
**IN THE
SUPREME COURT OF MARYLAND**

No. 35, September Term, 2023

SCM-REG-0035-2023

BENEDICT J. FREDERICK, III, et. al

Appellants,

v.

BALTIMORE CITY BOARD OF ELECTIONS, et al.

Appellees.

On Appeal from the Circuit Court for Baltimore City
(The Honorable Althea M. Handy, Judge)

REPLY BRIEF OF APPELLANTS

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I. ARGUMENT

A. The Court Should Not Permit the Mayor and City Council to Present Additional Questions to this Court.

1. The MCC has improperly attempted to expand the scope of this appeal.

Appellants and Appellee Baltimore City Board of Elections, Armstead B.C. Jones, Sr. and Scherod C. Barnes (“BCBOE”) have presented one question on this Appeal. Although phrased differently, Appellants and Appellee BCBOE have essentially presented the same substantive question for this Court to decide. The Appellee Mayor and City Council of Baltimore (“MCC”) have now raised additional questions for this Court to decide, none of which were previously addressed in the initial determination or by the lower court.

Appellants consented to the MCC intervening as a party in this action. E. 119-20. However, Appellants did not consent to the MCC introducing **new irrelevant non-expert opinions and arguments**. *Id.* The MCC’s Motion to Intervene and Motion to Dismiss attached thereto did not expressly reference or attach the previously prepared report produced by the Department of Finance, Bureau of the Budget and Management Research entitled: *Analyzing the Impact of the 2023 “Renew Baltimore” Charter Amendment Proposal on Property Tax Rates* (the “City’s Analysis”). E. 98-118. Specifically, the Verified Complaint (and Amended Verified Complaint) challenged the erroneous conclusion of the Election Director for the Baltimore City Board of Elections that the subject petition at issue in this matter conflicted with State law as it divested the MCC of

its authority to set a specific real property tax rate in Baltimore City. E. 16-96. The BCBOE's appellate brief in this matter is limited to this issue. The MCC should not be permitted to introduce **new material, which is irrelevant non-expert opinions, and new arguments beyond the singular issue to be determined by this Court.**

2. The MCC has Failed to Present Any Expert Testimony to Support Section IV of Its Brief and Failed to Object to the Sage Analysis at the Hearing on August 8, 2024.

To be clear, Appellants objected to the City's Analysis and argued it should be precluded under *Rochkind v. Stevenson*, 471 Md. 1 (2020) and Maryland Rule 5-702, as it contains no stated methodology and is unreliable. Additionally, Appellants objected to the affidavit of Robert Cenname as he is unqualified to render opinions in this case. E. 327-30. The MCC never raised any objection to the Sage Analysis. In fact, the MCC conceded to Appellants objection and admitted during the hearing at the trial court that the individual who signed the affidavit attached to the City's Motion for Summary Judgment and the City's Analysis is not an economic expert; therefore, his submitted report is not expert opinion admissible. "And I want to state clearly that the City's affidavits and its analysis weren't expert opinion..." E. 585.

Appellants attached the Sage Analysis along with three affidavits from renowned economists in support of their Opposition to the MCC's Motion for Summary Judgment in compliance with the Maryland Rules. E. 317-511. There was no testimony or evidence received at the motions hearing. It was simply arguments from counsel. The MCC failed to object to the Sage Analysis on any grounds at the hearing. E. 557-605. The Sage Analysis is a part of the record without objection.

The MCC cites *dicta* in *Smallwood* to argue - with no reliable evidence - this Court “would require invalidation of such an amendment” because the City alleges it would not be able to perform its obligations if the Petition is approved by the voters at the upcoming General Election. MCC Appellee Br. 4. This is no more than a bald allegation by the MCC. The Sage Analysis establishes the City’s ability to meet its obligations does not diminish. E. 338-81. Additionally, the Court in *Smallwood* rendered “no opinion as to the validity of the tax caps as they might have been applied in practice.” *Id.* 327 at 243.

The MCC have thrown everything into their brief including bald allegations and suppositions. They have included arguments and statements not supported by any probative evidence in what appears to be an attempt to prevent this matter from being decided expeditiously. This Court should not entertain such conduct by the Appellee. It should decide this appeal on the record submitted and as expeditiously as the circumstances require pursuant to §6-209(a)(4) of the Election Law Article, Maryland Annotated Code.

B. The Petition Does Not Violate Section (49) of the Baltimore City Charter.

Section 49 states as follows:

“...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).

Section 49 applies to the “classification and taxation” of real and personal property that is determined by the State. Only the State can determine what is classified as real or personal property and only the State can assess the property for taxation purposes. This is

the reason the City and its inhabitants are prohibited from initiating any legislation, laws or ordinances relating to the “classification and taxation of real and personal property within the limits” of the City. *Id.* Section 49 contains the word “and” between the words “classification and taxation.” Therefore, Section 49 is inapplicable since the Petition does not address the classification of real property in Baltimore City. To be sure, this Court expressly stated in *Cheeks* “this language does no more than express the intention of the Legislature to restrict to itself the power to enact laws concerning the ***classification and taxation*** of property.” 287 Md. at 613-14. (emphasis added).

Additionally, the MCC’s interpretation of Section 49 is illogical. If a charter amendment is the same as a law and the registered voters of Baltimore City have no right to make a law, then the registered voters of Baltimore City have no right to amend the charter ever under any circumstances relating to taxation of real and personal property in Baltimore City. That flies in the face of *Smallwood*. “The basic function of a constitution or a charter is to distribute power among the various agencies of government, and between the government and the people who have delegated that power to their government.” 327 Md. at 236. A charter amendment and law cannot be the same thing under Section 49. The Petition is simply attempting to impose a reasonable limitation on the real property tax rate that is fair, equitable and competitive with surrounding counties.

Dated: August 27, 2024

Respectfully submitted,

/s/ Constantine J. Themelis

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

I HEREBY CERTIFY that: (1) the Reply Brief of Appellants, excluding the portions of the Brief exempted by Rule 8-503, contains 1,085 words; and (2) the Reply Brief of Appellants was prepared in Times New Roman, proportionally spaced 13-point font with double spacing between the lines as permitted by Rule 8-112.

/s/ Constantine J. Themelis

Constantine J. Themelis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August, 2024, a copy of the foregoing Appellant's Reply Brief was filed using this Court's electronic filing system, which will effect service upon all counsel of record.

I FURTHER HEREBY CERTIFY that on the 27th of August, 2024, pursuant to Maryland Rule 20-404, I caused eight (8) copies of Appellant's Reply Brief to be filed with the Clerk of the Court and two (2) copies of Appellant's Reply Brief to be served in paper form via first-class mail postage prepaid.

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**TEXT OF PERTINENT CONSTITUTIONAL AND STATORY
PROVISIONS AND RULES**

Md. R. Evid. 5-702

Rule 5-702 - Testimony by Experts

Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine

- (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education,
- (2) the appropriateness of the expert testimony on the particular subject, and
- (3) whether a sufficient factual basis exists to support the expert testimony.