

**IN THE  
SUPREME COURT OF MARYLAND**

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SEPTEMBER TERM, 2023

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NO. 34

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

Appellants,

**v.**

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

Appellees.

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

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**REPLY OF APPELLANTS MARYLAND CHILD ALLIANCE**

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## INTRODUCTION

This Reply Brief is submitted on behalf of Appellant, Maryland Child Alliance, in response to arguments presented by the Appellees, the Mayor and City Council of Baltimore. Appellants respectfully urge this Court to reverse the Circuit Court’s decision and permit the Baltimore Baby Bonus charter amendment to remain on the November 2024 ballot.

## ARGUMENT

### **I. Appellees Mischaracterize Both the Holding of *Atkinson* and the Baby Bonus.**

#### **A. The Baby Bonus is not “wholly legislative.”**

Appellees mischaracterize the Baby Bonus as “wholly legislative” in an attempt to distinguish the Baby Bonus from other charter amendments. The Baby Bonus is not legislation. It is a simple policy directive that can be easily summarized: a minimum of \$1,000 payments to parents of newborns. No lawmaker would confuse this policy directive with comprehensive legislation.

#### **B. The City’s selective quotation misrepresents the *Atkinson* holding.**

The City emphasizes language from *Atkinson v. Anne Arundel County*, 428 Md. 723, 749 (2012) in which the Court explained that the amendment at issue left “all of the detail” to the County Council, while conveniently ignoring the crucial prepositional phrase “of implementation” that follows. This selective quotation misrepresents the Court’s ruling. The *Atkinson* Court did not hold that proper charter amendments must leave all of the details to the County Council. Such a ruling would allow the council to negate a charter amendment--precisely what the Court held that Anne Arundel County could not do. Rather,

the Court found that the *Atkinson* amendment was valid because it left “all of the detail of implementation to the Council.” *Id.* at 749-50.

This distinction is critical. The amendment at issue in *Atkinson* included numerous policy specifications regarding the arbitration process. The Court required that the implementation of those policy directives, not the policy decisions themselves, be left to the Council. The Baby Bonus amendment, like the amendment in *Atkinson*, includes some policy specifications and appropriately leaves details of implementation to the Council, satisfying the standard set in *Atkinson*.

**C. Charter amendments are not limited to broad objectives.**

Appellees incorrectly argue that the Baby Bonus Amendment oversteps by requiring specific actions. They state, “the Baby Bonus amendment does not merely authorize the City to provide for the welfare of newborn children. It requires the establishment of a mandatory, non-lapsing fund to make direct payments, and even specifies the minimum amount of those payments.” Brief of Appellees at 16. This argument reflects a fundamental misunderstanding of relevant case law; *Atkinson* and its predecessors plainly allow voters to make specific policy decisions.

For instance, in *Board of Supervisors of Elections of Anne Arundel County v. Smallwood*, 327 Md. 220 (1990), the Court upheld a charter amendment that explicitly mandated an exact tax cap, rather than setting a broad objective to keep taxes low. Similarly, the amendment in *Atkinson* required the implementation of binding arbitration for specific county employees and mandated that the Council fund the arbitrator’s decision in the following year’s budget; the amendment did not merely suggest that the Council

utilize arbitration to resolve labor disputes. This Court has been clear that charter amendments can reflect policy *directives*, not just broad objectives.

## **II. The Non-Textual “Form and Structure” Requirement Must Be Interpreted Through Case Law.**

The “form and structure” requirement for charter amendments is not rooted in the text of the Maryland Constitution; it was created by the *Cheeks* Court. The Home Rule Amendment was intended to grant local governments greater authority, with the only explicit constitutional limitation on charter amendments being that they cannot contradict state law.

In the absence of a textual basis for this requirement, or any effort on the part of the *Cheeks* Court to articulate a test for its application, we are left to rely solely on this Court’s subsequent rulings. In the two instances where the Court directly addressed amendments that delegated fiscal authority—*Smallwood* and *Atkinson*—it upheld both as permissible. The Baby Bonus amendment, which similarly delegates fiscal authority (though to a far lesser extent), alters the form and structure of government as defined by this Court’s precedents.

Finally, this Court must give serious consideration to the Board of Elections’ concern that the implicit “form and structure” requirement creates significant challenges in distinguishing between permissible and impermissible charter amendments. The Board must certify amendments each election cycle, a task made unnecessarily complex by this non-textual standard. To provide clarity and consistency, we urge the Court to return to the original intent and text of Article XI-A by recognizing that the only limitation on charter

amendments is that they cannot conflict with state law. This approach would align with the amendment's original purpose and provide much-needed guidance to both the Board of Elections and the citizens of Maryland.

**III. If this Court finds that the Baby Bonus Amendment is impermissibly legislative, that defect may be cured by severing the minimum payment provision.**

Appellees assert that no provision of the Baby Bonus Amendment may be severed while maintaining the original intent of the amendment. Brief of Appellees at 27. This is incorrect. The City seems particularly concerned by minimum payment language. If the \$1,000 minimum payment were stricken from the Amendment, the Baby Bonus would even more closely resemble the Children and Youth Fund. *See* Brief of Appellant Maryland Child Alliance at 27. The resulting language would maintain the primary purpose of the Baby Bonus (providing direct support to new parents) while vesting the City Council with full discretion over the precise amount of that support.

**CONCLUSION**

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

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

1. This brief contains 1175 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ H. Mark Stichel  
H. Mark Stichel

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27<sup>th</sup> day of August, 2024, a copy of the foregoing Appellant Reply Brief was sent via the courts MDEC electronic filing system to all counsel of record.

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