidence-of-failure-of-supply-side-tax-cuts> (last visited August 22, 2024) (“Kansas revenues plunged, leading to cuts to education and other vital services and downgrades in the state’s bond rating.”).

amendment proposes cutting the rate nearly in half, which therefore requires the assessed value of property in Baltimore to almost double to maintain revenue levels, and declares that property values in Baltimore would therefore nearly double over seven years, *see* E.351 (estimating the \$46.1 billion assessment would grow to \$91.5 billion), without providing any explanation why a single one-percent reduction in taxes would lead to property values growing at a rate averaging over ten percent *each year* for most of a decade, *id.*<sup>3</sup> It is also worth noting that nowhere in the Renew Report does the author even consider the possibility that the City might choose to set the property tax rate even lower than the drastically cut rate required by Renew’s amendment.

The City’s BBMR Report addressed Renew’s claim that sharp tax cuts would lead to sharp property value/revenue increases and found them “wildly optimistic.” E.202-03. Although “property tax is capitalized into the value of property” and studies have found “some modest increase in demand when the price of housing (including taxes) declines,” “predicting the level at which in-migration will occur is complicated by many other factors including the quality of schools,

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<sup>3</sup> Renew also provided affidavits from two economists who did not even purport to provide analysis of their own but simply said that the Renew Report was good because it performed “dynamic analysis” while the BBMR Report was bad because it performed “static analysis.” *See* E.383-84, E.402-04. Neither even attempted to fix the lack of any explanation of how the Renew Report’s “dynamic analysis” actually reached its conclusions. *Id.*

crime levels, commuting costs, distance from family, and the availability of desired amenities” such that predicting how much effect just a tax cut by itself would have is nearly impossible. *See* E.202. Instead, the BBMR Report tested the plausibility of Renew’s revenue-neutral claim by estimating how many additional residents Baltimore would need to attract to make up for the revenue that would be lost in Renew’s tax cut and concluded that more than 300,000 new residents would need to move to Baltimore, reversing roughly 50 years of population decline in only seven years, in order for the proposal to be revenue neutral. E.203-05. This, the BBMR Report concluded, “is substantially higher than what could reasonably be expected.” E.205.

Ultimately, the circuit court relied on neither the BBMR Report nor the Renew Report, and instead relied on the precedent of this Court to find that Maryland law does not allow Renew’s amendment to be placed on the ballot in November, regardless of what practical results such an amendment may or may not have. *See* E.542. Appellants timely appealed.

### **STANDARD OF REVIEW**

“Decisions on matters of law are reviewed *de novo*.” *Renbaum v. Custom Holding, Inc.*, 386 Md. 28, 43 (2005). Moreover, “[t]he Court reviews issues of statutory interpretation *de novo*.” *Minh-Vu Hoang v. Lowery*, 469 Md. 95, 104 (2020).

## ARGUMENT

**This Court must affirm the circuit court because the Renew amendment conflicts with state law, is legislative in nature, is unauthorized by state law, and would leave the City financially unable to fulfill its legal obligations.**

Each of the following four arguments provides an independently sufficient reason for affirming the circuit court's decision and prohibiting Renew's proposed amendment from being placed on the ballot in Baltimore City in November. All four arguments are correct, but the Court need only find any one of them persuasive to affirm the circuit court and reject the Renew amendment.

- I. Under *Hertelendy* and *Smallwood*, a charter amendment that restricts taxes to a rate below the current rate effectively allows voters to set the rate, thereby preventing the local governing body from doing so, in violation of TP § 6-302(a).**

In their brief, Appellants flatly misrepresent the holdings of *Smallwood* and make the same argument that this Court squarely rejected in *Hertelendy*. First and foremost, contrary to Appellants' contention, *Smallwood* emphatically did not place a blanket stamp of approval on all charter amendments that are styled as tax caps. Appellant Br. 8-9. Rather, the *Smallwood* Court explained that the specific caps proposed in that case were permissible because they were set above the current level, thereby acting as a limit to future increases in revenue obtained from taxes, not a reduction in the current tax rate:



If the proposed amendments had been adopted, the county councils of Baltimore and Anne Arundel Counties could still have exercised discretion to determine the tax rates on property for the next taxable year. A limitation would simply have been placed on this power, so that the increase in property tax revenue for the next tax year could not have exceeded 2% in Baltimore County or 4.5% in Anne Arundel County. The proposed tax limitations would not have had the effect of allowing the electorate of the two counties to set the tax rates.

*Board of Supervisors of Elections of Anne Arundel Cnty. v. Smallwood*, 327 Md.

220, 242 (1990) (emphasis added). The *Smallwood* caps were only permissible

because they “would not have had the effect of allowing the electorate of the two

counties to set the tax rates.” *Id.* Yet that is exactly what the Renew amendment

would do – it would set the tax rate by a vote of the electorate of Baltimore City.

The *Smallwood* Court itself, therefore, distinguished the increase-limiting tax caps

that it permitted from the type of tax-cutting cap that Renew proposes, which

would plainly set the rate by plebiscite and is therefore impermissible.

Moreover, the *Smallwood* Court also struck down the parts of the charter amendments that forced the county governments to reduce tax rates from their present rate by rolling back the permitted amount of revenue to a prior year’s level:

The “roll back” provisions of the proposed amendments would have limited the amount of property tax revenues for the tax year 1991–1992 to no more than the amount collected in the tax year 1989–1990 for Baltimore County, and no more than that collected in the tax year 1988–1989 for Anne Arundel County. These provisions violated § 6–302(a) of the Tax–Property Article which mandates that the governing body of each county is to set the property tax rate for the next tax year. Unlike

the tax cap provisions that would have simply placed a limit on the taxing power of each county council, the roll back provisions would have transferred the county councils' § 6–302(a) powers to the voters. Instead of the councils setting the tax rates, the roll back provisions would have allowed the voters of Baltimore and Anne Arundel Counties to set the property tax rates for the tax year 1991–1992.

*Id.* at 244 (emphasis added). The Court thus expressly held that the provisions limiting revenue to a level below their current level “violated § 6–302(a) of the Tax–Property Article which mandates that the governing body of each county is to set the property tax rate” precisely because they “would have allowed the voters of Baltimore and Anne Arundel Counties to set the property tax rates.” *Id.* at 244-45. And this is precisely why the Renew amendment violates that same mandate of TP § 6–302(a), because it allows “the voters of [Baltimore City] to set the property tax rates.” *Compare id with E.57* (text of Renew amendment dictating a specific and lower rate for each of the next seven years, and for all years thereafter).

Appellants try to distinguish the impermissible “roll back” provisions in *Smallwood* by noting that those provisions limited the amount of revenue collected, not the tax rate itself, Appellant Br. 13, but this line of argument ignores that the *Smallwood* Court found the revenue limit impermissible precisely because it allowed the voters there to effectively set the rate, albeit indirectly, by allowing the voters to reduce the revenue allowed below its current amount, *see* 327 Md. at 244. Indeed, the Appellants themselves even admit the very equation that demands

this result when they explain that “the amount of tax revenue equals the tax rate times the tax base.” Appellant Br. 13. The revenue cuts in *Smallwood* were only violations of TP § 6–302(a) because they were indirect rate cuts. Renew proposes a direct rate cut, without any need to calculate that requiring a revenue cut also requires a rate cut as well, so its violation of TP § 6–302(a) is that much more obvious. In other words, the Renew amendment that Appellants defend goes drastically farther than the amendment that was struck down in *Smallwood*.

Appellants also argue that the Renew amendment does not actually set any tax rate because the City would still be free to choose any rate below the tax cap in a given year, *see* Appellants Br. 16, but this ignores the practical reality of a governing body trying to pay for existing programs and ignores that this exact argument was rejected by this Court in *Hertelendy*. As discussed above in the Statement of Facts, the drastic tax cuts that would be mandated by the Renew amendment would make it nearly impossible for the City to pay for the services and programs that it is legally obligated to provide. Accordingly, the idea that the City, faced with such a mandate and such a deficit, could choose to cut the tax rate even lower flies in the face of reason. It is pure fantasy.

Moreover, the proponents of the amendment in *Hertelendy*<sup>4</sup> made the same argument Appellants put forth and were roundly rejected by this Court. The appellants there, defending a charter amendment that allowed no increase in property tax revenues,

asserted that, because the County Council could set the property tax at a rate lower than the “reasonable” and “non-detailed” constant yield tax rate, [the tax limiting charter amendment] left some discretion with the County Council and was, therefore, valid under the principles discussed in *Board v. Smallwood*.

*Hertelendy*, 344 Md. at 681. This argument did not prevail. Rather, the Court held that, even though the rate could theoretically be set lower, the Talbot County amendment “freezes the tax rate at the constant yield tax rate,” i.e., at the rate that produces the same revenue as the prior year. *Id.* at 684.

As of the moment when the amendment was adopted, the rate became fixed at the statutory level for the fullness of time ... [and] the voters in effect set the tax rate legislatively, by decreeing for the indefinite future that revenues shall not exceed levels in an arbitrary base year.

*Id.* at 684-85 (quoting the circuit court opinion that “correctly applied the principles of *Smallwood*”). Accordingly, the Court struck down that amendment as violating TP § 6–302(a) and should do the same for this amendment. Without even resorting to the undeniable equation that tax revenue equals tax rate times

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<sup>4</sup> As an aside, it is worth noting that in 1995, when *Hertelendy* was decided, Baltimore City’s property tax rate was more than twice what it is today and was set legislatively at 5.85%. *See* 344 Md. at 679.

assessable base, the Renew amendment would clearly set the property tax rate for Baltimore City for the next seven years and freeze it in place thereafter. That violates TP § 6–302(a), and the amendment must be rejected under the binding precedent of this Court in *Smallwood* and *Hertelendy*.<sup>5</sup>

This was the reason that the Board gave for rejecting Renew’s amendment petition, and the circuit court correctly affirmed that rejection for this reason as well. If this Court agrees with the City (and the Board, and the circuit court) on this point, the Court’s analysis need go no further and may affirm on this alone. However, in an abundance of caution, the City presents three additional arguments that also require that the Renew amendment be rejected.

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<sup>5</sup> If Appellants attempt to argue that the holdings of *Smallwood* or *Hertelendy* should be overruled, it should be noted that the doctrine of *stare decisis* would counsel strongly against such a reversal in this case. *See, e.g., Maryland Small MS4 Coal. v. Maryland Dep’t of Env’t*, 479 Md. 1, 276 A.3d 573, 591 (2022). The need for this doctrine is particularly strong “where people do plan and arrange their affairs for the future in reliance upon this Court’s prior rulings.” *Id.* And for the last few decades, local governments have been able to plan their annual budgets and long-term financial commitments knowing that under *Smallwood* and *Hertelendy* the revenue they receive from property tax rates will not be dramatically reduced by charter amendment. Further, as the Board noted below, the General Assembly has amended TP § 6–302 multiple times since these decisions without making any attempt to legislatively overrule them, thereby creating an inference of legislative acquiescence, and making it “particularly inappropriate to depart from the principle of *stare decisis*.” E.161-61 (quoting *Jones v. State*, 362 Md. 331, 337-38 (2001)).

**II. Under *Cheeks* and *Save Our Streets*, a charter amendment that completely removes a governing body’s discretion and control in an area under its authority is legislative in nature and therefore impermissible.**

This Court has held that charter amendments cannot be used to legislate:

[A] charter amendment ... is necessarily limited in substance to amending the form or structure of government initially established by adoption of the charter. A charter amendment, therefore, differs in its fundamental character from a simple legislative enactment. Its content cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation.

*Cheeks v. Cedlair Corp.*, 287 Md. 595, 607 (1980). This requirement that charter amendments concern the “form and structure of government” rather than the normal subjects of local legislation was clarified further in *Save Our Streets v. Mitchell*, 357 Md. 237 (1998):

[T]he 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 ... the Maryland Constitution.

*Id.* at 253. Here, the Renew amendment proposes to entirely monopolize an area of governance – the setting of property tax rates – that the General Assembly has expressly stated in TP § 6–302(a) must be done through annual local legislation. The setting of property tax rates is clearly legislative in nature rather than concerning the form and structure of government, as such an annual legislative determination is necessary in order to balance out the amount of money that must

be raised with the expenses that a legislative body believes the government will incur in the following year. And the Renew amendment removes all control and discretion in this legislative area from the City Council of Baltimore. Indeed, it specifically sets the exact rate that will be in force for each of the next seven years and then removes from the City's power any ability to alter the final rate thereafter. This is legislation, plain and simple, and is therefore inappropriate charter material that must be rejected under *Cheeks* and *Save Our Streets*.

Although *Smallwood* did allow as proper charter material tax caps that prospectively limit future increases in the property tax rate, an amendment that calls itself a tax cap but that actually enacts seven years of increasingly drastic tax cuts before freezing the tax rate at half of its existing rate is a legislative tax reduction scheme. The Renew amendment is not what this Court said was permissible in *Smallwood*. It is what this Court said is impermissible in *Cheeks* and *Save Our Streets*.

Indeed, Appellants spend more than five pages of their brief arguing that there is expert evidence<sup>6</sup> that the lower tax rates that Renew wishes to set will counterintuitively increase revenue, Appellants Br. 18-23, but this kind of

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<sup>6</sup> No expert evidence was ever admitted below. Had Appellants attempted to have either the report or the bare affidavits admitted as expert evidence, the City would have objected on numerous procedural and substantive grounds, not least of which being that there is absolutely no explanation in the Renew Report as to how it reached the rosy growth numbers it plugged in to reach its rosy conclusion.

speculative forecasting based on varying economic theories powerfully underscores that these are policy questions, appropriate only for the legislature's consideration. Any dispute between the parties about the amount of revenue that will result from the tax rates in the amendment only serves to confirm that the amendment effectuates policy. Whether or not a drastic rate reduction would or would not be a good economic path for the City is a policy matter for debate by the City Council. The City's BBMR tested Renew's claims and largely found Renew's predicted economic outcome to be implausible. E.203-11. However, the electorate is free to elect Councilmembers and a Mayor that will promise to try this economic experiment as best as it can be implemented.

The electorate, however, is not able to require that the current Mayor and City Council make this economic experiment their policy by amending the Baltimore City Charter. Md. Const., art. XI-A, § 2 (people do not legislate via Charter amendment); Md. Const., art. XI-A, § 3 (Baltimore City Council is City's legislative body); BALTIMORE CITY CHARTER, art. II, § 40(a) (City has home rule power to enact legislation concerning taxation, within defined limits); art. II, § 49 (General Assembly prohibits petition for charter changes about the "classification and taxation of real and personal property within the limits of the said City."). The content of a charter amendment "cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation." *Cheeks*,



287 Md. at 607. Although citizens have the right to change the organization of their government, “voters of a charter county cannot reserve to themselves the power to initiate legislation because such initiative conflicts with the terms of Art. XI–A, § 3, of the Maryland Constitution.” *Smallwood*, 327 Md. at 236. In short, “the enactment of specific legislation is left to the elected legislative bodies.” *Save Our Streets v. Mitchell*, 357 Md. 237, 252 (1998). That is precisely why the circuit court here affirmed the Board’s rejection on a second ground, because Renew’s amendment “is not proper Charter material because it ... allows the citizens of Baltimore to establish the tax rate, leaving nothing for the City Council to legislate because they would be required to lower the tax rate every year” and thereby did “not leave any discretion in the hand of the City Council.” E.542. The circuit court was legally correct under long-standing Maryland law in this determination and should be affirmed for this reason as well.

**III. As explained in *Cheeks*, the General Assembly restricted the Baltimore City voters’ power to amend their charter in Chapter 555 of the 1920 Laws of Maryland (now codified as Art. II, § 49 of the Baltimore City Charter), such that these petitions may not “relat[e] to the classification and taxation of real and personal property” in Baltimore.**

Although cuts to the real property tax rates are improper charter material in any county when they deprive the local legislature of the ability to set the actual tax rate, as discussed above, in Baltimore City, they are improper for an additional reason—the General Assembly expressly excluded from Baltimore City’s citizens the specific power to petition for a charter amendment about the “taxation of real and personal property within the limits of the said City.” BALTIMORE CITY CHARTER, art. II, § (49); 1920 Md. Laws, ch. 555. In Baltimore City, any proposed charter amendment that attempts to change the law regarding taxation of real property (such as by setting, or even limiting, the tax rate) is directly in conflict with Maryland state law.

In *Cheeks*, Chief Judge Murphy, writing for this Court, explained that although Article XI-A of the Maryland Constitution, the Home Rule Amendment, was ratified in 1915, *see* 287 Md. at 597, its provisions still required “the adoption by the General Assembly of ‘a grant of express powers’” for the local powers allowed by the new Article to become enabled and effective laws in Maryland, *see id.* at 598. Section 6 of Article XI-A allowed the General Assembly to transfer to

“the voters of the City of Baltimore,” “when expressly granted as herein provided,” the power to make amendments to the Baltimore City Charter.<sup>7</sup> *Id.* at 599.

Chief Judge Murphy went on to explain that “[b]y chapter 555 of the Acts of 1920, the Legislature expressly granted to the voters of the City, as authorized by [Section] 6 of Art. XI-A, the power, by charter amendment, ‘to make such changes [to the City Charter] . . . as they may deem best.’” *Id.* at 600. However:

Chapter 555 of the Acts of 1920 also provided:

“(N)othing contained in this Act shall give to the Mayor and City Council of Baltimore or to the inhabitants thereof the right to initiate any legislation, laws, or ordinances relating to the classification and taxation of real and personal property within the limits of the said City . . . .”

*Id.* at 600-01. A copy of this law of Maryland, passed a century ago but still binding today, is attached an appendix to this brief.

“The power granted to the voters by ch. 555 is set forth in the present City Charter in Article II(49).” *Id.* at 601 n.4.<sup>8</sup> This specific language that says that

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<sup>7</sup> Although Section 5 appears to provide this power, that section merely “sets forth the procedure for proposing amendments to a charter.” *Cheeks*, 287 Md. at 598.

<sup>8</sup> The relevant text of Section (49) of Article II of the City Charter reads:

The voters of Baltimore City shall have and are hereby expressly granted the power to make such changes in Sections 1 to 6, inclusive, of Article XI of the Constitution of the State of Maryland, as they may deem best; such power shall be exercised only by the adoption or amendment of a charter as provided in Article XI-A of said Constitution; provided, that nothing contained in this subsection (49)

neither the City nor “the inhabitants thereof” are given “the right to initiate any legislation, laws, or ordinances relating to the classification and taxation of real and personal property” by way of charter amendment was interpreted in *Cheeks* as “express[ing] the intention of the Legislature to restrict to itself the power to enact laws concerning the classification and taxation of property.” *Id.* at 613-14.

Thus, while the General Assembly expressly granted the voters of Baltimore City the power to amend the City charter, it also expressly limited that power by excluding from it the power “to initiate any legislation, laws, or ordinances relating to the classification and taxation of real and personal property” through such a charter amendment. 1920 Md. Laws, ch. 555; *Cheeks*, 287 Md. at 600. Moreover, this Court has already explained that this language was expressing the General Assembly’s clear intention to not grant the power to enact laws concerning property tax through charter amendment in Baltimore City. *Cheeks*, 287 Md. at 614. As “chapter 555 of the Acts of 1920” is the state legislation that “expressly

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shall be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said City, as set forth in Article XI-A of said Constitution; and expressly provided, further, that nothing herein contained shall give to the City or to the inhabitants thereof the right to initiate any legislation, laws or ordinances relating to the classification and taxation of real and personal property within the limits of said City.

BALTIMORE CITY CHARTER, art. II, § (49) (emphasis added).

granted to the voters of the City, as authorized by [Section] 6 of Art. XI-A, the power ... [to make a] charter amendment,” *id.* at 600, and it contains an express limitation on that power – namely, that such amendments cannot relate to property taxes – there simply has not been any grant to the voters of Baltimore City of the power to make such an amendment. The voters in Baltimore City simply have no power to make such an amendment because the General Assembly, when expressly granting them the general power to make amendments, expressly excluded from that grant and reserved for itself the power to make any property tax laws. Since the Renew amendment very plainly attempts to make law that relates to the taxation of real property, it must be rejected because the voters of Baltimore City have no legal power under Maryland law to make such a law.

To this plain language of Maryland statute, already interpreted by this Court, Appellants only offer two counters, neither of them availing. Appellants Br. 17. First, they make the dubious claim that it does not affect them because “[a] charter amendment is *not* ‘legislation, laws or ordinances.’” *Id.* (emphasis in original). That is nonsense. A local government’s charter, and the sections thereof, such as the one the Renew amendment wishes to add to the charter, are laws. Indeed, a charter is “the organic, the fundamental law” of a local government in Maryland. *Cheeks*, 287 Md. at 607. Second, they argue that the statute cannot mean what it plainly says (without offering any alternative interpretation) because it applies to

the City as well as to the voters of the City. Appellant Br. 17. It is not at all clear why Appellants think this is a problem. By the clear terms of both Chapter 555 of the Acts of 1920, and Section 49 of Article II of the City Charter (in which Chapter 555 is codified), neither the voters nor the government of Baltimore City has the power to initiate laws relating to property tax via the charter amendment powers enabled in Article XI-A of the Maryland Constitution and expressly granted by this enactment of the General Assembly. The City's governing body has since been granted the express power by other statute to make certain legislation, laws and ordinances relating to property taxes in Baltimore City (most notably relevant here, the enactment of TP § 6-302(a) granted the City's governing body the power to set property tax rates through legislation, and expressly required that it do so annually). No subsequent enactment by the General Assembly has granted the voters of Baltimore City the power to do what Appellants ask that they be allowed to do with the Renew amendment. Accordingly, this amendment must be rejected as contrary to the laws of Maryland, and the circuit court's judgment should be affirmed.

**IV. The petition is also invalid because the tax cuts it requires would reduce the City's total revenue by about 25%, or roughly half a billion dollars annually, thereby jeopardizing the City's ability to perform the duties required of it by law.**

The effect of removing the City's power to adopt legislation that sets the tax rate would leave the City without hundreds of millions of dollars of revenue needed to meet expenses for basic City services, statutory duties and existing contracts. BALTIMORE CITY CHARTER, art. III, § 1(a), 11; art. VI, §§ 5; 7. The *Smallwood* court explained that when “demonstrated in a particular case that a local limitation on property tax revenues so hampers a county government that it cannot perform the duties required under state law, a tax limitation charter provision may well be found to be invalid as applied.” *Smallwood*, 327 Md. at 243-44 (citing McQuillin, *The Law of Municipal Corporations*, at § 44.26). There can be no doubt that cutting in half the revenue source that provides the City with almost half its revenue would impair its ability to perform its duties under the law.

The City's roughly two-billion-dollar annual budget is more than half made up of fixed costs, including hundreds of millions of dollars each for statutory obligations for education funding, debt servicing, and pension liability. See E.200; E.214 (Cename Affidavit, ¶ 7). The City also has legal obligations, both statutory and common law, to provide public safety, health services, and maintenance of thousands of miles of roads, sidewalks, sewers, and other infrastructure. To fulfill

these duties, the City has multiple collective bargaining agreements with labor organizations that will require it to continue these expenses for years.

The BBMR Analysis starkly demonstrates the catastrophic effects of such a radical tax cut. The estimated loss of \$851 Million dollars in revenue in a short seven-year period would leave the City with little choice but to try to cover required expenses with credit, resulting in the City's violation of Section 7 of Article XI of the Maryland Constitution and the Baltimore City Charter, art. VI, § 7(c), which requires the City to balance its budget. The Charter expressly states how this balancing is supposed to be done by fixing the tax rate to address any deficiencies – when there is a

difference between the anticipated expenditures for the next fiscal year contained in the Ordinance of Estimates and all expected revenues other than from the full rate property tax. The Board shall then state a rate for the levy of full rate property taxes sufficient to realize the amount required to meet the said difference and the ordinance making the annual levy of full rate property taxes shall fix a rate not less than that state by the Board so that it shall not be necessary at any time for the City to create a floating debt to meet any deficiency....

*Id.* If the tax rate is permanently set at such a low level, it mathematically follows that the City's expenses will not be met by its revenue. *See* E.214 (Cenname Affidavit, ¶ 13).

In addition to not being able to meet its statutory costs, like funding education, the Renew amendment would result in the City's inability to pay amounts agreed to in contracts, such as pension and retirement costs. *Cherry v.*



*Mayor & City Council of Baltimore City*, 475 Md. 565, 603, (2021) (“the City breached its contract with the Retired and Retirement-Eligible Sub-classes” by implementing a local law that did not fulfill its promise to retirees). The Renew amendment would operate as a later enacted law that impaired existing contracts, potentially violating of the Contracts Clause of the United States Constitution if the impairment was severe. *See, e.g., U.S. Tr. Co. of New York v. New Jersey*, 431 U.S. 1, 24 (1977) (“Whatever the propriety of a State’s binding itself to a future course of conduct in other contexts, the power to enter into effective financial contracts cannot be questioned” although a government may modify a contract legislatively if “adopted with the purpose and effect of protecting the creditors”).

The unavoidable reality is that most of the City’s expenses are legal obligations. There simply is not half a billion dollars’ worth of voluntary spending that can be cut from the City’s budget without cutting deeply into the core services that the City is required by Maryland law to provide. And contrary to the Renew Report’s wildly optimistic fortune-telling, nobody wants to move to a city where local government is cutting funds to the schools, to the fire department, to the police, and to the other essential services that make life in an urban environment work. But if the Renew amendment is enacted, the City will be faced with exactly that type of scenario, and in all likelihood, it will drive down population and property values, making the City’s revenues (and thus services) spiral further down

still. The Renew amendment must be held invalid because it will cripple the City government and make it unable to perform basic functions. This is exactly the type of hampering of a government's ability to perform its duties that the *Smallwood* Court said would require a charter amendment be held invalid, and the Renew amendment must be rejected for this reason as well. *See* 327 Md. at 243-44.

### **CONCLUSION**

For all the above reasons, the Mayor and City Council of Baltimore respectfully ask that the judgment of the circuit court be affirmed in this matter.

Respectfully submitted,

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**CERTIFICATION OF WORD COUNT  
AND COMPLIANCE WITH RULE 8-112**

I hereby certify that:

1. This brief contains 7,337 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.



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MICHAEL REDMOND

## **TEXT OF PERTINENT AUTHORITIES**

### *Constitutional Provisions*

#### **MD Constitution, Art. 11-A, § 2**

##### **§ 2. Grant of express powers**

The General Assembly shall by public general law provide a grant of express powers for such County or Counties as may thereafter form a charter under the provisions of this Article. Such express powers granted to the Counties and the powers heretofore granted to the City of Baltimore, as set forth in Article 4, Section 6, Public Local Laws of Maryland, 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.

#### **MD Constitution, Art. 11-A, § 3**

##### **§ 3. Legislative bodies**

Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said City or County. Such legislative body in the City of Baltimore shall be known as the City Council of the City of Baltimore, and in any county shall be known as the County Council of the County. The chief executive officer or County Executive, if any such charter shall provide for the election of such executive officer or County Executive, or the presiding officer of said legislative body, if such charter shall not provide for the election of a chief executive officer or County Executive, shall be known in the City of Baltimore as Mayor of Baltimore, and in any County as the President or Chairman of the County Council of the County, and all references in the Constitution and laws of this State to the Mayor of Baltimore and City Council of the City of Baltimore or to the County Commissioners of the Counties, shall be construed to refer to the Mayor of Baltimore and City Council of the City of Baltimore and to the President or Chairman and County Council herein provided for whenever such construction would be reasonable. From and after the adoption of a charter by the City of Baltimore, or any County of this State, as hereinbefore provided, the Mayor of Baltimore and City Council of the City of Baltimore or the County Council of said County, subject to the Constitution and Public General Laws of this State, shall have full power to enact local laws of said City or County including the

power to repeal or amend local laws of said City or County enacted by the General Assembly, upon all matters covered by the express powers granted as above provided, and, as expressly authorized by statute, to provide for the filling of a vacancy in the County Council or in the chief executive officer or County Executive by special election; provided that nothing herein contained shall be construed to authorize or empower the County Council of any County in this State to enact laws or regulations for any incorporated town, village, or municipality in said County, on any matter covered by the powers granted to said town, village, or municipality by the Act incorporating it, or any subsequent Act or Acts amendatory thereto. Provided, however, that the charters for the various Counties shall specify the number of days, not to exceed forty-five, which may but need not be consecutive, that the County Council of the Counties may sit in each year for the purpose of enacting legislation for such Counties, and all legislation shall be enacted at the times so designated for that purpose in the charter, and the title or a summary of all laws and ordinances proposed shall be published once a week for two successive weeks prior to enactment followed by publication once after enactment in at least one newspaper of general circulation in the county, so that the taxpayers and citizens may have notice thereof. The validity of emergency legislation shall not be affected if enacted prior to the completion of advertising thereof. These provisions concerning publication shall not apply to Baltimore City. All such local laws enacted by the Mayor of Baltimore and City Council of the City of Baltimore or the Council of the Counties as hereinbefore provided, shall be subject to the same rules of interpretation as those now applicable to the Public Local Laws of this State, except that in case of any conflict between said local law and any Public General Law now or hereafter enacted the Public General Law shall control.

## **MD Constitution, Art. 11-A, § 5**

### **§ 5. Charter amendments**

Amendments to any charter adopted by the City of Baltimore or by any County of this State under the provisions of this Article may be proposed by a resolution of the Mayor of Baltimore and the City Council of the City of Baltimore, or the Council of the County, or by a petition signed by not less than 20% of the registered voters of the City or County, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition. A petition shall be filed with the Mayor of Baltimore or the President of the County Council. An amendment so proposed shall be submitted to the voters of the City or County at the next general or congressional election occurring after the passage of the resolution or the filing

of the petition. If at the election the majority of the votes cast for and against the amendment shall be in favor thereof, the amendment shall be adopted and become a part of the charter of the City or County from and after the thirtieth day after said election. The amendments shall be published by the Mayor of Baltimore or President of the County Council once a week for five successive weeks prior to the election in at least one newspaper published in said City or County.

## **MD Constitution, Art. 11-A, § 6**

### **§ 6. Transfer of powers from General Assembly to voters**

The power heretofore conferred upon the General Assembly to prescribe the number, compensation, powers and duties of the County Commissioners in each County, and the power to make changes in [Sections 1](#) to 6 inclusive, Article XI of this Constitution, when expressly granted as hereinbefore provided, are hereby transferred to the voters of each County and the voters of City of Baltimore, respectively, provided that said powers so transferred shall be exercised only by the adoption or amendment of a charter as hereinbefore provided; and provided further that this Article shall not be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said Counties or City as this Article sets forth.

## **MD Constitution, Art. 11-A, § 7**

### **§ 7. Definition of petition; signatures**

The word "Petition" as used in this Article means one or more sheets written or printed, or partly written and partly printed. There shall be attached to each paper of signatures filed with a petition an affidavit of the person procuring those signatures that the signatures were affixed in his presence and that, based upon the person's best knowledge and belief, every signature on the paper is genuine and bona fide and that the signers are registered voters at the address set opposite or below their names. The General Assembly shall prescribe by law the form of the petition, the manner for verifying its authenticity, and other administrative procedures which facilitate the petition process and which are not in conflict with this Article. The false signing of any name, or the signing of any fictitious name to said petition shall be forgery, and the making of any false affidavit in connection with said petition shall be perjury.

*Statutes*

**MD Code, Education, § 5-101**

**§ 5-101. Annual budget**

**Preparation of annual budget**

(a)(1) Subject to the rules and regulations of the State Board and with the advice of the county superintendent, each county board shall prepare an annual budget according to:

(i) The major categories listed in this section; and

(ii) Any other major category required by the State Board.

(2) In addition to the information required by this section, the county fiscal authorities may require the county board to provide details to the service areas and activities levels in the account structure within the “Financial Reporting Manual for Maryland Public Schools”.

(3) With the annual budget, each county board shall provide:

(i) The number of full-time equivalent positions included within each major category; and

(ii) A description of any fund balances or other money held by any outside source, including an insurer, that are undesignated or unreserved and are under the direction and control of the county board.

(4) The State Board shall adopt a process for the uniform reporting of the information in subsection (b) of this section to timely share the information provided by a county board in subsection (b) of this section to a county governing body.

**Categories included in budget**

(b) The budget shall be prepared to include the following categories:

**Part I**

(1) Current expense fund, estimated receipts:

(i) Revenue from local sources;

(ii) Revenue from State sources;

(iii) Revenue from federal sources;

(iv) Unliquidated surplus, the actual from the previous fiscal year and the estimated from the current fiscal year, whether accrued from revenues or expenditures; and

(v) Revenue from all other sources with identification of the source.

(2) Current expense fund, requested appropriations:



- (i) Administration, which means those activities associated with the general regulations, direction, and control of the county board, including:
  - 1. Executive administration;
  - 2. Business support services; and
  - 3. Centralized support services;
- (ii) Mid-level administration, including:
  - 1. The office of the school principal; and
  - 2. Staff providing administration and supervision to the school instructional programs;
- (iii) Instructional salaries, which means those activities which deal directly with teaching students, including:
  - 1. Teachers;
  - 2. Aides;
  - 3. Psychological personnel;
  - 4. Guidance counselors; and
  - 5. Library personnel;
- (iv) Textbooks and classroom instructional supplies;
- (v) Other instructional costs;
- (vi) Special education with subcategories and items budgeted in this category to be determined by the State Board with the advice of the county board;
- (vii) Student personnel services;
- (viii) Health services;
- (ix) Student transportation;
- (x) Operation of plant and equipment;
- (xi) Maintenance of plant;
- (xii) Fixed charges;
- (xiii) Food services; and
- (xiv) Capital outlay.
- (3) Current funds held in reserve, including:
  - (i) Revenue to and expenditures from funds held in reserve in the prior fiscal year; and
  - (ii) Appropriations planned in the upcoming fiscal year from funds held in reserve.
- (4) The amount of any federal funds received in the last fiscal year, including:
  - (i) Expenditures of the federal funds in the prior fiscal year;
  - (ii) A description of whether the federal funds are committed for a particular purpose; and
  - (iii) The anticipated timing to appropriate the federal funds in the upcoming fiscal year.

(5) The amount of funds held in trust or otherwise dedicated toward long-term obligations for retiree health care costs or other postemployment benefits, and information used to calculate the county board's obligation for those costs.

## **Part II**

(6) School construction fund, estimated receipts:

(i) Revenue from local sources;

(ii) Sale of bonds;

(iii) State General Public School Construction Loan;

(iv) Revenue from State sources;

(v) Revenue from federal sources;

(vi) Unliquidated surplus, the actual from the previous fiscal year and the estimated for the current fiscal year, whether accrued from revenues or expenditures; and

(vii) Funds from all other sources, with identification of the source.

(7) School Construction Fund, requested appropriations:

(i) Land for school sites;

(ii) Buildings and the equipment that will be an integral part of a building by project;

(iii) School site improvement by project;

(iv) Remodeling by project;

(v) Additional equipment by project;

(vi) Debt service; and

(vii) An amount that is adequate to satisfy a final court judgment that, after exhaustion of the rights of appeal, is rendered against the county board of education or any of its officers or employees.

## **Montgomery County Board of Education requirements**

(c) In addition to all other information required by this section, the Montgomery County Board of Education, on request of the County Executive and County Council, shall provide with the annual budget the program implications of recommendations for reductions to or increases in its annual budget, at whatever different levels of funding and accompanied by whatever reasonable supporting detail and analysis, as may be specified by the County Executive and County Council. Prior to the submission of the annual budget, similar information shall be submitted by the Superintendent of Schools upon request by the County Executive or County Council.

## **Addendum with estimated expenditures for special education**

(d) The budget document shall contain an addendum showing estimated expenditures for special education as defined by the “Financial Reporting Manual for Maryland Public Schools”.

**Cecil County Board of Education requirements**

(e) In addition to all other information required by this section, the Cecil County Board of Education, on request of the Cecil County Board of Estimates, shall provide with the annual budget separate information on the number of and costs associated with school-based noninstructional personnel.

**Prince George’s County Board of Education requirements**

(f)(1) In addition to all other information required by this section, the Prince George's County Board of Education shall provide to the County Executive and County Council with the annual budget, information relating to each of the following categories:

- (i) Instructional supplies and materials;
- (ii) Additional equipment;
- (iii) Replacement equipment; and
- (iv) Availability payments related to any public-private partnership agreement entered into under [§§ 4-126](#) and [4-126.1](#) of this article.

(2) For the categories specified in paragraph (1) of this subsection, the following information shall be provided for the public school system in the county:

- (i) Proposed expenditures for the next school year based on the annual budget;
- (ii) Estimated expenditures for the current school year; and
- (iii) Actual expenditures for the prior school year.

**MD Code, Tax - Property, § 6-302**

**§ 6-302. County tax**

**Tax rate on all assessments subject to county’s property tax**

(a) Except as otherwise provided in this section and after complying with [§ 6-305](#) of this subtitle, in each year after the date of finality and before the following July 1, the Mayor and City Council of Baltimore City or the governing body of each county annually shall set the tax rate for the next taxable year on all assessments of property subject to that county's property tax.

### **County property tax limits**

(b)(1) Except as provided in subsection (c) of this section and §§ 6-305 and 6-306 of this subtitle:

(i) there shall be a single county property tax rate for all real property subject to county property tax except for operating real property described in § 8-109(c) of this article; and

(ii) the county tax rate applicable to personal property and the operating real property described in § 8-109(c) of this article shall be no more than 2.5 times the rate for real property.

(2) Paragraph (1) of this subsection does not affect a special rate prevailing in a taxing district or part of a county.

### **Vacant lots**

(c)(1) The Mayor and City Council of Baltimore City or the governing body of a county may set a special rate for a vacant lot or improved property cited as vacant and unfit for habitation or other authorized use on a housing or building violation notice.

(2) On or before December 1 each year, the Mayor and City Council of Baltimore City or the governing body of a county that enacts a special rate under paragraph (1) of this subsection shall report to the Department of Housing and Community Development and, in accordance with § 2-1257 of the State Government Article, to the General Assembly on:

(i) the special rate set under paragraph (1) of this subsection;

(ii) the number of properties to which the special rate applies;

(iii) the revenue change resulting from the special rate;

(iv) the use of the revenue from the special rate; and

(v) whether properties subject to the special rate are viable for adaptive reuse, as defined in § 1-102 of the Housing and Community Development Article, and plans to convert viable properties.

## *Baltimore City Charter Provisions*

### **Article II**

#### **§ (49) Constitutional and other powers.**

The voters of Baltimore City shall have and are hereby expressly granted the power to make such changes in Sections 1 to 6, inclusive, of Article XI of the Constitution of the State of Maryland, as they may deem best; such power shall be exercised only by the adoption or amendment of a charter as provided in Article XI-A of said Constitution; provided, that nothing contained in this subsection (49) shall be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said City, as set forth in Article XI-A of said Constitution; and expressly provided, further, that nothing herein contained shall give to the City or to the inhabitants thereof the right to initiate any legislation, laws or ordinances relating to the classification and taxation of real and personal property within the limits of said City.

The powers heretofore or hereafter granted to the City not included in Article II of its Charter shall, nevertheless, be exercisable by said City. Nothing contained in this subsection (49) shall be construed to take away or limit any power vested in the City, under the laws existing prior to June 1, 1945.

### **Article 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.

## **Article VI**

### **§ 5. Preparation of proposed Ordinance of Estimates.**

(a) Contents.

After receiving the recommendations of the Department of Finance and the Planning Commission, the Board shall prepare its proposed Ordinance of Estimates, which shall consist of:

(1) an operating budget: estimates for the next fiscal year of the appropriations needed for the operation of each municipal agency and for all other purposes, other than for capital improvements. These estimates shall state the amounts needed by every municipal agency for each particular program, purpose, activity, or project and the source of funds, if other than general funds, for each.

(2) a capital budget: estimates of the amounts to be appropriated to each municipal agency for capital improvements in the next fiscal year. The capital budget proposed by the Board also shall include the projects that the Board includes in the first year of its long-range capital improvement program and the source of funds for all capital improvements. However, no capital project shall be included in the capital budget portion of the proposed Ordinance of Estimates submitted by the Board of Estimates to the City Council unless the Board has received and considered the reports and recommendations of the Planning Commission, the Director of Finance, and the Board of Finance with regard to such capital project. The Board of Estimates may establish additional procedures for the development of a long-range capital improvement program and a capital budget.

(b) Contingent fund.

The Board may include annually in the proposed Ordinance of Estimates a sum up to one million dollars (\$1,000,000.00) of the General Fund appropriations to

be used during the next fiscal year as a contingent fund in case of an emergency or necessity for the expenditure of money in excess of or other than the appropriations regularly passed for any municipal agency.

At least one week before it approves a contingent fund expenditure, the Board shall report to the City Council the reasons for the expenditure.

## **Article VI**

### **§ 7. Enactment of Ordinance of Estimates.**

#### **(a) Introduction; authorized cuts.**

(1) ON receipt of the proposed Ordinance of Estimates and the accompanying materials, the President of the City Council shall promptly cause it to be introduced in the City Council, and the Council shall hold public hearings on the proposed Ordinance of Estimates.

(2) By a majority vote of its members, the City Council may reduce or eliminate any of the amounts in the proposed Ordinance of Estimates, except:

- (i) amounts fixed by state or federal law;
- (ii) amounts for the Fire Department established by a board of arbitration and included in the proposed Ordinance of Estimates; and
- (iii) amounts for the payment of the interest and principal of the municipal debt.

#### **(b) Increases and additions.**

(1) Except as provided in this subsection, the City Council does not have the power to increase the amounts fixed by the Board or to add any amount for any new purpose in the proposed Ordinance of Estimates.

(2)(i) By a majority vote of its members, the City Council may increase items of appropriation within the general fund or add items within the general fund for new purposes provided that:

- (A) the aggregate amount of the increase does not exceed the aggregate amount by which the City Council has reduced or eliminated from the Ordinance of Estimates under subsection (a) of this section;

(B) the increases authorized by this subsection do not derive from the reduction or elimination of revenue, which by law, contract, or regulation must be used to support appropriations for specific purposes; and

(C) an item added for a new purpose is or will be authorized by legislation separate and apart from the Ordinance of Estimates.

(ii) In no event, however, may:

(A) the total amount of the Operating Budget or the Capital Budget, as amended by the City Council, exceed the total amount of the Operating Budget or Capital Budget, respectively, as proposed by the Board of Estimates; or

(B) any increase or addition be made to or for any item described in subsection (a)(2)(i), (ii), or (iii) of this section.

(3) If the carrying out of a particular program, purpose, activity, or project depends on action by a body other than the City, the City Council may insert a specific provision in the proposed Ordinance of Estimates making the appropriation for the particular program, purpose, activity, or project contingent on that action.

(c) Revenue ordinances.

As soon as practicable after the passage of the Ordinance of Estimates, the City Council shall enact such revenue ordinances as are necessary to produce sufficient expected revenues, as estimated by the Board of Estimates, to cover the total anticipated expenditures authorized by the Ordinance of Estimates. The Council may adopt revenue sources or revenue rates other than those proposed by the Board and in each such instance the estimate of the revenue to be yielded by such a source or rate shall be made by the Board of Estimates.

The Board of Estimates shall, taking into account any reductions and eliminations made by the City Council in the anticipated expenditures contained in the proposed Ordinance of Estimates and the revenues to be derived from all existing sources and from any new sources or new rates enacted by the City Council, certify to the Council the difference between the anticipated expenditures for the next fiscal year contained in the Ordinance of Estimates and all expected revenues other than from the full rate property tax. The Board shall then state a rate for the levy of full rate property taxes sufficient to realize the amount required to meet the said difference and the ordinance making the annual levy of full rate property taxes shall fix a rate



not less than that stated by the Board so that it shall not be necessary at any time for the City to create a floating debt to meet any deficiency, and it shall not be lawful for the City to create a floating debt for any such purpose.

## **APPENDIX**

# LAWS

HALL OF RECORDS  
ANNAPOLIS, MARYLAND

OF THE

# STATE OF MARYLAND

" Laws, Statutes, etc.

MADE AND PASSED

At the Session of the General Assembly  
Made and Held at the City of  
Annapolis on the Seventh day  
of January, 1920, and End-  
ing on the Fifth day of  
April, 1920

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PUBLISHED BY AUTHORITY

1276

1920

GEORGE T. MELVIN, STATE PRINTER  
ANNAPOLIS, MD.



rights of any bona fide purchaser or creditor without notice who becomes so prior to the passage of this Act.

Approved April 16, 1920.

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CHAPTER 555.

AN ACT to grant to the voters of the City of Baltimore, as provided for in Section 6 of Article XI-A of the Constitution of the State of Maryland, power to make such changes in Sections 1 to 6, inclusive, of Article XI of said Constitution, as they may deem best, and to grant to the City of Baltimore, under any charter adopted in pursuance of the authority conferred upon the voters of said city by Article XI-A of the Constitution, the power heretofore or hereafter granted to the said City.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That the voters of Baltimore City shall have and are hereby expressly granted the power to make such changes in Sections 1 to 6, inclusive, of Article XI of the Constitution of the State of Maryland, as they may deem best; such power to be exercised only by the adoption or amendment of a charter, as provided in Article XI-A of said Constitution; provided, that nothing in this section contained shall be construed to authorize the exercise of any powers in excess of those conferred by the Legislature upon said City of Baltimore, as set forth in Article XI-A of said Constitution; and expressly provided, further, that nothing contained in this Act shall give to the Mayor and City Council of Baltimore or to the inhabitants thereof the right to initiate any legislation, laws or ordinances relating to the classification and taxation of real and personal property within the limits of the said City of Baltimore.

SEC. 2. *And be it further enacted,* That the power heretofore or hereafter granted to the City of Baltimore not included in Article 4, Section 6, Public Local Laws of Maryland, shall be exercisable by said City under any charter adopted in pursuance of the authority conferred upon the voters of the City of Baltimore by Article XI-A of the Constitution.

SEC. 3. *And be it further enacted,* That nothing herein shall be construed to take away or limit any power which is

now vested in the Mayor and City Council of Baltimore, under the laws as existed prior to the passage of this Act.

Approved April 9, 1920.

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#### CHAPTER 556.

AN ACT to repeal Section 160, Article 22 of the Public Local Laws of the State of Maryland, title, Washington County, sub-title, Hagerstown, as enacted by Chapter 409 of the Acts of 1884, and re-enact the same.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That Section 166 of Article 22 of the Code of Public Local Laws of Maryland, title, Washington County, sub-title, Hagerstown, as the same was enacted by Chapter 409 of the Acts of 1884, be and the same is hereby repealed and re-enacted so as to read as follows:

SEC. 166. The tax collector shall collect all taxes assessed and levied by the Mayor and Council for general and special purposes, as authorized by this sub-title of this Article; he shall keep an account of all moneys collected and received by him, and shall credit the same on his books to the particular head or item of expense for which the same have been levied, collected or received; he shall receive all moneys which may be collected by the clerk under any ordinance passed in pursuance of the power conferred by Section 171 of this sub-title of this Article, and all moneys which shall be paid over to him by the clerk and collector as aforesaid, under any ordinances passed under the power conferred by Section 171 of this sub-title of this article; he shall distribute and apportion pro rata to the several particular heads or items of expense, as required to be designated in the levy for general purposes, as provided by Section 195; he shall pay out the several sums of money which may be collected or received upon warrants as hereinafter directed and in no case shall the collector pay out the money collected and credited for one purpose to or for any other; except that when the purpose for which any account shall have been created has been fulfilled and all obligations which may have existed against the said account has been satisfied and there remains to the credit to the said account a balance; he shall, if the Mayor and Council so order, transfer the said balance to the credit of the general purpose account; he shall make, under oath, quarterly reports,

BENEDICT J. FREDERICK, III, et al.,

Appellants,

v.

BALTIMORE CITY BOARD OF  
ELECTIONS, et al.,

Appellees.

IN THE

SUPREME COURT

OF MARYLAND

No. 35

September Term, 2023

SCM-REG-0035-2023

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 26th day of August 2024, a copy of the Brief of Appellee Mayor and City Council of Baltimore in the captioned case was served via MDEC on and two paper copy were mailed or delivered the next business day to:

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MICHAEL REDMOND