

* IN THE
* CIRCUIT COURT

* FOR

* BALTIMORE CITY

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* Case No. _____

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JARED DeMARINIS
151 West Street, Suite 200
Annapolis, MD 21401

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and

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MICHAEL G. SUMMERS
151 West Street, Suite 200
Annapolis, MD 21401

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Defendants.

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COMPLAINT

The Mayor and City Council of Baltimore, Michael Mocksten, and Robert Cenname, through undersigned counsel, bring the following action for Judicial Review, Mandamus, Declaratory Judgment, and Injunctive Relief against the Baltimore City Board of Elections; Armstead B.C. Jones, Sr., in his official capacity as Election Director of the Baltimore City Board of Elections; Scherod C. Barnes, in his official capacity as President of the Baltimore City Board of Elections; the State Board of Elections; Jared DeMarinis, in his official capacity as State Administrator of Elections of the State Board of Elections; and Michael G. Summers, in his official capacity as Chairman of the State Board of Elections, and allege as follows:

PARTIES

1. The Mayor and City Council of Baltimore (the “City”) is a municipal corporation created by the Baltimore City Charter and is an entity that may sue or be sued under the laws of Maryland.

2. Pursuant to the Maryland Uniform Declaratory Judgments Act, the City is a necessary party and entitled to be heard in this matter because it concerns the validity and legality of a proposed amendment to the Baltimore City Charter.

3. Michael Mocksten is a resident of, a registered voter in, and a taxpayer in Baltimore City. Mr. Mocksten serves as the Director of the Baltimore City Department of Finance (“DOF”). As head of DOF, Mr. Mocksten supervises and directs the Department, and his duties include recommending an operating budget for the City, including estimates for appropriations; establishing an expenditure schedule for all City agencies; making reports and recommendations on the capital budget and capital improvement program; making the proposed Ordinance of Estimates; implementing the Ordinance of Estimates; having general supervision and charge over all payments and disbursements made by the City; signing all checks of the City made by the City; and serving as the registrar of the public debt and responsible for all moneys and securities belonging to the City.

4. Robert Cennane is a resident of, registered voter in, and a taxpayer in Baltimore City. Mr. Cennane serves as the Deputy Director of DOF, and his duties include supervising and overseeing the daily functions of DOF and coordinating with the Director; signing all checks of the City made by the City; and performing the duties of the Director when the Director is incapacitated or otherwise unavailable for duty for any cause, and serves as Acting Director of DOF if the Director position becomes vacant.

5. The Baltimore City Board of Elections (the “City Board”) is an agency and instrumentality of the State of Maryland, authorized and created by Md. Code Ann., Election Law Article (“Elec.”), § 2-201, *et seq.* The City Board is empowered to make rules consistent with State laws to ensure the proper and efficient registration of voters and conduct of elections, oversee the conduct of all elections in Baltimore City, and to make determinations and hear and decide challenges and appeals as provided by law. The City Board maintains a principal office at 417 E. Fayette St., Room #129, Baltimore, Maryland 21202.

6. Armstead B.C. Jones, Sr. serves as the Election Director and Chief Election Official of the City Board and in that role is subject to the direction and authority of the State Board of Elections and is accountable to the State Board for its actions in all matters regarding the implementation of the requirements of the Election Law Article.

7. Scherod B. Jones serves as the President of the City Board and in that role is subject to the direction and authority of the State Board of Elections and is accountable to the State Board for its actions in all matters regarding the implementation of the requirements of the Election Law Article.

8. The State Board of Elections (the “State Board”) is a State agency created by Elec. § 2-101, *et seq.*, and manages and supervises elections in the State and ensure compliance with the requirements of the Election Law Article, including the printing and preparing of ballots for the general elections. The State Board maintains a principal office at 151 West Street, Suite 200, Annapolis, MD 21401.

9. Jared DeMarinis serves as State Administrator of Elections of the State Board and in that role is subject to the direction and authority of the State Board and is accountable to the State Board for its actions in all matters regarding the implementation of the requirements of the Election Law Article.

10. Michael G. Summers serves as the Chairman of the State Board and in that role is subject to the direction and authority of the State Board and is accountable to the State Board for its actions in all matters regarding the implementation of the requirements of the Election Law Article.

JURISDICTION AND VENUE

11. This Court has jurisdiction over Defendants pursuant to Md. Code Ann., Courts and Judicial Proceedings Article (“Cts.”), § 6-102(a), as they maintain their principal places of business and otherwise carry on business in Baltimore City, Maryland.

12. The Circuit Court has subject matter jurisdiction over this matter pursuant to Cts. § 1-501, and Elec. § 6-209.

13. Venue is proper pursuant to Cts § 6-201(a)-(b), as Defendants all regularly engage in business in and have their principal offices in Baltimore City, and pursuant to Elec. § 6-209(a).

FACTS COMMON TO ALL COUNTS

14. The Maryland Child Alliance submitted a petition to place a proposed charter amendment on the ballot for the November 5, 2024 General Election, which would add a Section 20 under Article I of the Baltimore City Charter to create the Baltimore Baby Bonus Fund (hereinafter referred to as the “Baby Bonus Fund Amendment”).

15. The Baby Bonus Fund Amendment would establish a continuing, non-lapsing fund for the exclusive use of sending “Baby Bonus Payment” of at least \$1,000 to each Baltimore City resident who is the birthing parent of a child upon the birth of the child.

16. The Baby Bonus Fund Amendment would be funded by a mandatory annual appropriation in the Ordinance of Estimates of an amount equal to at least \$0.03 on every \$100 of assessed or assessable value of all property in the City of Baltimore. Any unused funds would remain with the Baby Bonus Fund, would not revert to the general funds for Baltimore City, and would not lapse.

17. It has been estimated that the Baby Bonus Fund Amendment would result in an expenditure of at least \$7 million per year by the City. That estimate does not include the cost of administering the Fund.

18. The Baby Bonus Fund Amendment violates the Maryland Constitution and cannot be enacted into law.

19. The Maryland Constitution, Article XI–A, § 2 provides that the General Assembly shall grant express powers to the governments of charter counties and Baltimore City, and that such powers shall not be enlarged by a charter adopted under Article XI–A, § 3. A charter amendment “cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation.” *Cheeks v. Cedlair Corp.*, 287 Md. 595, 607 (1980), declined to follow by *Board of Sup’rs of Elections of Anne Arundel County v. Smallwood*, 327 Md. 220 (1990).

20. Article XI-A of the Maryland Constitution vests the City’s law-making power with an elected City Council. Pursuant to Article XI-A § 3, “the City-Council, and not the City electorate, is specifically given ‘full power’ to enact local laws.” *Cheeks*, 287 Md. at 608 (1980); accord *Bd. of Supervisors of Elections of Anne Arundel Cnty. v. Smallwood*, 327 Md. 220, 234-35 (1992); *Bd. of Election Laws v. Talbot County*, 316 Md. 332, 348–350 (1989).

21. Thus, a charter amendment “cannot transcend its limited office and be made to serve or function as a vehicle through which to adopt local legislation.” *Cheeks v. Cedlair Corp.*, 287 Md. 595, 607 (1980), *declined to follow on other grounds by Board of Sup’rs of Elections of Anne Arundel County v. Smallwood*, 327 Md. 220 (1990).

22. Pursuant to the Baltimore City Charter, the City Council is the City’s legislative body and has the “power to pass all ordinances, not inconsistent with the Charter, necessary to give

effect and operation to all powers vested in the City.” BALTIMORE CITY CHARTER, art. III, §§ 1(a), 11.

23. The Baltimore City Charter is “intended to provide a broad organizational framework establishing the form and structure of government in pursuance of which the political subdivision is to be governed and local laws enacted.” *Cheeks*, 287 Md. at 607 (quoting 2 E. McQuillan, *Municipal Corporations* s 9.03 (3rd ed. 1979)).

24. A charter amendment is “necessarily limited in substance to amending the form or structure of government initially established by adoption of the charter.” *Id.*; Md. Const., Art. XI-A, §§ 3, 5.

25. Simply put, citizens cannot “legislate by charter amendment,” *id.*, and any attempt do so is “manifestly repugnant to § 3 of Article XI–A.” *Md. State Admin. Bd. of Election Laws v. Talbot Cty.*, 316 Md. 332, 348 (1988).

26. The Baby Bonus Fund Amendment is legislative in character. The Amendment does not address to the form or structure of government in any fundamental sense and is not, therefore, charter material. Indeed, the Baby Bonus Fund Amendment would require the City to exercise its legislative authority in a certain way, as to a certain group, rather than changing the form or structure of the government.

27. Further, because the Baby Bonus Fund Amendment would establish a continuing, non-lapsing fund, to be funded by a mandatory appropriation, it constitutes an exercise of the City Council’s power with respect to the annual budgeting process which is a legislative in nature. The City Council reviews the budget, engages in hearings to determine the fiscal needs of the City. It makes changes to proposed appropriations to reflect the City’s needs—all a part of the legislative process.

28. By earmarking funds in the City Charter, the voters are usurping those powers by creating a specific appropriation for a specific purpose and removing the City Council's power to adjust that appropriation to meet the needs of the City in any given year, thus denying it the ability to exercise its powers. Establishing the annual budget requires knowledge that is "specific" and "technical" in nature, making it a matter reserved to the legislature and not the voters. *Accord Mayor and City Council of Ocean City v. Bunting*, 168 Md. App. 134, 148 (2006).

29. Further, because the Baby Bonus Fund Amendment would establish a continuing, non-lapsing fund, to be funded by a mandatory appropriation, it constitutes an exercise of the police power in all respects similar to the enactment of a local law. Thus, it is an impermissible attempt by the voters to exercise the City's police and general welfare powers by legislating through a charter amendment.

30. Moreover, because the Baby Bonus Fund Amendment requires the City Council to pass a law or laws to implement the mandatory fund, it divests the City Council, the DOF, and the Director and Deputy Director of DOF of their discretion on how to appropriate, budget, and spend City funds.

31. The City Board of Estimates is required to formulate and execute the fiscal policy, BALTIMORE CITY CHARTER, art. VI, § 2, and so the Baby Bonus Fund Amendment also usurps the responsibilities and duties of the Board of Estimates as mandated by the City Charter.

32. Elec. § 6-205 requires that any party seeking a charter amendment must submit a petition to the appropriate election authority.

33. Thereafter, the Chief Election Official has the authority and obligation to review the petition to determine if it is "authorized by law." Elec. § 6-206(c).

34. More specifically, Elec. § 6-206(c) requires that the Chief Election Official “*shall* declare that the [Baby Bonus Fund Amendment] petition is deficient” if the petition “seeks 1) the enactment of a law that would be unconstitutional . . . or 2) a result that is otherwise prohibited by law.” (emphasis added).

35. Here, the Chief Election Official failed to make the required finding that the Baby Bonus Fund petition was unconstitutional and otherwise prohibited by law.

36. Instead, the City Board of Elections certified the Baby Bonus Fund Amendment on July 1, 2024.

37. As a result of this failure, and absent court intervention, the City, through its Law Department, will be required to draft unconstitutional ballot language for the Baby Bonus Fund Amendment. *See* Elec. § 7-103 (requiring the City Law Department to prepare and certify a description and purpose of the ballot question to the State Board).

38. Absent court intervention, the Baby Bonus Fund Amendment will thereafter appear on the ballot on November 5, 2024 General Election.

39. The expenditure of public funds to place the unconstitutional Baby Bonus Fund Amendment on the ballot will result in increased taxes or other pecuniary loss to the Plaintiffs, including incurring the wrongful expense for publication of the Amendment and printing it on the ballots of the November 5, 2024 General Election.

40. If the Baby Bonus Fund Amendment is permitted to appear on the November 5, 2024 General Election ballot, then the Mayor of Baltimore will be required to publish the Amendment once a week for five successive weeks prior to the election in at least one newspaper published in Baltimore City. *See* Md. Constitution, Art. 11-A, § 5. Thus, the City and its taxpayers will incur additional costs in having to publish an unconstitutional charter amendment.

41. Further, if the Baby Bonus Fund Amendment is placed on the ballot and enacted, Mr. Mocksten and Mr. Cenname, as Director and Deputy Director of DOF, respectively, will be charged with administering and making payments under the Amendment and faced with a dilemma in either in refusing to act under the unconstitutional Baby Bonus Fund Amendment, or in acting and subsequently finding Baby Bonus Fund Amendment to be unconstitutional.

42. In sum, the “[City] Council alone, and not the voters . . ., has the power to initiate local legislation[,] . . . and such legislative power cannot be exercised by means of an amendment to the charter.” *Save Our Streets v. Mitchell*, 357 Md. 237 (1998) (citing to *Cheeks*, 287 Md. at 607, 612-14).

43. Therefore, Plaintiffs will suffer immediate, substantial, and irreparable harm if an unconstitutional charter amendment appears on the election ballot.

COUNT ONE
(Petition for Judicial Review Pursuant to Election Law §§ 6-209 and 6-210)

44. Paragraphs 1-43 above are incorporated as if recited herein.

45. Elec. § 6-209 gives any “person aggrieved” the right to seek judicial review of the chief election official’s determination of sufficiency or deficiency under Elec. § 6-206.

46. This Court is empowered to “grant relief as it considers appropriate to ensure the integrity of the electoral process.” Elec. § 6-209(a)(2).

47. Further, a proceeding brought under Elec. § 6-209 “shall be heard and decided without a jury and as expeditiously as the circumstances require[.]” Elec. § 6-209(a)(3)(i).

48. Because the Baby Bonus Fund Amendment seeks the enactment of a law that would be unconstitutional or otherwise prohibited by law, Defendants failed to meet their obligation under Elec. § 6-206 to declare the petition deficient.

49. As a result, Defendants are not permitted to include the Baby Bonus Fund Amendment on the ballot for the November 5, 2024 General Election.

COUNT TWO
(Writ of Mandamus Pursuant to Md. Rule 15-701)

50. Paragraphs 1-49 above are incorporated as if recited herein.

51. The Plaintiffs, pursuant to Md. Rule 15-701, request a writ of mandamus to compel Defendants to perform their statutory duties.

52. Under Elec. § 6-206(c), Defendants have a clear duty to review and consider the legality of proposed amendments to the Baltimore City Charter, including the Baby Bonus Fund Amendment. Defendants failed at this duty.

53. Plaintiffs have a clear right to have the Baby Bonus Fund Amendment excluded from the November 5, 2025 General Election ballot because it is unconstitutional.

54. The Plaintiffs have no adequate remedy by which they can obtain their right to exclude the Baby Bonus Fund Amendment from the November 5, 2025 General Election ballot.

COUNT THREE
(Declaratory Judgment Pursuant to Cts. §§ 3-401 to 3-415, and Elec. § 6-209(b))

55. Paragraphs 1-54 above are incorporated as if recited herein.

56. An actual controversy exists between the Plaintiffs and the Defendants within the meaning of the Cts. § 3-409(a)(1) because the City Board certified the Baby Bonus Fund Amendment on July 1, 2024.

57. Elec. § 6-209(b) states that “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.”

58. The Plaintiffs maintain that the Baby Bonus Fund Amendment is unconstitutional. Thus, an actual controversy of a practicable issue exists between the Plaintiffs and Defendants within the jurisdiction of this Court involving the rights and liabilities of the parties under the Maryland Constitution, the Public General Laws, the Public Local Laws, and the Baltimore City Charter.

59. The refusal of the Defendants to exclude the Baby Bonus Fund Amendment from the November 5, 2024 General Election ballot is arbitrary, capricious and an abuse of discretion.

COUNT FOUR (Injunctive Relief)

60. Paragraphs 1-59 above are incorporated as if recited herein.

61. Plaintiffs will suffer immediate, substantial, and irreparable harm if an unconstitutional charter amendment appears on the election ballot by incurring costs associated with preparing the ballots, expending taxpayer money on an unconstitutional ballot provision, usurping the power of the City Council, the Mayor of Baltimore, and the Department of Finance, and compelling Plaintiffs to comply or refuse to act under an unconstitutional charter amendment.

62. The benefits to the Plaintiffs in obtaining injunctive relief are equal to or outweigh the potential harm which Defendants would incur if this Court grants the requested injunctive relief because Plaintiffs are requesting the Court to maintain the status quo until the Court either addresses or resolves the merits of the controversy.

63. The public interest would be served by the entry of an injunction in this action which involves fundamental issues of constitutional law. Further, the public will be faced with confusion if the unconstitutional Baby Bonus Fund Amendment is permitted to appear on November 5, 2024 General Election ballot.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs demand that judgment be entered in their favor against Defendants and that the Court issue the following relief:

- A. A declaration that: (1) the Baby Bonus Fund Amendment is unconstitutional; and (2) the refusal of the Defendants to exclude the Baby Bonus Fund Amendment from the November 5, 2024 General Election ballot is arbitrary, capricious and an abuse of discretion.
- B. An injunction and writ of mandamus ordering Defendants to issue a declaration of deficiency as to the Baby Bonus Fund petition under Elec. 6-206(c).
- C. An injunction and writ of mandamus ordering Defendants to exclude the Baby Bonus Fund Amendment from the November 5, 2024 General Election ballot.
- D. Any and all such further relief as the Court may deem just and proper, including, but not limited to attorneys' fees and costs.

Respectfully submitted,

EBONY M. THOMPSON, Baltimore City Solicitor



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