

**IN THE
SUPREME COURT OF MARYLAND**

September Term, 2023

No. 35

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
(Althea M. Handy, Judge)

**BRIEF OF APPELLEES 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. As relevant here, a local charter amendment is unconstitutional and unlawful if it would conflict with a public general law of the State.

Renew Baltimore, a ballot issue committee, sponsored a petition proposing an amendment to the City Charter (the “Property Tax Amendment”) that would require Baltimore City’s real property tax rate, currently set at \$2.248 per \$100 in assessed value, to be no higher than \$2.20 beginning in the 2025–2026 tax year, no higher than \$2.10 in the 2026–2027 tax year, and so on down to a permanent limit of \$1.20 starting in the 2031–2032 tax year.

The Election Director reviewed the petition and determined, under § 6-206(c)(5) of the Election Law Article, that the petition was deficient because the proposed Property Tax Amendment would be unconstitutional or otherwise prohibited by law. Md. Code Ann., Elec. Law § 6-206(c)(5) (LexisNexis 2022). Specifically, he determined that the amendment would conflict with a public general law of the State: § 6-302 of the Tax-Property Article, which vests authority to set the property tax rate in the Mayor and City Council of Baltimore. Md. Code Ann., Tax-Prop. § 6-302 (LexisNexis 2019). On July 9, 2024, the Election Director issued a notice of petition deficiency to Renew Baltimore: a final determination that the proposed charter amendment could not qualify for the ballot. (E. 48-49.)

Plaintiffs, three individuals who allege they are residents and property taxpayers in Baltimore City, filed a timely complaint on July 12, 2024 against the City Board in the Circuit Court for Baltimore City.¹ (E. 16-24.) 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. The complaint sought a determination that the Property Tax Amendment is not unconstitutional or prohibited by law and must be placed on the ballot.

The Mayor and City Council of Baltimore moved to intervene as a defendant; the circuit court granted the motion with the consent of all parties. The State Board of Elections also intervened as a defendant, not to take a position on the merits but to make the court aware of the need for an expedited decision given upcoming ballot-printing deadlines.

The City Board Defendants filed a motion to dismiss or, alternatively, for summary judgment, on the basis that the Election Director's determination was legally correct. Plaintiffs filed a cross-motion for summary judgment, and the Mayor and City Council also filed a motion to dismiss and a motion for summary judgment arguing that the Election Director was correct and raising further arguments against the legality of the Property Tax Amendment.

¹ Plaintiffs later filed an amended complaint naming Baltimore City Election Director Armstead B.C. Jones, Sr., and Baltimore City Board of Elections President Scherod C. Barnes as additional defendants. (E. 53-63.) The City Board, Mr. Jones, and Mr. Barnes are here collectively referred to as the "City Board Defendants."

The circuit court conducted a hearing on all dispositive motions on August 8, 2024. On August 9, the circuit court denied the plaintiffs' motion and granted the City Board's and Mayor and City Council's motions, ruling that the Election Director's determination on the legality of the Property Tax Amendment was correct. (E. 538-43.) Plaintiffs noticed a direct appeal 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 Property Tax Amendment, which would roll back Baltimore City's property tax rate to progressively lower levels over a period of years, conflicted with § 6-302 of the Tax-Property Article and thus could not appear on the ballot?

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). Amendments to an Article XI-A charter 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. The process often begins with a petition sponsor requesting an “advance determination” on the format of a petition. Elec. Law § 6-202 (LexisNexis 2022). An advance determination addresses only the format of the petition form and whether the summary on the form accurately and fairly reflects the text of the proposed charter amendment. *See id.* The local board has no authority, at that stage, to make a legality determination on the substance of the charter amendment. *See id.*

Once a petition sponsor has finished gathering signatures and filed their petition with 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. 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). If the Election Director so determines, he or she must “declare that the petition is deficient,” Elec. Law § 6-206(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) (LexisNexis 2022). 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).

Property Taxation in Baltimore City

Section 6-202 of the Tax-Property Article authorizes “[t]he Mayor and City Council of Baltimore City or the governing body of a county” to impose a property tax on the assessable property within their jurisdiction. The City Charter incorporates that power. See Baltimore City Charter art. II, § 39 (authorizing the City to levy and collect property taxes to fund the City government).

Under § 6-302 of the Tax-Property Article, the rate of property tax is to be set annually by the Mayor and City Council:

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.

Tax-Prop. § 6-302(a).

The Charter sets out that process in more detail. At least 45 days before the beginning of a new fiscal year, the Board of Estimates, after holding public hearings, must submit a proposed Ordinance of Estimates (i.e., a City budget) for the upcoming fiscal year to the City Council. Baltimore City Charter art. VI, § 3. At the same time, the Board of Estimates submits to the Council a proposed property tax rate which, together with all other anticipated revenues, will be sufficient to balance the proposed budget. *Id.* art. VI, § 6(b)(5).

The City Council then sets the tax rate for the upcoming year by ordinance. For Fiscal Year 2025, which began this past July 1, the City Council adopted, and the Mayor signed on June 24, 2024, an ordinance setting the property tax rate at \$2.248 per \$100 of assessed or assessable value for nonexempt real property. Baltimore City ord. no. 24-345 (Council Bill 24-0522) (2024).

The Property Tax Amendment

The Property Tax Amendment would add a new Section 6A to Article I of the City Charter. (E. 29.) The Amendment would provide that “[n]otwithstanding any other provision of [the] Charter,” the City property tax rate shall be set in accordance with Section 6A. (E. 29.) “[F]or the fiscal year beginning July 1, 2025,” the rate shall be “no higher than \$2.200” per \$100 of assessed or assessable value. (E. 29.) The cap would then continue to decrease in each succeeding year, first by \$0.100 and then by \$0.180 per year, until, beginning with the 2031–2032 tax year, it would permanently be set at \$1.200. (E. 29.)

On June 12, 2023, Renew Baltimore submitted their proposed petition form to the City Board for an advance determination. (E. 167 ¶ 4.) The Election Director approved the petition as to format without making any determination as to the charter amendment’s legality. (E. 167 ¶ 5.) On June 20, 2024, Renew Baltimore submitted petition signature pages purporting to contain 23,542 valid signatures in support of the Property Tax Amendment. (E. 167 ¶ 8.) The City Board’s staff began reviewing the signatures, and the Election Director took the legality of the Property Tax Amendment under advisement. (E. 167 ¶ 9.) On July 9, 2024, the Election Director determined that the Property Tax Amendment was unconstitutional or otherwise prohibited by law on the ground that it conflicted with § 6-302 of the Tax-Property Article and notified Renew Baltimore of his determination. (E. 48-49.)

SUMMARY OF ARGUMENT

A local charter amendment may not conflict with a public general law of the State. Section 6-302 of the Tax-Property Article, a public general law of the State, authorizes and requires the local legislative body in each county and Baltimore City to set the property tax rate annually. This Court has held that § 6-302 of the Tax-Property Article precludes a local charter amendment from setting the property tax rate in the charter, or transferring rate-setting power from the council to the voters. Specifically, a charter amendment may not “roll back” the permissible level of local tax revenue to a lower amount, as this would effectively force the local government to adjust the tax rate to accommodate the new revenue cap, nor may a local government freeze tax revenue at its

existing level, for the same reason. See *Board of Supervisors of Elections v. Smallwood*, 327 Md. 220 (1990); *Hertelendy v. Board of Educ.*, 344 Md. 676 (1995).

Renew Baltimore’s proposed charter amendment is indistinguishable from the charter provisions the Court invalidated in *Smallwood* and *Hertelendy*. Indeed, it is more clearly in conflict with the Tax-Property Article than the provisions in those cases, because it directly sets the tax rate instead of setting it indirectly by altering the permissible level of revenue. Plaintiffs argue that the Renew Baltimore amendment does not set the tax rate but merely caps the rate, and that the City Council could set a rate lower than the cap. But the same was true for the provisions invalidated in *Smallwood* and *Hertelendy*. The Court in those cases recognized that setting a tax “cap” at or below the current level of taxation effectively sets the rate at the “cap.” The Renew Baltimore amendment would leave even less theoretical discretion to the City Council than the charter provisions at issue in *Smallwood* and *Hertelendy*, because rather than merely “roll back” taxation for a single year or freeze taxation at its existing level, the amendment would require the City tax rate to be repeatedly lowered, step-by-step and year-over-year, for a period of multiple years, ultimately forcing it down to approximately half its current level. Because such an amendment would be clearly invalid under *Smallwood* and *Hertelendy*, the Election Director correctly declined to certify it for the ballot, and this Court should affirm.

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 made a determination on the legality of a proposed charter amendment, 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. A CHARTER AMENDMENT MAY NOT SET THE LOCAL PROPERTY TAX RATE.

The City Board is a neutral election administration body with no interest in the success or failure of a particular ballot measure. The General Assembly has given local Election Directors the duty to exclude unlawful charter amendments from the ballot. Elec. Law § 6-206(c)(5). The City Board also has an interest in avoiding the confusion and waste of resources that would result from submitting to the voters a charter amendment that could not legally take effect. *See Montgomery County v. Board of Supervisors of Elections*, 311 Md. 512, 521-22 (1988).

This Court held in *Smallwood* and *Hertelendy* that while a charter amendment may limit the future growth of a county’s property tax rate, a charter amendment cannot freeze property tax revenue collection at its existing level or mandate a “roll back” of tax

collections to a lower level. *Smallwood*, 327 Md. at 244; *Hertelendy*, 344 Md. at 683. Such a freeze or “roll back” would, in effect, let the voters set the tax rate contrary to § 6-302 of the Tax-Property Article, which vests that authority in the local legislative body. No meaningful distinction exists between the Property Tax Amendment and the charter provisions invalidated in *Smallwood* and *Hertelendy*. The Election Director thus correctly concluded that the Property Tax Amendment would conflict with Tax-Property § 6-302 and declined to certify it for the ballot. The circuit court agreed, and this Court should affirm.

A local charter amendment is unlawful if it would conflict with a public general law of the State. *See* Md. Const. art. XI-A, § 1; *Montgomery County*, 311 Md. at 518-20. This is a separate analysis from the question of whether a charter amendment is proper “charter material,” *see Smallwood*, 327 Md. at 241, although plaintiffs’ discussion of *Smallwood* conflates the two issues, *see, e.g.,* Appellants’ Br. 8-12, 15-16.² Section 6-302 of the Tax-Property Article is a public general law. *See Smallwood*, 327 Md. at 241.

Smallwood established that under § 6-302 of the Tax-Property Article, voters may not “roll back” property tax revenue to a lower level. That case considered proposed amendments to the charters of Baltimore County and Anne Arundel County. The amendments, which were proposed as ballot questions at the 1990 general election, both

² Plaintiffs assert that “[t]here is no dispute that the Petition is proper charter material,” Appellants’ Br. 8, but the Election Director made no determination on that issue (E. 49). There was no need to do so, given his conclusion that the Property Tax Amendment would be unlawful on the separate ground of conflict with public general law.

would have functioned the same way. First, each amendment included a tax “roll back” provision. *Id.* at 244. The “roll back” language would have provided that the affected county’s property tax revenue for the 1991-1992 tax year could not exceed the revenue collected in a specified earlier tax year: 1989-1990 in Baltimore County, and 1988-1989 in Anne Arundel County. *Id.* at 229 n.2, 231 n.5.

Second, and separate from the “roll backs,” each proposed amendment included a “tax cap.” These caps would have constrained the further growth of property tax revenue in years following the “roll back” year of 1991-1992. *Id.* at 229 n.2, 231 n.5. Starting in 1992-1993, Baltimore County would be able to increase property tax collections by no more than 2% per year, or by a greater amount if the voters approved the increase in a referendum. *Id.* at 229 & n.2. In Anne Arundel County, starting in 1992-1993, the county could increase property tax revenues in accordance with the rate of inflation, or 4.5%, whichever would be less, and could exceed this threshold only with referendum approval. *Id.* at 231 n.5.

The Court held that the “tax cap” provisions could properly be submitted to the voters, but the “roll back” provisions could not be. *See id.* at 244. The difference was that only the latter conflicted with § 6-302 of the Tax-Property Article. The “tax caps” left the county councils “discretion to determine the tax rates on property for the next taxable year.” *Id.* at 242. The “roll backs,” on the other hand, “would have transferred the county councils’ § 6-302(a) powers to the voters” and “would have allowed the voters . . . to set the property tax rates for the tax year 1991–1992.” *Id.* at 244. Because

the “roll backs” conflicted with the system of tax administration set up by the General Assembly, they could not lawfully be part of a local charter.

Although *Smallwood* dealt with charter amendments limiting tax revenue rather than the tax rate, nothing in *Smallwood*’s reasoning or in the Court’s definition of a “roll back” was limited to measures rolling back revenue. Just the opposite: the revenue “roll backs” were unlawful because they let voters effectively set the tax rate, in conflict with Tax-Property § 6-302, which vests rate-setting authority in the local legislative body. See *Smallwood*, 327 Md. at 244 (“[T]he roll back provisions would have allowed the voters of Baltimore and Anne Arundel Counties to set the property tax rates[.]”).

Smallwood also recognized that the “roll back” provisions improperly transferred rate-setting power to the voters even though both were framed as caps on revenue, with the county council having the theoretical power to set an even lower revenue level. The Baltimore County proposed amendment read: “[F]or the tax year 1991–1992, the County property tax *may not exceed* the property tax realized by the County for the tax year 1989–1990[.]” 327 Md. at 229 n.2 (emphasis added). Similarly, the Anne Arundel County proposed amendment read: “[C]ommencing on 1 July 1991 (tax year 1991–1992), the County Council may not establish property tax rates which would provide *more* property tax revenues than were raised during the 1988–1989 tax year[.]” *Id.* at 231 n.5 (emphasis added).

The Court nonetheless held that the “roll backs,” despite being framed as caps, effectively set the tax rate in the charter in violation of § 6-302 of the Tax-Property Article. See *id.* at 244. The Court understood that when the “cap” is lower than the

existing level of taxation, the local government is forced to change the tax rate, and, in practice, will set the tax rate at the new cap. *See id.* The theoretical discretion to lower the rate below the “cap” changes neither the reality that a rolled-back “tax cap” effectively determines the new tax rate, nor the fact that the local government’s hand has been forced in the first place. *See id.*

The Court reaffirmed and extended the holding of *Smallwood* five years later in *Hertelendy*. *Hertelendy* considered the validity of an existing Talbot County Charter provision. As relevant here, the charter provision, which had been enacted in 1978, declared that “the [County] Council may not establish property tax rates which would provide more property tax revenues than were raised during the 1978–79 tax year, unless such additional revenues are the result of assessments on newly constructed property or other property not previously assessed.” *Hertelendy*, 344 Md. at 678.

The Talbot County charter provision thus did not roll back tax revenues to a lower level, but instead froze them where they were at the time of the charter provision’s enactment. The Court nonetheless held the charter provision invalid under *Smallwood* because it “allowed the voters . . . to set the property tax rates.” *Hertelendy*, 344 Md. at 683 (alteration in original). This was, again, true even though the Talbot County provision was framed as a cap, preserving the Council’s theoretical authority to set a revenue level even lower than the base level. The Court approvingly quoted the circuit court’s statement that voters may not “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 685 (emphasis added).

Nobody disputes that *Smallwood* and *Hertelendy* remain good law. If the General Assembly had disagreed with this Court’s interpretation of § 6-302 of the Tax-Property Article, it could have overruled those decisions by amending the statute, but it has not done so. See, e.g., *American Bank Holdings, Inc. v. Kavanagh*, 436 Md. 457, 475 n.19 (2013). To prevail, then, plaintiffs must argue that the Property Tax Amendment is distinguishable from the provisions invalidated in *Smallwood* and *Hertelendy*. Their contention is unpersuasive.

III. RENEW BALTIMORE’S PROPOSED CHARTER AMENDMENT IS INDISTINGUISHABLE FROM THE CHARTER PROVISIONS INVALIDATED IN *SMALLWOOD* AND *HERTELENDY*.

There is no relevant difference between the Property Tax Amendment and the charter provisions this Court rejected in *Smallwood* and *Hertelendy*. *Smallwood* held that a local charter amendment may not “roll back” property tax revenues to a lower level. See 327 Md. at 244. The mandate to “roll back” revenue would require the local government to change the tax rate. See *id.* So “roll back” requirements for tax revenue would in effect let the voters set the tax rate through the Charter. *Id.* And, the Court held, allowing the voters to set the tax rate through the Charter would conflict with § 6-302 of the Tax-Property Article, which requires and empowers the elected governing body to set the tax rate. *Id.*; accord *Hertelendy*, 344 Md. at 683. It was the amendments’ interference with the local governments’ rate-setting authority, not their limitations on revenue, that made them unlawful.

The Property Tax Amendment proposed by Renew Baltimore does the same thing as the invalid provisions in *Smallwood* and *Hertelendy*. The only difference is that it cuts

out the intermediate step and lowers the tax rate directly, instead of lowering it indirectly by “rolling back” the permissible level of City revenue. Contrary to plaintiffs’ contention, then, that the Property Tax Amendment operates on the tax rate rather than tax revenue strengthens, rather than weakens, the argument that the Amendment is impermissible under *Smallwood* and *Hertelendy*.

By forcing down the permissible level of tax revenue, the “roll backs” in those cases would have compelled the local government to lower the tax rate in order to take in less revenue. Plaintiffs acknowledge this relationship between tax revenue and tax rate. See Appellants’ Br. 11. Because it was the effect on rates, not the effect on revenues, that made the “roll backs” unlawful in *Smallwood*, a charter amendment setting the property tax rate directly would be even more clearly improper.

Plaintiffs’ contention that the Property Tax Amendment would increase tax revenue, Appellants’ Br. 18-23, is thus irrelevant to this Court’s analysis. Even assuming plaintiffs are correct, the amendment would still conflict with § 6-302 of the Tax-Property Article because it would increase revenue by the prohibited mechanism of setting the tax rate in the Charter. The Board of Elections has no view on the policy merits of Renew Baltimore’s proposal, but whether the amendment would be good policy or not, the Election Director was required by law to exclude it from the ballot.

Nor does characterizing the Property Tax Amendment as a “cap,” as plaintiffs do, distinguish it from the amendments that this Court has rejected. The charter provisions at issue in *Smallwood* and *Hertelendy* also took the form of caps. The counties retained the theoretical ability to set an even lower level of revenue. *Smallwood*, 327 Md. at 229 n.2,

231 n.5; *Hertelendy*, 344 Md. at 678. But the Court recognized that letting the voters “roll back” tax collections to a “cap” below the existing level of taxation (as in *Smallwood*) or freeze the existing level of taxation as the “cap” (as in *Hertelendy*) would in reality lead local governments to set the tax rate at the cap: the cap would determine the tax rate. See *Smallwood*, 327 Md. at 244; *Hertelendy*, 344 Md. at 685. When the voters “decree[] for the indefinite future that revenues *shall not exceed*” a certain level, they “in effect set the tax rate legislatively.” *Hertelendy*, 344 Md. at 685 (emphasis added) (approvingly quoting the circuit court). That is exactly what Renew Baltimore’s amendment would do.

Plaintiffs’ argument, that the Council’s ability to set a rate below the cap saves the proposed charter amendment, is not new. The partial dissent in *Smallwood*, too, argued that the “roll back” merely set a “ceiling[]” on tax revenue. See 327 Md. at 252 (Chasanow, J., concurring in part and dissenting in part). The intervenors defending the Talbot County charter provision in *Hertelendy* made the same argument: that because the Talbot County provision let the council set tax revenue level lower than the cap, it “left some discretion with the County Council and was, therefore, valid under the principles discussed in [*Smallwood*].” 344 Md. at 681. For the reasons discussed, that argument twice failed to persuade this Court.

Although Renew Baltimore’s amendment is a “roll back” as *Smallwood* uses that term because it would force the property tax rate down, the Court need not conclude that the provision is a “roll back” to hold that it would conflict with § 6-302 of the Tax-Property Article. After all, the Court in *Hertelendy* did not consider it necessary to apply

that label to the Talbot County provision it invalidated. What mattered in *Hertelendy* (as in *Smallwood*) was that the charter provision effectively took away the county council's authority to set the tax rate. See 344 Md. at 685. The Renew Baltimore amendment would do the same.

The Property Tax Amendment would leave even less theoretical discretion to the City Council than the provisions in *Smallwood* and *Hertelendy*. The *Smallwood* “roll back” provisions were of limited duration, lasting only a single fiscal year. See 327 Md. at 229 n.2, 231 n.5. The provision in *Hertelendy* merely froze tax revenue at its existing level. See 344 Md. at 678. Renew Baltimore's amendment, in contrast, would impose a continuously lowering cap, requiring the City Council to continuously decrease the tax rate to comply, and then, once the “cap” reaches its lowest level, the amendment would set it in place permanently. Although it purports to leave discretion to the local government, the Property Tax Amendment has both the purpose and the effect of forcing the City Council to set the tax rate at \$2.20 next year, at \$2.10 the following year, and, eventually, at \$1.20 for all time.

Because Plaintiffs have identified no meaningful distinction between the Property Tax Amendment and the charter provisions held invalid in *Smallwood* and *Hertelendy*, this Court should affirm the circuit court's and the Election Director's determination that the Property Tax Amendment conflicts with § 6-302 of the Tax-Property Article and so may not appear on the ballot.

CONCLUSION

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

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 4,841 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))

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.

BENEDICT J. FREDERICK, III, ET AL.,	*	IN THE
<i>Appellants,</i>	*	SUPREME COURT
v.	*	OF MARYLAND
BALTIMORE CITY BOARD OF ELECTIONS, ET AL.,	*	September Term, 2023
<i>Appellees.</i>	*	No. 35

* * * * *

CERTIFICATE OF SERVICE

I certify that on this 26th day of August, 2024, two copies of the Brief of Appellees Baltimore City Board of Elections, Armstead B.C. Jones, Sr., and Scherod C. Barnes in the captioned case were filed and served electronically on the MDEC system and that two copies will be sent by first class mail to all parties entitled to service:

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