

**IN THE
SUPREME COURT OF MARYLAND**

September Term, 2023

No. 34

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

Appellants,

v.

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

Appellees.

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

**BRIEF OF APPELLANTS BALTIMORE CITY BOARD OF ELECTIONS,
ARMSTEAD B.C. JONES, SR., AND SCHEROD C. BARNES**

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STATEMENT OF THE CASE

Baltimore City has a home rule charter under Article XI-A of the Constitution of Maryland. Section 5 of Article XI-A allows amendments to the Baltimore City Charter to be proposed by a petition of 10,000 or more voters registered in Baltimore City. An amendment proposed this way becomes part of the Charter if approved at the subsequent general election. In Baltimore City, charter amendment petitions are reviewed by the Baltimore City Board of Elections (the “City Board”). When a petition is filed, the

Election Director for the City Board is required to determine, among other matters, whether the petition contains sufficient signatures and whether it seeks a result that would be unconstitutional or otherwise prohibited by law.

The Maryland Child Alliance (the “Child Alliance”) sponsored a petition proposing an amendment to the City charter (the “Baby Bonus Amendment”) that would require Baltimore City to make payments of \$1,000 or more to new parents in the City. The Election Director reviewed the petition and determined that it contained sufficient valid signatures and that the Baby Bonus Amendment would not be unconstitutional or otherwise prohibited by law. On July 1, 2024, the Election Director accordingly certified for the 2024 general election ballot the question of whether the Baby Bonus Amendment should be adopted. (E. 49-50.)

The Mayor and City Council of Baltimore, together with the Director and Deputy Director of the City’s Department of Finance as separately named plaintiffs, filed a timely complaint on July 11, 2024 against the City Board and the State Board of Elections in the Circuit Court for Baltimore City.¹ (E. 26-38.) The plaintiffs sought relief under § 6-209 of the Election Law Article, which permits judicial review of the decisions of local boards of elections related to voter petitions. Md. Code Ann., Elec. Law § 6-209 (LexisNexis 2022). The complaint sought a determination that the Baby Bonus Amendment is not proper “charter material” under Article XI-A of the

¹ The complaint also named as defendants Baltimore City Election Director Armstead B.C. Jones, Sr.; Baltimore City Board of Elections President Scherod C. Barnes; State Administrator of Elections Jared DeMarinis; and State Board of Elections President Michael G. Summers. The City Board, Mr. Jones, and Mr. Barnes are here collectively referred to as the “City Board Defendants.”

Constitution of Maryland. The circuit court granted the Child Alliance's unopposed motion to intervene as a defendant.

The City Board Defendants filed a motion to dismiss or, alternatively, for summary judgment, on the question of whether the Baby Bonus Amendment is proper charter material. The plaintiffs and the Child Alliance also filed cross-motions for summary judgment on the same question, and the Child Alliance separately moved to dismiss on the ground that the plaintiffs lacked standing. The circuit court conducted a hearing on all dispositive motions on August 7, 2024. On August 9, the circuit court denied the Child Alliance's motion to dismiss and the defendants' motions for summary judgment and granted the plaintiffs' cross-motion for summary judgment. The court ruled that the plaintiffs had standing and that the Baby Bonus Amendment was not proper charter material under this Court's precedent. (E. 8-24.) The court accordingly declared the Baby Bonus Amendment unconstitutional under Article XI-A and enjoined the City Board and State Board from placing it on the general election ballot. (E. 25.)

The City Board Defendants and the Child Alliance separately noticed direct appeals to this Court. *See* Elec. Law §§ 6-209(a)(3)(ii), 6-210(e)(3)(i)(2) (LexisNexis 2022).

QUESTION PRESENTED

Did the City Board's Election Director correctly determine that the Baby Bonus Amendment, which establishes a mandatory appropriation and mandates Baltimore City's adoption of a particular policy but leaves implementation details to the Mayor and City Council, was proper charter material under Article XI-A of the Constitution of Maryland?

STATEMENT OF FACTS

The Charter Amendment Process

Since 1918, Baltimore City has been governed by a home rule charter under Article XI-A of the Maryland Constitution. *See Cheeks v. Cedlair Corp.*, 287 Md. 595, 599 (1980). Article XI-A allows a county or Baltimore City to adopt a "charter or form of government" by popular vote. Md. Const. art. XI-A, § 1. A local government operating under an Article XI-A charter may exercise the express powers delegated to charter home rule jurisdictions by the General Assembly. *Id.* § 2. The charter "shall provide for an elective legislative body in which shall be vested the law-making power" of the local government, and that legislative body, the County or City Council, shall have "full power to enact local laws . . . upon all matters covered by the express powers" granted by the General Assembly. *Id.* § 3.

Article XI-A also sets out the process for amending a local charter. Amendments can be proposed either by the local legislative body or by a petition signed by 20% of the registered voters in the jurisdiction, or 10,000 voters, whichever is fewer. *Id.* § 5. In Baltimore City, a charter amendment petition is filed with the Mayor. *Id.* A charter

amendment properly proposed by one of these methods shall be submitted to the voters at the next general election, and if a majority of votes on the amendment are in favor of it, the amendment shall become part of the charter. *Id.*

The General Assembly has the power to specify the details of the petition process. *Id.* § 7. Those procedures are found in the Election Law Article, mainly in Titles 6 and 7. Once a charter amendment petition is received by the local government, it is forwarded to the local board of elections. Elec. Law § 6-205(a) (LexisNexis 2022). The local Election Director, who is the chief administrator for the local board of elections, *see* Elec. Law § 2-202(b)(2) (LexisNexis 2022), then must make several determinations. Among those determinations is whether the petition contains sufficient valid signatures of registered voters in the jurisdiction. Elec. Law § 6-207 (LexisNexis 2022).

Also, and most relevant here, the Election Director must determine the legality of the proposed charter amendment. Specifically, he or she must determine whether the “petition seeks . . . the enactment of a law that would be unconstitutional . . . or . . . a result that is otherwise prohibited by law.” Elec. Law § 6-206(c)(5) (LexisNexis 2022). If the Election Director so determines, he or she must “declare that the petition is deficient.” Elec. Law § 6-206(c).

If, in contrast, the Election Director determines that the charter amendment petition “has satisfied all requirements established by law,” including legality and the required number of signatures, the Election Director shall certify that the question of the adoption of the charter amendment has qualified to be placed on the ballot. Elec. Law § 6-208(c) (LexisNexis 2022).

The Election Law Article also establishes procedures for challenging the Election Director's determination. "A person aggrieved by a determination made" under certain provisions of Title 6, including § 6-206 (which governs legality determinations), may seek judicial review, in the case of a charter amendment, in the circuit court for the City or the relevant county. Elec. Law § 6-209(a) (LexisNexis 2022). A registered voter may also seek declaratory relief "as to any petition." Elec. Law § 6-209(b). In any such action, the circuit court shall hear the case without a jury on an expedited basis. Elec. Law § 6-210(e)(3) (LexisNexis 2022). An expedited direct appeal to this Court is available from the circuit court's decision. Elec. Law §§ 6-209(a)(3)(ii), 6-210(e)(3)(i)(2).

The Baby Bonus Amendment

The Baby Bonus Amendment is a proposed amendment to the Baltimore City Charter sponsored by the Child Alliance. The Baby Bonus Amendment would add Section 20 to Article I of the Baltimore City Charter and establish the "Baltimore Baby Bonus Fund" in the City treasury. (E. 54 (§ 20(a)(1)).) The exclusive purpose of the fund would be to make a one-time payment of at least \$1,000 to each Baltimore City resident who is the birth parent of a child, upon the birth of the child. (E. 54 (§ 20(a)(2)).) The primary source of funds for the Baltimore Baby Bonus Fund would be a mandatory annual appropriation in the City budget equal to at least \$0.03 on every \$100 of assessed or assessable property value. (E. 54 (§ 20(b)).) Moneys in the fund would remain in the fund and could not lapse or revert to the City's general fund. (E. 54 (§ 20(c)).)

The amendment also provides for the City Council or a City agency to establish the details of implementation by ordinance or regulation. Under its terms, “the Mayor and City Council [would] provide for the oversight, governance, and administration” of the fund, and would specify by ordinance methods for determining eligibility, procedures for making distribution, and any other rules necessary to implement the program. (E. 54 (§ 20(d)).) Specific issues that the amendment would leave to the City to determine include the conditions, if any, under which a person who is not a birth parent (such as a guardian or adoptive parent) may receive a “baby bonus” payment; the amount of the payment (subject to the \$1,000 minimum); what City agency will administer the program; how parents will apply for the payment; how the City will verify eligibility; and the logistics of how the money will be distributed once the City determines a parent is eligible. (E. 54.)

In 2023, the Child Alliance submitted their proposed petition form to the City Board. (E. 73 ¶ 4.) The City Board’s Election Director, Armstead B.C. Jones, Sr., approved the petition as to format without making any determination as to the charter amendment’s legality. (E. 73 ¶ 5.) The petition sponsors submitted signatures to the City Board on a rolling basis. (E. 73 ¶ 8.) On July 1, 2024, the Election Director determined that the petition had met the threshold of 10,000 valid and verified signatures from City registered voters. (E. 73 ¶ 9.) The Election Director also determined that the petition had met all other requirements of law, including that the proposed charter amendment would not be “unconstitutional . . . or . . . otherwise prohibited by law.” Elec. Law

§ 6-206(c)(5). The Election Director accordingly certified the Baby Bonus Amendment as a ballot question. (E. 73-74 ¶¶ 10-11.)

SUMMARY OF ARGUMENT

This Court’s precedent establishes that charter amendments should address the “form or structure” of local government. It also states that a charter amendment may not contain a comprehensive legislative scheme and must instead leave discretion to the local government. Some authority suggests that these two standards are two sides of the same coin: a charter amendment that appropriately leaves discretion to the local government may be said to aim at “form or structure” rather than improper legislating via the charter. Alternatively, it may be that these are two separate standards, with the “form or structure” requirement addressing the charter amendment’s subject matter and the “no legislation” test addressing the level of detail in the amendment and the amount of discretion left to the local legislative body.

The Court’s most recent statement on the subject of “charter material,” *Atkinson v. Anne Arundel County*, 428 Md. 723 (2012), recognizes that a charter amendment can, under at least some circumstances, mandate rather than merely authorize the adoption of a particular public policy and that a charter amendment also may require the local governing body to appropriate certain funds, removing the local government’s discretion over part of its budget.

Whatever the relationship between the “form or structure” standard and the “legislation” standard, the Election Director was justified in determining the Baby Bonus Amendment to be constitutional under Article XI-A. The Baby Bonus Amendment

leaves sufficient discretion to the City Council to avoid being classed as “legislation.” In this respect, the Baby Bonus Amendment is like the charter provision approved in *Atkinson*, which mandated that Anne Arundel County adopt binding arbitration for certain first responders and specified certain important high-level details but left matters of procedure and implementation to the County Council. The Baby Bonus Amendment also addresses the “form or structure” of City government because it alters the allocation of budget and appropriation authority, which are core matters of “form or structure,” as *Atkinson* again confirms.

ARGUMENT

I. THIS COURT REVIEWS BOTH THE CIRCUIT COURT’S JUDGMENT AND THE ELECTION DIRECTOR’S DETERMINATION DE NOVO.

Review of a trial court’s grant of a motion for summary judgment is de novo. *Ademiluyi v. Maryland State Bd. of Elections*, 458 Md. 1, 29 (2018). Where, as here, no material facts are disputed, this Court determines whether the circuit court “correctly granted summary judgment as a matter of law.” *Ross v. State Bd. of Elections*, 387 Md. 649, 659 (2005). When a local board of elections has certified a proposed charter amendment as a ballot question, this Court will consider the legality of the proposed charter amendment without deference to the local board. *See Griffith v. Wakefield*, 298 Md. 381, 382-83, 386-88 (1984).

II. THIS COURT’S PRECEDENT HOLDS THAT A CHARTER AMENDMENT MAY COMPEL THE ADOPTION OF A PUBLIC POLICY AND MAY ESTABLISH A MANDATORY APPROPRIATION.

The Election Director’s determination that the Baby Bonus Amendment is proper charter material correctly applied this Court’s precedent. As the agency charged with administering the local charter amendment process, *see* Elec. Law §§ 6-201 – 6-211 (LexisNexis 2022), the City Board has an interest in the availability of that process to would-be petitioners, and thus in ensuring that legally valid charter amendment questions can appear and remain on the ballot. At the same time, the City Board, as a neutral election administration body, does not have an interest in the success or failure of a particular ballot measure. Rather, the City Board’s interest is in correct application of the law both to this charter amendment petition and to future charter amendment petitions.

Thus, although the City Board maintains that the best reading of this Court’s precedent requires the circuit court to be reversed, the City Board has an equal or greater interest in the establishment of a clear and administrable rule for what constitutes “charter material.” The existence of such a clear rule will allow petition sponsors to know, before beginning a petition effort, whether their objectives are constitutionally permissible, and will also reduce litigation at the end of the petition process.

This Court first addressed the question of whether a proposed charter amendment was “charter material” in *Cheeks*. That case involved a proposed Baltimore City charter amendment that would have established a Tenant-Landlord Commission and specified a detailed scheme for rent control to be administered by that commission. *Id.*, 287 Md. at 602. The proposed charter amendment was comprehensive in detail and left nothing for

the Mayor and City Council independently to do, other than appoint the members of the commission and potentially expand its powers. *See id.* at 615-32.

The Court explained that, given a charter's function as a "local constitution," "a charter amendment within the context of [Article] XI-A is necessarily limited in substance to amending the form or structure of government." *Id.* at 607. Such an amendment thus could not "function as a vehicle through which to adopt local legislation." *Id.* Importantly, the petition sponsors in *Cheeks* conceded that their charter amendment was legislative in nature and was an attempt to directly exercise the police power of the City. *See id.* at 608-09. The question presented, then, was whether legislation could be enacted via the City charter; the Court held it could not. *See id.* at 608.

The Court grounded its conclusion in structural considerations, meaning what the Court considered to be the ordinary function of a charter, and in § 3 of Article XI-A, which grants "the law-making power" and "full power to enact local laws" under the local government's delegated express powers to the City Council. *Id.* at 608-09 (quoting Md. Const. art. XI-A, § 3). This constitutional language required that the Council remain the "primary legislative organ" of the City. *See Cheeks*, 287 Md. at 612-13. Although § 3 permitted the reservation to the voters of the right of referendum, it did not allow the voters to initiate legislation. *See id.*

The Court also held that the proposed charter amendment violated Article XI-A, § 2, which states that a local charter may not extend the express powers delegated by the General Assembly. *Id.* at 609-10. The General Assembly had authorized the City to

enact ordinances exercising the police and general welfare powers, *id.* at 600, implying that the exercise of those powers other than by ordinance, i.e., by charter, would be an improper expansion of the City’s express powers. *Id.* at 609-10. The Court mentioned in a footnote that the City was “authorized under its grant of express powers to adopt, in its charter, a method for exercising the express powers other than by ordinance” but did not explain why that authorization did not resolve the Court’s § 2 concern. *See id.* at 609 n.8.

The Court recognized that Article XI-A, § 1, which empowers counties and the City to adopt a “charter or form of government,” implicitly authorizes the adoption via charter of provisions related to the form and structure of government, such as the referendum, provided those charter provisions do not conflict with other provisions of Article XI-A or with higher law such as the federal Constitution. *Id.* at 612-13; *see also* Md. Const. art. XI-A, § 1 (providing that the charter is subject to the Constitution and the public general laws of Maryland).

The takeaway from *Cheeks*, then, was that charter amendments may alter the form and structure of local government, including placing limitations on local lawmaking such as the referendum power, but charter amendments must leave intact the Council’s role as the “primary legislative organ,” which means that a charter amendment cannot initiate legislation under one of the local government’s expressly delegated lawmaking powers. *See Cheeks*, 287 Md. at 612-13. Any charter amendment that is “not addressed to the form or structure of government” necessarily is not “charter material.” *Id.* at 608.

But because the petition sponsors in *Cheeks* conceded that their charter amendment was legislative in nature, the Court did not need to draw the boundary line

between charter provisions properly addressing “form or structure” and charter provisions improperly constituting “legislation.” The location of that boundary remained an open question.

Later cases grappled with that question. In *Griffith v. Wakefield*, the Court considered a proposed charter amendment that would have mandated binding arbitration between Baltimore County and its firefighters, 298 Md. at 382. The proposed amendment would have specified all the procedural details of the arbitration process, including the composition of the board of arbitrators, the exact day-by-day timeline of the arbitration, the procedural powers of the arbitration board, and the factors to be considered in reaching a decision. *Id.* at 386-87. Because the amendment would not merely have authorized the county to adopt a binding arbitration policy, but would itself have “contain[ed] all of the law on the subject,” the Court held it invalid under *Cheeks*. *Griffith*, 298 Md. at 389-90.

The Court suggested the proposed amendment was not addressed to the “form or structure” of government *because* it was a detailed legislative enactment. *Id.* at 388 (explaining that the “amendment is not intended to, nor does it, alter the ‘form or structure’ of the Baltimore County government. Instead, the core of the amendment is the imposition of a comprehensive system of binding arbitration”); *id.* at 389 (rejecting the firefighters’ argument that the binding arbitration amendment addressed the “form or structure of government” because it would be a “detailed local enactment” (internal quotation marks omitted)). The Court thus hinted that these are not two separate requirements, i.e., that to be “charter material,” an amendment must (1) address “form or

structure” and (2) not be “legislative” in its level of detail. Instead, the Court suggested that there is a single spectrum running from “form or structure” amendments at one end to “legislative” amendments at the other.

Further guidance on the meaning of “form or structure” came with *Board of Supervisors of Elections v. Smallwood*, 327 Md. 220 (1990). *Smallwood* held that a “tax cap” limiting the future growth of a county’s property tax rate is proper charter material.² *Id.* at 241. The Court reasoned both that limitations on local government revenue-raising go to the form and structure of government, and that the tax cap was not akin to the “detailed legislation” considered in *Cheeks* and *Griffith* because it did not set specific property tax rates. *Id.* at 240. The Court also noted that restrictions on the budgetary and fiscal authority of county councils, like the “executive budget system” under which the Council has only a limited ability to modify a County Executive’s proposed budget, can be proper charter material. *Id.* at 241.

The Court’s next decision on the subject, *Save Our Streets v. Mitchell*, 357 Md. 237 (1998), considered two unrelated charter amendments. One would have prohibited the installation of new speed bumps and required the removal of existing speed bumps in Montgomery County; the other would have placed a one-year moratorium on development in Harford County and prohibited all future development that did not meet adequacy standards that the charter amendment specified in precise detail. 357 Md. at

² *Smallwood* also held that certain aspects of the proposed tax limitation charter amendments were invalid on the ground that they conflicted with State law. 327 Md. at 244. No such issue exists in this case; nobody has argued that the Baby Bonus Amendment would conflict with any public general law of the State.

240 & n.2, 242 & n.4. The Court rejected the notion that any charter amendment framed as a limitation on government is necessarily proper charter material, and held that following *Cheeks* and *Griffith*, both proposed charter amendments in *Save Our Streets* were invalid as detailed legislative measures. *Id.* at 253.

Save Our Streets focused its discussion on charter amendments merely authorizing or precluding particular policies. *See, e.g., id.* at 254-55. The Court left open the question whether a charter amendment could go farther and mandate that a local government adopt a particular public policy, if the charter amendment did not contain “all of the law on the subject” but instead left the policy details to the local government’s discretion. *See id.* at 254 (quoting *Griffith*, 298 Md. at 390). Would the result in *Cheeks*, for example, have been different if the proposed charter amendment had mandated that the Baltimore City Council adopt rent control legislation but had not specified the details?

The Court’s most recent “charter material” case, *Atkinson v. Anne Arundel County*, suggested that the answer to that question is “yes.” *Atkinson*, like *Griffith*, involved a charter amendment mandating binding arbitration in collective bargaining with county first responders. *Id.*, 428 Md. at 727. The only real difference between the charter amendment in *Griffith* and the charter amendment in *Atkinson* was that the *Atkinson* provision did not specify all the details of the arbitration procedure but left the County Council discretion to shape the contours of the process. The charter provision required the county council to enact a binding arbitration ordinance, dictated that the result of the arbitration would bind the county, and specified some, but not all, required features of the

ordinance. *Id.* at 735-36. For example, the charter provision identified some of the factors to be considered in the arbitration and mandated that the ordinance prohibit strikes and work stoppages. *Id.*

The Court held that the charter amendment in *Atkinson* was constitutional under Article XI-A. The Court first explained that earlier cases, which had held that binding arbitration provisions must be authorized by charter or State law, established that “binding arbitration is an appropriate subject matter for inclusion in a county charter.” *Id.* at 745 (citing cases). The Court then explained that the amendment “does not run afoul of [Article XI-A] by including what amounts to an entire statute in the Charter.” *Id.* at 746. On this point, the “operative standard” was “the extent to which discretion of the legislative body is precluded by the proposed Charter amendment.” *Id.* at 747.

Placed on that axis, the charter provision in *Atkinson* fell between the two extremes of a charter amendment merely authorizing a particular enactment, on the one hand, and a charter amendment both mandating an enactment and containing all the law on the subject, on the other hand. *Id.* The Anne Arundel provision mandated the adoption of an ordinance on a given subject but left “fleshing out of the directive to the County Council.” *Id.* at 748. Under the charter provision, the County Council had adopted an ordinance articulating the details of the arbitration scheme, including procedures for the arbitration, the factors for the arbitrator to consider, and the implementation of the award. *Id.* at 750. The Court concluded that this division of responsibility between the County Council and the Charter was proper. *Id.*

Atkinson also confirmed that a charter provision may constrain the local legislative body's discretion to the extent of mandating a particular appropriation. The charter amendment in *Atkinson* required that the labor arbitrator's award be implemented through the budget process. *Id.* at 748. Because the county's budget system is a fundamental aspect of its form and structure, a charter amendment could alter that system by imposing limits on the Council's budget discretion. *Id.*; *see also Smallwood*, 327 Md. at 241.

An important question left open after *Atkinson* was whether the requirement that a charter amendment address the "form or structure" of government is separate from the requirement that the charter amendment must leave discretion to the county government (i.e. not be "legislative" in nature). On one hand, cases like *Griffith* suggest that "form or structure" amendments and "legislative" amendments are two sides of the same coin, *see* 298 Md. at 388-89, such that a charter amendment that is *not* legislative in nature is, by virtue of that fact, necessarily aimed at "form or structure." *See* 298 Md. at 388-89. (The idea would be that such an amendment merely establishes a framework for government action rather than specifying the action in detail. *See id.*)

On the other hand, cases like *Smallwood* also examined the particular subject matter of the charter amendment in determining whether it addressed "form or structure." *See* 327 Md. at 238 ("[A] limitation on the power of a legislative body to raise revenue is at the heart of the form and structure of our government and thus is proper charter material."). *Atkinson's* statement that "binding arbitration is an appropriate subject matter for inclusion in a county charter" arguably is in line with that view. 428 Md. at 745.

A further question is whether, if there is a separate subject-matter test for “form or structure,” a charter provision that deals with “form or structure”-related subject matter can contain all of the law on that subject and leave no discretion to the Council. In other words, if the “legislative detail” and “form or structure” tests are separate tests, are they alternative tests, such that a charter amendment can pass muster by satisfying one or the other, or must they both be satisfied? *Atkinson* suggests that the former is true, and that, at least in the context of mandatory appropriations, a “form or structure” charter provision may be charter material even if it leaves no discretion to the local government in a certain area. *See* 428 Md. at 748 & n.9.

But because the Baby Bonus Amendment both leaves discretion to the City government and deals with a “form or structure” subject, namely, budgeting and appropriations, the Election Director was justified in approving it as to legality, regardless of the answers to these questions.

III. THE BABY BONUS AMENDMENT IS PROPER CHARTER MATERIAL BECAUSE IT LEAVES IMPLEMENTATION DETAIL TO THE CITY COUNCIL AND ALLOCATES BUDGET AUTHORITY WITHIN CITY GOVERNMENT.

The Baby Bonus Amendment would establish a special fund in the City treasury, mandate regular appropriations of a certain specified amount into that fund, and require the money in the fund to be used to make payments of at least \$1,000 to new parents in Baltimore City. Some details of the policy would be specified the charter amendment itself; others would be left to the Mayor and City Council to decide. Under this Court’s precedent, and *Atkinson* in particular, the Election Director’s decision to approve the Baby Bonus Amendment as to legality was justified.

A. The Baby Bonus Amendment Leaves Discretion to the City Council Comparable to *Atkinson*.

Atkinson held that charter amendments are not limited to authorizing or precluding government action, but also can mandate the adoption of a particular public policy. *See* 428 Md. at 747-48. What made the charter amendment in *Atkinson* proper was that it left many details of procedure and implementation to the County Council. *Id.* This distinguished it from the proposed amendment in *Griffith*, which dealt with the same subject matter, but fell afoul of this Court’s precedents because in providing “all of the law on the subject,” 298 Md. at 389-90, the proposed charter amendment improperly left no legislative role to the County Council, *Atkinson*, 428 Md. at 747-48.

The charter provision in *Atkinson* did specify various important aspects of the policy that the County was required to adopt. Aside from the general mandate to institute a binding arbitration policy in the first place, the charter identified the groups of employees who would be eligible for binding arbitration; mandated the implementation of the arbitration award in the budget; required the arbitration process to take certain factors into account; and specified that the implementing ordinance must prohibit strikes or work stoppages. *Id.* at 735-36.

On the other hand, the charter provision did not specify, and left for the County Council to determine by ordinance, the procedural details of the arbitration. These included the process for selecting the arbitrator, the procedural steps of the arbitration, the full list of factors the arbitrator would consider, and the process for implementation of the award. *Id.* at 749-50. The details left to the County Council, then, were all secondary

details of procedure and implementation. The County Council was not left with discretion to alter the primary public policy judgment that the County should be required to submit to binding arbitration and to provide funds for implementing the arbitrator's decision. The implementing ordinance could not alter the fact that the county would have to make certain payments at the direction of an authority other than its Council.

The Baby Bonus Amendment is analogous to the charter provision approved in *Atkinson*. The amendment itself would make the primary policy decision to require Baltimore City to make payments of \$1,000 or more to new parents. (E. 54 (§ 20(a)).) Like the amendment in *Atkinson*, which provided benefits to law enforcement and firefighters, the Baby Bonus Amendment would specify the beneficiaries of the policy, namely, new parents. (E. 54 (§ 20(a)).) The City would also have some, albeit limited, discretion to adjust eligibility, by specifying conditions under which a guardian or adoptive parent of a particular child rather than the child's biological parents would receive the payment. (E. 54 (§ 20(a)(3)-(4)).) The details left to the City would otherwise be the same sort of procedural and implementation details that were left to the County Council in *Atkinson*: what City agency will administer the program, how parents will apply for the payment, how the City will verify eligibility, and the logistics of how the money will be distributed once the City determines a parent is eligible. (E. 54.) But as in *Atkinson*, the City will not be able to alter the fundamental policy decision that Baby Bonus payments should be made.

The circuit court concluded that, unlike in *Atkinson*, the Baby Bonus Amendment would deprive the City of any "meaningful" discretion. (E. 20.) Depending on how one

draws up the lists of issues, one could argue that the *Atkinson* provision left a longer list of questions for the local government than the Baby Bonus Amendment would. *See Atkinson*, 428 Md. at 750. But the categories of questions reserved by the charter amendment, on one hand, and delegated to the City, on the other, are analogous: primary policy judgments reserved, and procedural and implementation questions delegated.

Because the Baby Bonus Amendment would leave discretion to the City, it cannot be said to improperly “exercise” the City’s legislative powers contrary to *Cheeks*. *See* 287 Md. at 608 (stating that a charter amendment may not “directly exercise the City’s police or general welfare powers”). In light of *Atkinson*, that aspect of *Cheeks* is best understood as a statement of the rule that a charter amendment may not contain a legislative level of detail and must leave discretion to the local government. If a charter amendment leaves discretion to the local government, *Atkinson* suggests, it is not “legislation” and so does not improperly exercise the City’s delegated legislative power. *See* 428 Md. at 747-48. In *Cheeks*, the petition sponsors conceded that their proposed charter amendment was an attempt to legislate in the charter, 287 Md. at 608-09; here, though, whether the Baby Bonus Amendment leaves the City insufficient discretion, and so constitutes legislation, is the question the Court must decide. For the reasons just explained, the amendment leaves the City sufficient discretion to qualify as charter material under *Atkinson*.

B. The Baby Bonus Amendment Addresses the Form or Structure of Government Because It Allocates Budget Authority.

If Article XI-A imposes a separate (additional or alternative) requirement that the subject matter of a charter amendment be concerned with “form or structure,” the Baby Bonus Amendment, under *Atkinson*, satisfies that requirement as well. *Atkinson* understood the mandatory arbitration charter provision as primarily a budget measure, which transferred part of the County Council’s budget authority to a neutral arbitrator under specified circumstances. *See* 428 Md. at 748. Framed this way, the mandatory arbitration charter provision dealt with the form and structure of government because it reallocated budget and appropriation authority. *See id.* This conclusion was consistent with *Smallwood*’s recognition that other restrictions on local government budgeting, such as the executive budget system that limits a legislative body’s ability to initiate or increase appropriations, may be proper charter material. *See* 327 Md. at 241.

At its core, the Baby Bonus Amendment is a spending measure in the same way as the charter provision in *Atkinson*. Both require the local government to appropriate an amount of funds determined by someone other than the Council: the arbitrator in *Atkinson*, the charter provision itself in this case. Both also dictate the object on which those funds will be spent: firefighter and law enforcement officer compensation and benefits, in *Atkinson*, and payments to new parents, in this case. Both take away the discretion of the local legislative body over a certain aspect of the budget.

Atkinson also recognized that the authority to budget and make appropriations is implicit in Article XI-A, § 1, empowering counties to devise a form of government, and

does not depend on Article XI-A, § 3, which requires that the elected local legislative body be the primary legislative organ. *See* 428 Md. at 749-50. To the extent the Baby Bonus Amendment is understood as an appropriation measure, its authorization similarly flows from § 1 and does not depend on, or exercise, one of the delegated legislative powers governed by § 2 and § 3.

The Baby Bonus Amendment also contains a policy framework directing that payments be made out of the local government's treasury to particular individuals. But this aspect of the amendment is also mirrored in *Atkinson*. The mandatory arbitration system under the charter provision in *Atkinson* not only required the Council to appropriate certain funds but also dictated that those funds be spent in accordance with the arbitrator's award, on salaries, benefits, or other matters of the kind covered by a collective bargaining agreement. *See* 428 Md. at 744 (explaining that the arbitrator's award would be binding on the county). And although the charter provision in *Atkinson* did not itself determine the exact amount or object of that spending, it, like the Baby Bonus Amendment, deprived the county legislative body of discretion to make that determination.

The circuit court took an unduly restrictive view of the "form or structure" standard. In the circuit court's opinion, "what was critical to the Court's decision in *Atkinson* was the fact that county council's role in the budgetary process was being transferred to a neutral arbitrator, which affected the form and structure of government." (E. 22.) But the Baby Bonus Amendment also involves transfer of budget authority away

from the local legislative body. The Baby Bonus Amendment would impair the discretion of the City Council to the same extent.

If the charter provision in *Atkinson* affected the form or structure of government, then so too would the Baby Bonus Amendment. Neither changes the organizational structure of the local government or creates a new agency. But both alter local government budget authority by mandating the inclusion of certain items in the budget, as well as the disbursement of those amounts in accordance with that appropriation. Thus, even if a charter amendment must affect the form or structure of government to qualify as proper charter material, the Baby Bonus Amendment satisfies that criterion. And because the Baby Bonus Amendment also leaves sufficient discretion to the City, this Court's precedent required the Election Director to approve the Baby Bonus Amendment.

CONCLUSION

The judgment of the Circuit Court for Baltimore City should be reversed.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 6,335 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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

/s/ Thomas S. Chapman

Thomas S. Chapman

TEXT OF PERTINENT PROVISIONS
(Rule 8-504(a)(10))

Maryland Constitution, Article XI-A

§ 1.

On demand of the Mayor of Baltimore and City Council of the City of Baltimore, or on petition bearing the signatures of not less than 20% of the registered voters of said City or any County (Provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition), the Board of Election Supervisors of said City or County shall provide at the next general or congressional election, occurring after such demand or the filing of such petition, for the election of a charter board of eleven registered voters of said City or five registered voters in any such Counties. Nominations for members for said charter board may be made not less than forty days prior to said election by the Mayor of Baltimore and City Council of the City of Baltimore or the County Commissioners of such County, or not less than twenty days prior to said election by petition bearing the signatures written in their own handwriting (and not by their mark) of not less than 5% of the registered voters of the said City of Baltimore or said County; provided, that in any case Two thousand signatures of registered voters shall be sufficient to complete any such nominating petition, and if not more than eleven registered voters of the City of Baltimore or not more than five registered voters in any such County are so nominated their names shall not be printed on the ballot, but said eleven registered voters in the City of Baltimore or five in such County shall constitute said charter board from and after the date of said election. At said election the ballot shall contain the names of said nominees in alphabetical order without any indication of the source of their nomination, and shall also be so arranged as to permit the voter to vote for or against the creation of said charter board, but the vote cast against said creation shall not be held to bar the voter from expressing his choice among the nominees for said board, and if the majority of the votes cast for and against the creation of said charter board shall be against said creation the election of the members of said charter board shall be void; but if such majority shall be in favor of the creation of said charter board, then and in that event the eleven nominees of the City of Baltimore or five nominees in the County receiving the largest number of votes shall constitute the charter board, and said charter board, or a majority thereof, shall prepare within 18 months from the date of said election a charter or form of government for said city or such county and present the same to the Mayor of Baltimore or President of the Board of County Commissioners of such county, who shall publish the same in at least two newspapers of general circulation published in the City of Baltimore or County within thirty days after it shall be reported to him. Such charter shall be submitted to the voters of said City or County at the next general or Congressional election after the report of said charter to said Mayor of Baltimore or President of the Board of County Commissioners; and if a majority of the votes cast for and against the adoption of said charter shall be in favor of such adoption,

the said charter from and after the thirtieth day from the date of such election shall become the law of said City or County, subject only to the Constitution and Public General Laws of this State, and any public local laws inconsistent with the provisions of said charter and any former charter of the City of Baltimore or County shall be thereby repealed.

§ 2.

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.

§ 3.

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.

§ 5.

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.

Annotated Code of Maryland, Election Law Article (LexisNexis 2022)

§ 6-206. Determinations by chief election official at time of filing.

(a) *Review by chief election official* – Promptly upon the filing of a petition with an election authority, the chief election official of the election authority shall review the petition.

(b) *Determination by chief election official* – Unless a determination of deficiency is made under subsection (c) of this section, the chief election official shall:

(1) make a determination that the petition, as to matters other than the validity of signatures, is sufficient; or

(2) defer a determination of sufficiency pending further review.

(c) *Declaration of deficiency* – The chief election official shall declare that the petition is deficient if the chief election official determines that:

(1) make a determination that the petition, as to matters other than the validity of signatures, is sufficient; or

(2) after providing the sponsor an opportunity to correct any clerical errors, the information provided by the sponsor indicates that the petition does not satisfy any requirements of law for the number or geographic distribution of signatures;

(3) an examination of unverified signatures indicates that the petition does not satisfy any requirements of law for the number or geographic distribution of signatures;

(4) the requirements relating to the form of the petition have not been satisfied;

(5) based on the advice of the legal authority:

(i) the use of a petition for the subject matter of the petition is not authorized by law; or

(ii) the petition seeks:

1. the enactment of a law that would be unconstitutional or the election or nomination of an individual to an office for which that individual is not legally qualified to be a candidate; or

2. a result that is otherwise prohibited by law; or

(6) the petition has failed to satisfy some other requirement established by law.

(d) *Consistency with advance determination* – A determination under this section may not be inconsistent with an advance determination made under § 6-202 of this subtitle.

(e) *Notice of determination* – Notice of a determination under this section shall be provided in accordance with § 6-210 of this subtitle.

§ 6-209. Judicial review.

(a) *In general* –

(1) A person aggrieved by a determination made under § 6-202, § 6-206, or § 6-208(a)(2) of this subtitle may seek judicial review:

(i) in the case of a statewide petition, a petition to refer an enactment of the General Assembly pursuant to Article XVI of the Maryland Constitution, or a petition for a congressional or General Assembly candidacy, in the Circuit Court for Anne Arundel County; or

(ii) as to any other petition, in the circuit court for the county in which the petition is filed.

(2) The court may grant relief as it considers appropriate to ensure the integrity of the electoral process.

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

(i) the case shall be heard and decided without a jury and as expeditiously as the circumstances require; and

(ii) 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.

(4) The Supreme Court of Maryland shall give priority to hear and decide an appeal brought under paragraph (3)(ii) of this subsection as expeditiously as the circumstances require.

(b) *Declaratory relief* – Pursuant to the Maryland Uniform Declaratory Judgments Act and upon the complaint of any registered voter, the circuit court of

the county in which a petition has been or will be filed may grant declaratory relief as to any petition with respect to the provisions of this title or other provisions of law.

BALTIMORE CITY BOARD OF ELECTIONS, ET AL.,	*	IN THE
<i>Appellants,</i>	*	SUPREME COURT
v.	*	OF MARYLAND
MAYOR AND CITY COUNCIL OF BALTIMORE, ET AL.,	*	September Term, 2023
<i>Appellees.</i>	*	No. 34

* * * * *

CERTIFICATE OF SERVICE

I certify that on this 20th day of August, 2024, the Brief of Appellants Baltimore City Board of Elections, Armstead B.C. Jones, Sr., and Scherod C. Barnes in the captioned case was filed and served on all parties electronically on the MDEC system (with all parties consenting to waiver of service of paper copies):

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