In The

Court of Appeals of Maryland

No. 52
September Term, 2020

COA-REG-0052-2020

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

Petitioners,

vs.

COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, *et al.*,

Respondents.

Writ of Certiorari to the Court of Special Appeals of Maryland from its Decision in No. 2751, Sept. Term 2018, on the Appeal from the Circuit Court for Worcester County No. C-23-CV-18-000021

BRIEF AND APPENDIX FOR PETITIONERS

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STATEMENT OF THE CASE

Under §6-305 of the *Tax-Property* Article of the Maryland Code, in specified counties (Allegany, Anne Arundel, Baltimore, Garrett, Harford, Howard, Montgomery, and Prince George's), "if it can be demonstrated that a municipal corporation performs services or programs instead of similar county services or programs, the governing body of the county **shall** grant a tax setoff to the municipal corporation." Md. Code, *Tax-Property*, §6-305(c).[1] Under §6-306 of the *Tax-Property* Article, in the remaining counties (including Worcester County), "if a municipal corporation performs services or programs instead of similar county services or programs, the governing body of the county **may** grant a tax setoff to the municipal corporation." Md. Code, *Tax-Property*, §6-306(c).[2] This statutory scheme plainly treats municipalities differently, on an important matter of local (and annually recurring) concern, depending (arbitrarily) upon the county in which they happen to be located.

Relying on *Tax-Property* Article §6-306, Worcester County has repeatedly refused over many years to provide either a tax differential or a tax rebate (any tax setoff) to the Town of Ocean City or its taxpayers, despite there being continuous grounds for a setoff. This case challenges the constitutionality of Worcester County's asserted statutory basis

[1] A tax setoff for municipalities in Frederick County is mandated as well under §6-305.1 of the *Tax-Property* Article, with somewhat different terms as to how the amount of the tax setoff is determined.

[2] In this case, those counties listed in §6-305 (and §6-305.1) have been identified and referred to generally as "the ***shall*** counties" and the remaining counties (governed by §6-306), including Worcester County, have been identified and referred to generally as "the ***may*** counties."

for this refusal; specifically, it challenges the constitutionality of the disparate treatment of municipalities under §§6-305 (and 6-305.1) and 6-306 of the *Tax-Property* Article. Ocean City submits this statutory scheme is unconstitutional under Article XI-E, §1 of the Maryland Constitution.[3]

On January 16, 2018, the Mayor and City Council of Ocean City, along with the Mayor (individually named) and the individual members of the Council and their respective spouses (individually named as taxpayers in both Ocean City and Worcester County) (collectively "Ocean City" or "Petitioner"), initiated their lawsuit in Worcester County Circuit Court against the Commissioners of Worcester County (collectively, "the County" or "Respondent").

The lawsuit sought a declaration that: (a) *Tax-Property* §6-305(b) (which limits the applicability of §6-305 to municipalities located in only eight counties and requires tax differentials to be afforded to municipalities located in those counties) and the entirety of *Tax-Property* §6-306 (which permits municipalities in the remaining counties to be arbitrarily denied tax differentials) violate Article XI-E, §1 of the Maryland Constitution[4]; and (b) Tax-Property §6-305 is constitutionally valid and should be severed and continue in force as a general law of this State, such that tax differentials or

[3] Article XI-E, §1 of the Maryland Constitution requires the General Assembly to "act in relation to the . . . government or affairs of any . . . municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations."

[4] Such relief, if and when granted, may also have the effect of invalidating §6-305.1 of the *Tax-Property* Article, which treats municipalities in Frederick County (also a "shall county") somewhat differently than the other "shall counties" listed in §6-305.

tax rebates are mandatory for every municipality in the State, including the Town of Ocean City, where it is demonstrated that the municipality "performs services or programs instead of similar county services or programs."

In the Circuit Court case, the County sought dismissal and/or summary judgment and Ocean City filed a cross-motion for summary judgment. A hearing was held on October 3, 2018 before retired Wicomico County Circuit Court Judge Donald C. Davis (E. 565). Judge Davis granted the County's motion for summary judgment and denied Ocean City's summary judgment motion, finding §§6-305 and 6-306 of the *Tax-Property* Article to be constitutional and not in violation of Article XI-E, §1. Judge Davis entered an Order so declaring on October 19, 2018 (E. 590), which incorporated the reasons set forth in the County's legal memoranda filed in support of its summary judgment motion.

Although the County has agreed that §§6-305 and 6-306 are "general laws" within the meaning of Article XI-E, §1, it has argued below and throughout this case that, before it can be deemed to violate the uniformity requirement of Article XI-E, §1, a State law must deal with a matter of "*purely*" local/municipal concern. The County asserted, and the trial court held, that §§6-305 and 6-306 do not deal with *purely* local matters – and therefore cannot violate the uniformity requirement of Article XI-E, §1 – since those statutes deal with both the municipal real property tax rate and the County's tax rate.[5]

[5] The County relied on non-authoritative advice letters from Assistant Attorneys General to support its argument. Those letters, however, erroneously said only that "there is a reasonable basis for concluding" that the proposed amendment to §§6-305 and 6-306 "would not violate Section 1 of the Municipal Home Rule Article." 1986 WL 289917 (1986). (E. 70-75).

Ocean City timely appealed the trial court's ruling to the Court of Special Appeals.[6] (E. 605). On October 13, 2020, the Court of Special Appeals issued its unreported opinion, finding that *Tax-Property* Article §§6-305 and 6-306, although clearly "general laws," do not violate Article XI-E, §1 of the Maryland Constitution (and its prohibition against the General Assembly acting "in relation to the . . . affairs of any . . . municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations"). (App. 1-17). Applying what it deemed as a binding test under this Honorable Court's decision in *Birge v. Town of Easton*, 274 Md. 635 (1975), the Court of Special Appeals determined that *Tax-Property* Article §§6-305 and 6-306 were not "*purely local*" in nature, and on that basis, they need not comply with the uniformity requirement under Article XI-E, §1 of the Maryland Constitution.

Notably, in upholding the statutes in question as constitutional, based on a finding that the statutes did not (in the Court's view) involve matters of "*purely*" local/municipal concern, the Court of Special Appeals deemed itself constrained by this Honorable Court's decision in *Birge* – holding expressly in its opinion that "[w]e are not free . . . to disregard the Court of Appeals' teaching in *Birge*." Opinion, at p. 11, fn. 15 (App. 12).

Mandate was issued by the Court of Special Appeals on November 17, 2020. (App. 18). Petitioners timely petitioned this Court for a Writ of *Certiorari*. The County opposed the Petition. On February 8, 2021, this Court granted Ocean City's Petition.

[6] Before an argument date was scheduled, Ocean City submitted a Petition for Writ of Certiorari to this Honorable Court. That petition was denied, and the case proceeded in the Court of Special Appeals.

(App. 19-21).

QUESTIONS PRESENTED FOR REVIEW

1. Whether the statutory scheme created by *Tax-Property* Article §§6-305, 6-305.1, and 6-306 – which provides for mandatory real property tax setoffs for certain municipalities (located in certain counties), but only optional tax setoffs for municipalities, including Ocean City, located in other counties – is constitutional under Article XI-E, §1 of the Maryland Constitution, which requires the General Assembly to "act in relation to the . . . government or affairs of any . . . municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations."

2. Whether the non-uniform provisions of §§6-305(b) and 6-306 should be severed, to the end that all municipalities in this State shall be governed by the remainder of §6-305, and shall be entitled to receive mandatory tax setoffs from the counties in which they are located, upon a showing by a municipality that it performs services of a type provided by the county (i.e., upon a showing that it is entitled to setoff).

STATEMENT OF FACTS

I. THE HISTORY OF TAX SETOFF LEGISLATION.

Tax setoffs have been a matter of concern to the General Assembly since at least 1959, when "Joint Resolution No. 26" requested the Governor to appoint a commission to study the problem of city-county fiscal relations including "the bases for county tax differentials" since many "governmental services are provided by the

town and not by the county." (E. 195-97). Four years later, the resulting Commission on City-County Relationships issued its Report. (E. 198-242). In describing its "fact-finding task," the Commission, demonstrating the tax differential issue was and is a question of ***municipal*** concern, said:

> The town taxpayer who contributes his tax payment to the support of a town police force may justifiably complain of the necessity to contribute taxes also to a county police force which performs few, if any services for his town... [T]he property tax should bear some relation to the protection which the taxpayer's property receives.
>
> The above hypothetical problem appears to be the kind of problem with which local officials, ***particularly municipal officials,*** are chiefly concerned.

(E. 204-05) (emphasis added). Among the findings and conclusions of the Commission were that:

> The problem arises primarily as a result of the fact that in many counties the county government established a single tax rate on all taxableproperty, whereas it may appear to provide some of its services only in the unincorporated areas of the county and leave the furnishing ofthese services within the cities and towns to the municipal governments.The results are that owners of property within the incorporated areaspay both the county and municipal governments forthese services . . . but they may receive the services only from the city or towngovernments.

(E. 207).

In 1970 the Legislative Council Committee on Taxation and Fiscal Matters reported that, at that year's Legislative Session, a bill had been introduced which "would have required [all] county governments to levy a tax on property located within municipal corporations which reflected only those services the county provided to

municipal residents and not to reflect expenditures for services … provided solely to residents outside the municipal corporations." (E. 244).

The Committee found "there are instances in Maryland where the residents of municipal corporations are paying county taxes for services that are not provided to them by the county and for which they must pay municipal taxes for the same services," but also found that there were instances "where municipal corporations are receiving a disproportionate share of revenues for the type of services provided." (E. 255). The Committee "strongly urge[d] that the governing body of each county initiate a meeting with the officials of the municipal corporations within the county to discuss county- municipal fiscal relationships with the goal of eliminating any double taxation of municipal residents " *Id.*

In 1975, the General Assembly enacted then Article 81, §32A as the first enabling legislation granting counties the discretion to either establish a different rate of taxation within a municipality or grant a tax rebate, if the municipality provided government services of a type similar to that provided by the county. (E. 261). The Act excluded from its operation all of the municipalities and counties of the Eastern Shore. Subsequent amendments in 1977 and 1978 removed all counties from that exclusion except for Kent and Queen Anne's. (E. 266, 270).

In 1978, the General Assembly adopted “Joint Resolution No. 31,” encouraging counties to discuss tax differentials with the municipalities within their borders and requiring an annual report to the Legislature of the progress in establishing tax differentials. The Resolution provided:

Tax Differential

* * *

WHEREAS, Many county governments have established a single tax rate on all taxable property even though the county may provide some of its services only in the unincorporated areas of the county and leave the furnishings of these services within the cities and towns to the municipal governments; and

WHEREAS, As a result, owners of property within incorporated areas pay both the county and municipal governments for services but may receive the services only from the municipal governments; and

WHEREAS, The 1975 General Assembly enacted legislation permitting county governments to levy a lesser rate of county property tax on property located within a municipality where the municipality performs governmental services similar to county governmental services; and

* * *

WHEREAS, Most Maryland counties have declined to discuss the issue of tax differential with the respective municipal governments within them; now, therefore, be it

RESOLVED, That the General Assembly encourages counties to meet with the municipalities within the county to discuss tax differential; and be it further

RESOLVED, That the State Department of Fiscal Services is directed to conduct an annual review on the progress of counties in establishing tax differentials and to report their findings at the close of each fiscal year to the Legislative Policy Committee ....

(E. 275-276).

That Resolution remains in effect today and each year since 1978, the Department of Legislative Services has issued its Report.[7] In 1982, Article 81, §32A was amended

[7] Exhibit 20 to Ocean City's April 30, 2018 Cross-Motion for Summary Judgment reproduced each of Legislative Services' Annual Reports from 1979 to 2017 (R. Vols. 3, 4 and 5). The 2017 Report is reproduced in the Record Extract at E. 346 - 403. The progress state-wide since 1978 has been significant, but not universal. Legislative Services' 2017 Report summarizes the current status of tax differentials. (E. 346). There are nine counties where tax differentials to municipalities are mandated under §6-305 (Allegany, Anne Arundel, Baltimore, Frederick, Garrett, Harford, Howard,

to require counties to meet annually with municipalities to discuss tax differentials and tax rebates. The preamble to Chapter 694 stated that "the municipal taxpayer is being doubly taxed" and resolved that "counties should eliminate double taxation of municipal residents." (E. 277-279). The Act permitted, but did not require, a tax differential or a tax rebate. The amendment applied to all counties except Queen Anne's.

In 1983, legislation was introduced "requiring every county governing body to levy a tax on certain property located in municipalities to set the tax at a rate less than the general county property tax rate if the municipal government provides certain governmental services." 1983 Senate Bill 277 (E. 280). While the Senate Bill did not pass, House Bill 321, which called for "formaliz[ing] the negotiation process" between counties and municipalities and "eliminat[ing] the double taxation of municipal residents in certain counties," did pass. (E. 282).

As originally proposed, House Bill 321 was to apply to *all* municipalities. (E. 282- 86). However, the bill was amended and as enacted created two separate and differently-treated groups of municipalities: the first group received mandated tax differentials; the second group, including Ocean City, at the sole discretion of the

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Montgomery,and Prince George's). In the remaining fourteen counties, tax differentials are discretionary under §6-306. In 2017, eighteen of the twenty-three counties provided property tax setoffs. Of the five counties that provided no setoffs, Baltimore and Howard Counties have no municipalities. **The three remaining counties declining to provide tax setoffs are Kent, Wicomico and Worcester**. (E. 352).

counties in which they sat, could receive a tax differential only at the election of the county. *Id.* That same disparate treatment continues today under Tax-Property §§6-305 and 6-306.

Of the 156 municipalities within the State of Maryland (E. 354), all but 24 receive some form of tax set-off. (E. 384-89). Of the municipalities that do not receive anytax set-offs, Ocean City is the second largest by population, behind Salisbury. *Id.* In 1999, Worcester County reported that it provided "rebates" to its four municipalities totaling $400,000 (of which $250,000 went to Ocean City), although the nature of those "rebates" is unknown, as is whether the "rebates" were otherwise mandated. (E. 410). In the ensuing nineteen years, Worcester County has never provided a tax setoff to any of the four municipalities within its jurisdiction, including Ocean City. (E. 410-15).[8]

Legislative Services' January 2018 report (E. 347) summarizes the status of tax setoffs. Again, there are nine counties where tax setoffs to municipalities are mandated under §6-305 (and 6-305.1) of the *Tax-Property* Article (the so-called "shall" counties, including Allegany, Anne Arundel, Baltimore, Frederick, Garrett, Harford, Howard, Montgomery, and Prince George's). Under §6-306 of the *Tax-Property* Article, tax setoffs are fully elective and discretionary, in an absolute and unfettered sense, as to

[8] The chart at E. 404-15 summarizes Worcester County's annual reporting to Legislative Services from 1978 to 2017 as set forth in each Annual Report. The Reports consistently state for each year that, "Worcester County did not provide tax set-offs to its municipalities in fiscal [ ]."

municipalities in the remaining fourteen counties (the so-called "may" counties, including Worcester County).

II. THE TAX DIFFERENTIAL STUDIES FOR OCEAN CITY AND WORCESTER COUNTY REPEATEDLY DEMONSTRATE THE NEED FOR IMPLEMENTATION OF A TAX DIFFERENTIAL OR TAX REBATE.

A. The 1999 IGS Study. Worcester County acknowledges that Ocean City has been requesting tax set-offs since at least 1999. (E. 416, 502). In 1998, Ocean City commissioned a tax differential study conducted by the Institute for Governmental Service ("IGS"). The IGS Study was completed in May 1999; and it concluded there were duplicated services in planning and zoning, police, fire and rescue, animal control, emergency communications, highways and streets, parks and recreation, and economic development. (E. 418-43). Its analysis concluded a tax differential of between $0.25 and $1.33, or a tax rebate of between $3,612,691 and $19,221,778. A copy of the IGS Study was provided to the Worcester County Commissioners in late November, 1999, along with Ocean City's request for a tax differential. (E. 442-45). No tax differential or rebate was given by the County to Ocean City following submission of the IGS Study.

B. The 2007 First MFSG Report. In 2007, Ocean City commissioned a second study by Municipal & Financial Services Group (the "First MFSG Report"). (E. 446-62). MFSG concluded that Ocean City "receives a disproportionately small share of County services and programs." (E. 448). The Report found that for FY 2008, Ocean City taxpayers paid $13,894,610 to the County for services not provided to them. (E. 449, 460). It calculated a tax differential rate of a $0.22 adjustment to the County-wide

property tax rate which was then $0.70, decreasing Ocean City's rate to $0.64 and increasing the County rate outside of Ocean City to $0.86 (E. 449). Although the MFSG Report was provided to the County along with Ocean City's request for a tax differential (E. 550), no differential was granted.

C. The 2013 Second MFSG Report. In 2013, for the third time, Ocean City commissioned a tax differential study. The 2013 Second MFSG Report concluded:

> MSFG identified several County services or programs that ***are not*** offered to, provided to and/or utilized by the Town of Ocean City and its resident…
>
> * * *
>
> MFSG's analysis indicates that for FY 2013, Worcester County will need to collect $119,678,288 in property tax revenue. Our analysis indicates that $102,531,947 of the property tax collected should be paid by all County residents including those in Ocean City, but that $17,146,341 in property taxes should not be paid by Ocean City taxpayers. This $17,146,341 is therefore the expense amount that calculates the tax differential of $0.269 which adjusts the $0.770 Countywide property tax rate to $0.687 for Ocean City and $0.956 for the remainder of Worcester County.

(E. 466) (emphasis in original). Although the Second MFSG Report was provided to the County (E. 559), no tax differential was instituted.

D. The 2016 TischlerBise Report. In response to the repeated requests by Ocean City, Worcester County commissioned its own study by TischlerBise which was first presented to the Worcester County Commissioners on May 17, 2016. (E. 482, 488-89). TischlerBise agreed that a tax differential was justified, albeit in a lesser amount than had been otherwise demonstrated and supported. The TischlerBise Report concluded:

> Given the analysis of County services provided in the Town of OceanCity and other areas of the County, the property tax rate differential results in $0.87 per $100 in valuation, or approximately $7.8 million ($7,782,112) (6.9 percent) in County property tax revenue for services not provided/duplicated in Ocean City.

(E. 81). The TischlerBise Report calculated that the tax rate in Ocean City should be $0.740, and the tax rate outside Ocean City should be $0.827, for a differential in the amount of $0.087. (E. 81). Although the bottom line between the Second MFSG Report and the TischlerBise Report differed, both Reports concurred that there were significant sums paid by Ocean City taxpayers for services the County did not provide. Both Reports also concluded that a tax differential was justified.

III. OCEAN CITY'S MOST RECENT REQUESTS FOR TAX SET-OFFS.

As the Court of Special Appeals stated in its Opinion (at App. 2-3): "Ocean City is the largest municipality in Worcester County, Maryland. Taxpayers in Ocean City pay property taxes to both Ocean City and to Worcester County, but receive governmental services mostly from Ocean City. To compensate its taxpayers for this tax differential, Ocean City sought a tax setoff from Worcester County. Worcester County declined." More particularly, the history of Ocean City's recent setoff requests, which are generally representative of the past two decades, are as follows:

A. The 2016 Request for Fiscal 2018. On November 29, 2016, the Mayor of Ocean City sent the County Commissioners a request for a tax differential for fiscal year 2018. (E. 490). On January 3, 2017, the County Commissioners met to discuss Ocean City's request. (E. 499, 502-04). The 2016 request for a tax differential

in fiscal year 2018 was quickly rejected by the County Commissioners, on January 3, 2017, when they voted 6-1 to deny the request but to continue issuing certain discretionary grants. (E. 504).[9]

B. The 2017 Request for Fiscal 2019. On November 20, 2017, the Mayor of Ocean City again submitted a formal request for a tax differential for fiscal year 2019. (E. 505). The request was discussed by the County Commissioners at their December 5, 2017 meeting. (E. 506, 507). The Commissioners directed the Chief County Administrator to meet with the Town to discuss "the nature of the Ocean City tax setoff request." (E. 507). The set-off appears never to have been discussed. On February 27, 2018 the Mayor sent a letter asking for an increase in the grants for 2019. (E. 513). The letter concluded, "The issue of tax differential remains very important to Ocean City taxpayers and remains to be resolved. In the interim the above grants provided in lieu of tax differential will be applied to the Town's FY19 budget to provide relief for Ocean City taxpayers for services provided by Worcester County in the Town." (E. 514).

SUMMARY OF ARGUMENT

It is undisputed that only Ocean City, not Worcester County, provides certain services and programs to the Town's taxpayers even though the County includes the

[9] The County argued below that certain annual "grants" it makes to Ocean City constitute tax rebates under section 6-306, even though most do not relate to duplicated services. The County argued that these "grants" satisfied the statute, rendering Ocean City's claim non-justiciable. Rejecting that argument, the Circuit Court denied the County's motion to dismiss which had been advanced on that basis, and the County did not appeal that ruling. (E. 589).

cost of the same services and programs in its tax rate to the Town's taxpayers. In other words, Ocean City would undisputedly be entitled to a mandatory tax setoff, if the statutory scheme of §§6-305 and 6-306 included Worcester County as a "shall county." Worcester County has never exercised its discretion under §6-306 to provide a tax setoff to Ocean City (or the other municipalities within the County).

The unequal (and inequitable) treatment of municipalities (like Ocean City) located in "may" counties, as compared with those in "shall" counties, violates the mandate of Article XI-E, §1 of the Maryland Constitution that "the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any . . . municipal corporation only by general laws which shall in their terms and in their effect *apply alike to all municipal corporations* . . ." (Emphasis added).[10] Accordingly, under applicable law, and to meet the intent of the underlying legislation, this Court should sever the unconstitutional portions of §§6-305 and 6-306 so that, where appropriate and warranted from the standpoint of services provided, all Maryland municipalities, including Ocean City, or their taxpayers, "shall" receive either a tax differential or a tax rebate from the county in which they are located.

[10] Section 2 of Article XI-E permits the General Assembly to classify municipalities into "not more than four classes...." The General Assembly has established only a single class. Local Gov't Art. §4-102. The General Assembly, therefore may regulate the affairs of municipalities only through public general laws which apply alike to all municipalities.

ARGUMENT

I. STANDARD OF REVIEW.

Because this case concerns only issues of statutory and constitutional construction, this Court's review is *de novo* and the lower courts' conclusions and holdings are afforded no deference. As this Honorable Court explained in *Davis v. Slater*, 383 Md. 599, 604 (2004), the "interpretation of the Maryland Declaration of Rights and Constitution, provisions of the Maryland Code, and the Maryland Rules are appropriately classified as questions of law[;] we review the issues *de novo* to determine if the trial court was legally correct in its ruling on these matters."

II. ARTICLE XI-E, §1, OF THE MARYLAND CONSTITUTION.

Article XI-E, §1 of the Maryland Constitution was adopted by Maryland's voters in 1954 on the recommendation of the Sobeloff Commission, as part of the Home Rule Amendment. Article XI-E, §1 provides: "the General Assembly shall act in relation to the government, or affairs of any . . . municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations."[11] The Sobeloff Commission's Second Report said that what constitutes a local affair "would continue to remain in the courts."

However, what constitutes "local affairs" for purposes of Article XI-E, §1 and its uniformity requirement, and for purposes of evaluating the constitutionality of general

[11] Article XI-E, §§1 and 2 speak of "classes" of municipalities which §2 authorizes. However, under *Local Government* Article §4-102, the General Assembly has provided that "[t]here is one class of municipalities in the State, and every municipality is a member of that class."

laws that treat municipalities differently, has rarely been considered by Maryland's appellate courts in any depth; and this Court's review of that issue is not only warranted in this particular case, but is also necessary to give guidance on the subject to trial courts, practitioners, counties, municipalities, and taxpayers.

III. *TAX-PROPERTY* ARTICLE §§6-305 AND 6-306, WHICH PROVIDE FOR MANDATORY REAL PROPERTY TAX SETOFFS TO CERTAIN MUNICIPALITIES FROM THE COUNTIES IN WHICH THEY ARE LOCATED, BUT ONLY DISCRETIONARY TAX SETOFFS TO ALL OTHER MUNICIPALITIES, INCLUDING OCEAN CITY, VIOLATE THE UNIFORMITY REQUIREMENT OF ARTICLE XI-E, §1 OF THE MARYLAND CONSTITUTION.

Under the mandate of Article XI-E, §1 that the General Assembly act "in relation to the ... government, or affairs of any ... municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations," to determine whether §§6-305 and 6-306 are unconstitutional, a three-prong inquiry must be made: **First**, are the statutes general laws? **Second**, do the statutes "relate to" municipal affairs? **And third**, if they are general laws that relate to municipal affairs, do they apply and operate uniformly to all municipalities? In this case, the answer to the first and second questions is "yes," and the answer to the third question is plainly "no." Consequently, the subject statutory scheme fails the test of constitutionality under Article XI-E, §1, because it constitutes a general law relating to municipal government or affairs but does not apply uniformly to all municipalities.

Below and now before this Honorable Court, this case turns entirely on the second "prong" of the inquiry – whether the subject statutory scheme "relates to"

municipal government or affairs, within the meaning of Article XI-E, §1. The County has argued, and the lower Courts have held, that to be treated as "relating to municipal affairs" within the meaning of Article XI-E, §1 (and to be held to the uniformity requirement thereunder), the law(s) in question (in this instance, §§6-305 and 6-306 of the *Tax-Property* Article) must relate ***entirely and purely*** to municipal or local affairs.

More particularly, applying what it deemed as the appropriate and binding test under this Court's decision in *Birge v. Town of Easton*, 274 Md. 635 (1975), the Court of Special Appeals determined that *Tax-Property* §§6-305 and 6-306 are not "*purely local*" in nature or in effect, and on that basis, they need not comply with the uniformity requirement under Article XI-E, §1.[12] The Court of Special Appeals held:

> As a matter of simple math, however, [requiring Worcester County to grant Ocean City a tax setoff] . . . compels the conclusion that this **cannot be a purely local matter**. If Worcester County is required to grant tax setoffs to Ocean City—either as a tax rebate to the Ocean City taxpayers or as a subsidy to Ocean City's government—property owners in Worcester County outside of Ocean City would necessarily have to pay more . . . And when citizens of Worcester County outside of Ocean City are required to pay more (or receive less governmental services, *see* n. 17), that "is likely to be felt by a considerable number of people outside [Ocean City] and in a rather strong degree," and therefore, it is a "concern … for the [S]tate." *Birge*, 274 Md. at 644. We therefore hold that the question of whether counties must or may offer tax setoffs **is not a purely local affair** and need not comply with the restrictions on State legislation concerning local affairs found in Article XI-E, §1.

App. 14-16 (COSA Opinion, at pp. 13-15)

[12] The Court of Special Appeals deemed itself constrained by this Honorable Court's decision in *Birge* – holding expressly in its opinion that "[w]e are not free . . . to disregard the Court of Appeals' teaching in *Birge*." (App. 12) (COSA Opinion, at p. 11, fn. 15).

A. *Tax-Property* Article §§6-305 and 6-306 are Public General Laws.

This Court, in *Rosecroft Trotting & Pacing Ass'n, Inc. v. Prince George's County*, 298 Md. 580, 596-97 (1984), spoke of tax differentials, although they were not directly at issue:

> As a theoretical ideal, the differential reflects the difference between the cost to the county of rendering service in the extra-municipal area of the county and the lower cost to the county of the more limited services rendered by the county in a given municipality where the municipal government itself furnishes certain services in lieu of the county.

The *Rosecroft* ruling recognized that (then) Article 81, §32A, the predecessor to §§6-305 and 6-306 of the *Tax-Property* Article, was "a public general law." *Id.*[13] This is not disputed in this case.

B. The statutory scheme created and existing under *Tax-Property* Article §§6-305 and 6-306 plainly does not treat all Maryland municipalities uniformly.

Likewise, there is no debate as to whether the disparate treatment of municipalities under §§6-305 and 6-306 of the *Tax-Property* Article complies with the uniformity requirement of Article XI-E, §1 – it quite clearly does not. Those provisions of the *Tax-Property* Article mandate tax differentials for certain municipalities (located in nine specified counties), while subjecting the entitlement to tax differentials for all other municipalities to the whim of the counties in which they

[13] *Mayor and City Council of Forest Heights v. Frank*, 291 Md. 331, 345 fn. 9 (1981), also mentioned tax differentials: "Various commissions or task forces have throughout the years studied . . . whether a tax rate differential should be mandated when the municipality performs certain services thereby relieving the county of the necessity for so doing."

are located.

C. *Tax Property* Article §§6-305 and 6-306 should be deemed to "relate" to municipal affairs, within the meaning of Article XI-E, §1.

The pivotal "prong" of the constitutional inquiry here is whether §§6-305 and 6-306 are "in relation to the ... government, or affairs of ... municipal corporation[s]." Ocean City submits that the subject statutory provisions, indeed, "relate to" municipal/local affairs, and that the lower courts erred in holding otherwise, and more fundamentally, erred in their view that a State law must relate *purely* to local affairs in order to be subject to the uniformity requirement of Article XI-E, §1, and that a law cannot be deemed to relate "purely" to local affairs if its effects "extend to a significant number of people outside of the municipality." (App. 12) (COSA Opinion, at p. 11, Fn. 15).

1. The relationship generally between tax differential and municipal/local affairs.

Local Gov't Article Title V grants certain powers to municipalities to adopt ordinances which regulate government, protect municipal rights, property, and privileges, preserve peace and order, secure persons and property from danger, and protect the health, comfort, and convenience of its residents. Md. Code, *Local Gov't* Art., §5-202. Those powers are "[i]n addition to, but not in substitution of, the powers that have been or may be granted to it" by the General Assembly. *Id*. at §5-203.

Among the powers granted to municipalities by the General Assembly are the

powers to provide for the control and management of its finances, expend money for public purposes (and to affect the safety, health and general welfare), and collect taxes (§5-205), the power to establish and maintain police and fire departments (§5-207), boards of health (§5-209), social services (§5-210), building regulations (§5-211), zoning and planning laws (§§5-212 and 5-213), and parks and recreation facilities (§5-216).

In addition, *Tax-Property* Article §6-303(a) expressly authorizes and directs "the governing body of each municipal corporation [to] annually [] set the tax rate for the next taxable year on all assessments of property subject to municipal corporation property tax."[14]

All those enumerated powers clearly deal with the "affairs" of a municipality. If police and fire protection, ambulance services and the like are among the "affairs" of the municipality, funding these services must be among the municipality's affairs as well. As the Oklahoma Supreme Court said in *Bodine v. Oklahoma City*, 187 P. 209 (1919), "[w]e do not believe that the framers of the Constitution intended to breathe life into a municipal corporation through a charter... and at the same time provide for the means to strangle it to death by denying it the power of taxation for municipal purposes."

Any tax rate set by a county on property owned by municipal taxpayers has an

[14] This Court in *Griffin v. Anne Arundel County*, 25 Md. App. 115, 126 (1975), said that a municipality's "authority [to tax] derives from Article XI-E of the Constitution and Code, Article 23A, Section 2," which is the predecessor to *Local Gov't* Art. §5-205.

impact on, and therefore relates to, the tax rate the municipality can and will charge and therefore relates to the "affairs" of the municipality, particularly where the county is charging municipal taxpayers for services and programs which it does not provide. Since the municipality is specifically authorized to "assure good government" and "protect the health, comfort and convenience of the residents," assuring that its residents are not paying through taxes for services they do not receive certainly is part of the municipality's "affairs." Moreover, the municipality's available funds are used to finance the services it provides to its residents and visitors.

That a county's tax rate within a municipality is a municipal concern has been repeatedly emphasized over the years by the General Assembly and various legislative and gubernatorial commissions. Thus, in its 1959 Joint Resolution the General Assembly said there had never been a study "of fiscal relationships directly between the city and county governments" and that "[b]ecause these levels of government are closest to the citizens, it is vital to the well-being and progress of the State that these matters be solved." (E. 195- 96). The Resolution singled out the need for "a study of possible tax differentials between city and town residents *whereby town residents might get lower county tax rates in consideration of the fact that many of their governmental services are provided by the town and not by the county*." (Emphasis added) (E. 196). The 1963 Report by the Commission on City-County Fiscal Relations recognized, "The town taxpayer who contributes his tax payment to the support of a town police force may justifiably complain of the necessity to

contribute taxes also to a county police force which performs few if any services for his town.... [This] problem is typical of the kind which remain unsolved at the level of local government in Maryland and appears to be the kind of problem with which local officials, ***particularly municipal officials***, are chiefly concerned." (Emphasis added). (E. 204-05).

Joint Resolution 31 (1978), noted that "owners of real property within incorporated areas pay both the county and municipal governments for services but may receive the services only from the municipal governments." (E. 275). This was reiterated in Chapter 694 of the 1982 Laws which stated that "the municipal taxpayer is being doubly taxed" and resolved that "counties should eliminate double taxation of municipal residents." (E. 278). That these were expressions of concern for the municipal taxpayer, rather than the non-municipal county taxpayer, is self-evident. That this is a continuing concern of the General Assembly is evidenced by the fact that the 1978 Resolution remains in effect (E. 346-403). Clearly then, §§6-305 and 6-306 are "in relation to the ... government, or affairs of ... municipal corporation[s]" within the meaning of Article XI-E of our Constitution.

2. The Lower Courts erred in their interpretation of *Birge* and in concluding that, to be "in relation" to municipal affairs, the matter governed by a general State law must be "*purely*" municipal, in order to be subject to the constitutional requirement of uniformity under Article XI-E, §1.

In order to "relate to" municipal/local affairs within the meaning of Article XI-E, §1, there is no requirement, nor should there be, that a general State law relate *only* or *purely* to municipal affairs, or that a general law not have any material effect

on populations outside the municipality. The Court of Special Appeals' interpretation of and reliance in this regard upon *Birge v. Town of Easton*, 274 Md. 635 (1975), was erroneous and deviated from the intent and context of that decision and the plain meaning and effect of Article XI-E, §1, as it should be properly applied.

As 2 McQUILLIN MUN. CORP. §4.78 (3d ed.) points out:

> [I]t is not necessary that each and every legislative subject be classified and fitted into either a statewide or local and municipal category with the result that either the city or the state, but not both, is empowered to exercise exclusive authority with respect to those subjects. Indeed, the cases have not recognized exclusive spheres of activity where the authority of the state and city must be meticulously separated and the respective powers isolated so as to invalidate any ordinance which strays into state affairs. On the contrary, the practical impossibility of such divisions has prompted the courts to declare the mutual exclusion doctrine inapplicable to such intermediate subjects.

2 MCQUILLINMUN. CORP. §4:84 (3d ed.) adds:

> General definitions of "municipal affairs" and "state affairs" within the meaning of the rules governing legislative control of municipal corporations have occasionally been announced in judicial decisions, although frequently courts deliberately refuse to define these terms, so that each case as it arises may be considered upon its own facts and circumstances without the complication of prior pronouncements upon the attributes of the one or the other category of "affairs." This unwillingness or inability to designate with certainty a line dividing the two classes of matters, and, indeed, the futility of attempts to do so, are clearly demonstrated by the conflicting and inharmonious decisions upon particular matters as belonging to the "municipal" or in the "state" class of affairs.

Here, although *Tax-Property* Article §§6-305 and 6-306 may, by derivative effect, implicate a county's tax rate, the clear and direct purpose of those statutes is to address the tax burden that taxpayers *within the municipality* will bear, and to equitably address the municipal burden in relation to the provision of services. *Tax-*

Property Article §6-305(c) says: "[I]f it can be demonstrated that a municipal corporation performs services or programs instead of similar county services or programs, the governing body of the county shall grant a tax setoff to the municipal corporation." *Tax-Property* Article §§6-305 and 6-306 say nothing about the taxes non-municipal taxpayers will pay to the county, other than that, where a tax differential applies, there is a "difference between the general county property tax rate and the property tax rate ... in a municipal corporation." Md. Code, *Tax-Property*, §§6-305(a)(l) and 6-306(a)(l).

"When interpreting constitutional provisions, we generally employ the same rules of construction that are applicable to the construction of statutory language. . . Like construing a statute, to ascertain the meaning of a constitutional provision or rule of procedure we first look to the normal, plain meaning of the language . . . If that language is clear and unambiguous, we need not look beyond the provision's terms to inform our analysis . . . ; however, the goal of our examination is always to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision, be it statutory, constitutional or part of the Rules." *Davis v. Slater*, 383 Md. 599, 604-05 (2004) (internal citations omitted).

The Court's review is undertaken "on the tacit theory that the General Assembly is presumed to have meant what it said and said what it meant... " *Bellard v. State*, 452 Md. 467, 481 (2017) (citing *Wagner v. State*, 445 Md. 404 (2015)). In construing statutes, courts "neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly

used or engaged in forced or subtle interpretation in an attempt to extend or limit the statute's meaning." *Id*.

Contrary to these rules, in concluding that §§6-305 and 6-306 do not relate to municipal affairs, the lower courts, misconstruing or mis-applying *Birge* and other law, improperly read into Article XI-E, §1, a limitation that, to be subject to the constitutional requirement of uniformity, a State law must relate "purely" to municipal affairs.

In *Birge v. Town of Easton*, 274 Md. 635 (1975), this Court addressed the issue of whether the Town of Easton could amend its charter to allow for the acquisition of real property outside of its boundaries, for use in connection with the operation of its municipally owned electric system. In determining whether the charter amendment was a "local [Home Rule] matter" under Article XI-E this Court held:

> Under §3 of Article XI-E of the Constitution of Maryland (the Municipal Home Rule Amendment), the Town possesses the power and authority to amend its charter with respect to matters relating to its 'incorporation, organization, government, or affairs.' It is, of course, the general purpose of Article XI-E to permit municipalities to govern themselves in local matters. *Woelfel v. Mayor & Aldermen*, 209 Md. 314 (1956). We noted in *Hitchins v. City of Cumberland*, 208 Md. 134 (1955), that Article XI-E is generally in accord with the recommend-ations of the Commission on Governmental Organization of the State (the so-called Sobeloff Commission); the report of that Commission stated that final determination of ***what constitutes a matter of purely local or municipal concern***, i.e., a matter relating to the 'incorporation, organization, government, or affairs' of the municipality, is for the courts to make in light of all existing circumstances. ***In determining whether a matter is local or is one of general state concern***, 1 C. Antieau, MUNICIPAL CORPORATION LAW § 3.36 (1973) states:

> 'If the effect of local rules or municipal control is not great upon people outside the home-rule city, the matter is apt to be deemed local. . . .
>
> 'Contrariwise, if the effect of the regulation or the administration of a particular matter is likely to be felt by a considerable number of people outside the city and in a rather strong degree, courts are probably going to conclude that the concern is for the state.'

Birge v. Town of Easton, 274 Md. at 644 (emphasis added).

While the Sobeloff Commission did not use the word "purely" in its report, it did speak to "matters considered *solely* as local in nature" (emphasis added), but only in the context of determining whether a law is local or general. (E. 157). The Sobeloff Commission recommended Article XI-E for the specific purpose of prohibiting the General Assembly from enacting local laws. Its discussion of municipal affairs was in that context: "The proposed constitutional amendment would not define matters of municipal organization, government, and affairs concerning which the General Assembly could pass no local laws. Since local affairs are not spelled out in the present Constitution, final determination as to what they are would continue to remain in the courts . . . [M]atters considered solely as local in nature must be reviewed as circumstances change." (E. 157).

The source of this concept that a local law is one which is "purely," "exclusively" or "solely" limited in its application to a single municipality or county seems to be Article XI-A, §4 of the Maryland Constitution. That Article permits our counties and Baltimore City to adopt a charter governing their own home rule. That Article has provided since its ratification in 1915, that, "[f]rom and after the adoption

of a charter . . . no public local law shall be enacted by the General Assembly for said City or County on any subject covered by the express powers granted as above provided. *Any law so drawn as to apply to two or more of the geographical sub-divisions of this State shall not be deemed a Local Law . . . ."* (Emphasis added). Thus, to be a local law, it must be "purely," "exclusively" or "solely" limited in its application *to Baltimore City or a single County*, as opposed to applying to two or more counties, which by express definition would be a "general law." *See Baltimore Transit Co. v. Metropolitan Transit Authority*, 232 Md. 509, 520 (1963) (finding a law not exclusive to Baltimore City is not local in nature); *Prince George's County v. Mayor and City Council of Laurel*, 262 Md. 171 (1971); *City of Bowie v. Washington Suburban Sanitary Commission*, 249 Md. 611 (1968).

But whether *Tax-Property* Article §§6-305 and 6-306 are *local* or *general* laws is not at issue in this case (they are plainly "general" laws). The question before this Court (and the lower Courts) – whether *Tax-Property* Article §§6-305 and 6-306 (*as clearly "general" laws*) "relate to" municipal "affairs" and are therefore subject to the uniformity requirement of Article XI-E, §1 – is and has always been a different question, to be approached and analyzed differently, *than whether a particular law is a general or local law in nature*. That analysis is plainly unnecessary here as this Court in *Rosecroft*, *supra*, already has determined, and Worcester County has agreed, that *Tax-Property* Article §§6-305 and 6-306 are *general* laws.

Birge dealt, not with the uniformity requirement in §1 of Article XI-E (and whether the subject law "related to" municipal affairs in *that* context), but rather with the

Town of Easton's power (or lack thereof) to amend its charter under Article XI-E, §3, which permits a municipality "to amend or repeal [its] charter or local laws relating to [its] incorporation, organization, government, or affairs." In *Birge*, the Town already had authority from the General Assembly dating to 1914 to operate an electric system and supply heat and power "to the citizens of Easton, *and vicinity*" (emphasis added) and, as of the 1975 court decision, had a service area of some fifty square miles "both within and without the Town limits." *Birge*, 274 Md. at 636-37. The challenged charter amendment permitted the Town of Easton to acquire an interest in an electric plant located outside the Town (indeed, in the State of Delaware) in conjunction with a private entity.

In deciding whether the charter amendment was valid *under Article XI-E, §3*, this Court looked to the Second Sobeloff Report and said: "what constitutes a matter of purely local or municipal concern, i.e., a matter relating to the 'incorporation, organization, government, or affairs' of the municipality, is for the courts to make in light of all existing circumstances." *Birge*, 274 Md. at 644. The Court then looked to 1 C. Antieau, *Municipal Corporation Law* §3.36 (1973), and found that, rather than speaking in terms of "pure" local concern, Antieau spoke in terms of *relative* effect: "If the effect of local rules or municipal control is *not great* upon people outside the home-rule city, the matter is apt to be deemed local . . . Contrariwise, if the effect of the regulation or the administration of a particular matter is likely to be felt by a considerable number of people outside the city and in a *rather strong degree*, courts are probably going to conclude that the concern is for the state." *Birge*, 274 Md. at 644 (emphasis added).

The *Birge* Court then, exercising its authority to make its decision "in light of all existing circumstances," concluded: "[c]onsidering the nature and needs of the Town's electric utility, its limited service area, its overall regulation by the State through the PSC, and the negligible effect upon nonresidents of the Town, we think the power granted by the charter amendment with respect to the Town's electric system is in the sense contemplated by Article XI-E a local matter involving the 'incorporation, organization, government, or affairs' of the municipality."

Thus, while clearly the charter amendment at issue in *Birge* was not "purely" a municipal concern (there were electric customers outside the Town and the proposed plant was located in Delaware), the *Birge* Court, even though still using the word "purely," nevertheless found that, *relatively speaking*, the issue was a "local matter" involving the government and affairs of the Town; and on that basis, the charter amendment was constitutional *under Article XI-E, §3* (which, again, permits a municipality "to amend or repeal [its] charter or local laws relating to [its] incorporation, organization, government, or affairs").

Below, the Court of Special Appeals mis-applied or mis-construed *Birge* as establishing a binding "standard" for determining, not only under Article XI-E, §3, but also under Article XI-E, §1, "whether a matter is of local or of State concern, and how to deal with statutes that are of a mixed nature and concern both local and State matters." App. 11-12 (COSA Opinion, at p. 10). In Ocean City's considered view, the *Birge* decision did not do so. If *Birge* created any binding "test" at all, it created a test for determining whether a locally adopted law or ordinance, having some impact or effect

outside the municipality, might nevertheless be deemed a constitutional exercise of Home Rule power by the municipality, vis-à-vis Article XI-E, §3 of the Maryland Constitution. In *that* context, to reiterate, this Court held in *Birge* that, although the subject charter amendment was not "purely" a municipal concern (there were electric customers outside the Town and the proposed plant was located in Delaware), *relatively speaking*, the issue was a "local matter" involving the government and affairs of the Town (and therefore passed constitutional muster under Article XI-E, §3, as a proper exercise of Home Rule power).

This case presents a *different* question arising under a *different* constitutional provision – whether general State laws (§§6-305 and 6-306 of the *Tax-Property* Article) relating materially and directly to municipal affairs but not solely to municipal affairs, and treating municipalities dramatically differently, violate the uniformity requirement of Article XI-E, §1. Ocean City submits respectfully that such laws violate the uniformity requirement of Article XI-E, §1, and that the "test" applied below by the Court of Special Appeals, purportedly under *Birge*, was erroneously gleaned from that case, erroneously articulated, and erroneously applied.

Indeed, if there is a "test" to be applied from *Birge* to the present case, it should be that, to be constitutional under Article XI-E, §1, general State laws relating directly and meaningfully to municipal affairs must treat all Maryland municipalities the same, even if such laws may also have some non-local effect (outside of the municipalities).

3. Other decisions of this Court confirm that under Article XI-E, §1, a determination of whether a general State law relates to municipal affairs involves a straight-forward analysis without reference to whether the statute in question relates "purely" or "solely" or even "mostly" to municipal affairs.

None of the cases deciding whether legislation relates to municipal affairs and thus must be uniform as to all municipalities under Article XI-E, inquire as to whether the legislation is "purely" or "solely" municipal. Rather, those cases apply, as they should, the plain language of Article XI-E and consider, in a straight-forward analysis, whether the general laws "relat[e] to the . . . government or affairs of the municipal corporation."[15]

The history, case law, and remedial nature of Article XI-E, §1 make clear that what the people intended when they adopted Article XI-E is that local governments are to be left to govern themselves, except as to policy issues of State-wide concern. The General Assembly was empowered under Article XI-E to act by general laws, *but only if they are applicable to all municipalities alike*. The Sobeloff Commission recommended a constitutional amendment in which the General Assembly would retain the authority to regulate municipalities through general laws. "Local laws

[15] The decisions of courts interpreting home rule language similar to Maryland's employ a broader test than did the lower courts in this case. *See Adler v. Deegan*, 251 N.Y. 467, 167 N.E. 705, 714 (1929) (Cardozo, C.J.) ("I do not say that an affair must be one of city concern exclusively"); *State ex rel. Michalek v. LeGrand*, 77 Wis.2d 520, 253 N.W.2d 505 (1977) ("As to the third mixed bag category of situations, our court has recognized ... that many matters while of state-wide concern, affecting the people and state at large somewhat remotely and indirectly, yet at the same time affect the individual municipalities directly and intimately, can consistently be, and are, local affairs ....") (quotation marks omitted).

relating to the 'incorporation, organization, government and affairs' of municipalities would be prohibited ... " (E. 155). The Commission also said that determining what constitutes municipal "organization, government and affairs" should be left undefined and "continue to remain in the courts." (E. 157). As the Court of Special Appeals rightly held in *Mayor and Alderman of Annapolis v. Wimbleton*, Inc., 52 Md. App. 256, 265 (1982), the adoption of Article XI-E, §1, reflected "a desire by the people of Maryland to preclude legislation aimed at only certain specific municipalities."

The history of Article XI-E sheds little light on what should be deemed a municipal affair.[16] However, there are cases which have construed what constitute municipal affairs in other contexts under Article XI-E.

In *City of Gaithersburg v. Montgomery County*, 271 Md. 505 (1974), the Court found zoning and annexation as among municipal "organization, government or affairs." In upholding the constitutionality of the subject statute, this Court found that it applied alike to all municipalities, not just those in Montgomery and Prince George's County. But the Court noted that "If we agreed with appellants that Chapter 116 applied only to municipalities in Montgomery and Prince George's Counties, it is doubtful that the Act would be constitutional" under Article XI-E, §1. *City of Gaithersburg v. Montgomery County*, 271 Md. at 510.

[16] There is, however, little doubt as to the source of the language of Article XI-E, §1. The Sobeloff Commission quoted virtually identical language which then appeared in the New York Constitution. (E. 191).

In *Bowie Inn, Inc. v. City of Bowie*, 274 Md. 230 (1975), this Court found that a statute regulating the disposal of trash related to the affairs of the municipality. Particularly noteworthy in the *Bowie Inn* decision is this Court's comment that as originally enacted, Art. 23A §4 purported to make §2 (wherein the authority to regulate garbage was granted) inapplicable in certain counties. This Court, after quoting Article XI-E, §1, said, "The General Assembly, apparently recognizing the unconstitutionality of §4 of Art. 23A [because it did not "in [its] terms and [its] effect apply alike to all municipal corporations], repealed §4 in 1973." *Id*. at 248.[17]

In *Gordon v. Commissioners of St. Michaels*, 278 Md. 128 (1976), this Court held that although zoning constituted a municipal affair, Article 66B, §4.05(d) was unconstitutional as the legislation *did not apply alike to all municipalities*. More specifically, this Court found:

> Chapter 723 of the Acts of 1971 pertained only to §4.05(d). Section 4.05(d) concerns only Talbot County. Since there is only one class of municipal corporations in Maryland, since Constitution Art. XI-E, §1 specifies that the power of the General Assembly to act relative to the affairs of municipal corporations is "only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes" for which provision is made, and since this act applies only to Talbot County municipalities, it follows that it is unconstitutional.

Id. at 133-34. (Emphasis added).

[17] The 2013 Revisor's Notes to Local Gov't Art.§§13-310 and 13-311 are also instructive. Those statutes, which apply to transient vendors, have provisions which apply to limited specified municipalities. The Code Revision Commission pointed out to the General Assembly in its Notes to each section that those provisions "may be inconsistent with the [uniformity] requirement under Article XI-E, §1."

In *Wimbleton*, *supra*, the Court of Special Appeals held that Art. 23A §19(u), which empowered municipalities to enlarge their corporate boundaries by annexation, and specifically gave Anne Arundel County the power to register its disapproval of an annexation resolution by one of the two municipalities within its jurisdiction, was unconstitutional because it failed to apply uniformly to all municipalities. In reaching its conclusions, the Court implicitly found that annexation was among the municipalities' "government, organization and affairs."

A common thread running through these cases is that a "government or municipal affair" is self-evident and unambiguous. In *City of Gaithersburg* and *Wimbleton*, the municipal "affair" under consideration was the power of the municipality to annex land, a power now codified at Local Gov't Art. Title 4, Subtitle 4. In *Bowie Inn* the ordinance in question was enacted pursuant to former Article 23A §2(14), which granted municipalities authority to regulate garbage disposal and is now codified at Local Gov't Art. § 5-209(d). *Gordon v. Commissioners of St. Michaels* dealt with the power of a municipality to zone, which is now codified in Local Gov't §5-213.

In the present case, the "municipal affairs" at issue "relate" to the services and programs which Ocean City provides to its taxpayers pursuant to its delegated powers, the taxes (revenue) which Ocean City must raise to pay for those services and programs, and the burden of "double taxation" that Ocean City taxpayers suffer under the County's taxing power in the absence of a tax setoff from the County. Ocean City has the power to provide services and programs under Local Gov't Art.

§5-201 *et seq.*, and is empowered to levy taxes under *Tax-Property* §6-303. Although *Tax-Property* §§6-305 and 6-306 refer to the *county* tax rate, it is the county tax rate within ***municipal corporations*** that those sections deal with. Ocean City's power to tax under §6-303, and the impact of County taxes on the Ocean City's taxpayers, are necessarily and deeply impacted by the County's tax rate in the absence of a tax setoff. Not only has the General Assembly expressed its continuing concern about this inequity for almost 65 years, but the Court of Special Appeals in *Griffin v. Anne Arundel County*, 25 Md. App. 115, 138 (1975), recognized this unfairness as well, stating: "[F]undamental considerations of fairness indicate that the City of Annapolis - and perhaps other municipalities throughout Maryland - may be entitled to more equitable tax treatment by the counties than they receive."

That *Tax-Property* Article §§6-305 and 6-306 "relate" to municipal government or affairs within the meaning of Article XI-E, §1, is also demonstrated by considering their relative impact on the County's and the Town's revenues. By increasing the County tax rate outside of municipal boundaries and decreasing it within municipal boundaries, the County will have no loss in revenues; *it will receive exactly the same tax dollars*. Granted, the County's non-municipal taxpayers may have their tax rate increase, but that is only because the County's municipal taxpayers (those owning property in Ocean City) have been inequitably subsidizing them for decades.

That the tax setoff concept set forth in §§6-305 and 6-306 "relates" to "municipal affairs" is further confirmed by viewing §6-305 (the "shall" provision) in

isolation. Under §6-305, a county has no discretion to refuse a tax setoff. The General Assembly has mandated that it do so upon a showing that the municipality "performs services or programs instead of similar county services or programs." The setoff, then, *must* be a municipal affair, as the setoff gives the municipality the financial flexibility to either adjust its tax rate in the event a tax differential is granted, or to defray the costs of providing the similar services and programs in the event a tax rebate is made. Section 6-305 is, then, a mandate by the General Assembly that the County must assist the municipality by a direct payment to the municipality through a tax rebate, or that the county assist the municipality's taxpayers in paying for the services they receive from the municipality rather than from the County, through a tax differential. The statutory scheme is directed at eliminating the inequity of municipal taxpayers paying the county for services which are provided only by the municipality. The tax setoff mechanism, therefore, *must* "relate" to "municipal affairs" within the meaning of Article XI-E, §1.

IV. THE UNCONSTITUTIONAL PROVISIONS OF *TAX-PROPERTY* ARTICLE §§6-305 AND 6-306 SHOULD BE SEVERED AND STRUCK DOWN, LEAVING §6-305(A)-(J) INTACT.

Sections 6-305 and 6-306, as enacted, are unconstitutional under Article XI-E, §1. As such, under applicable law it becomes the duty of this Court to sever the unconstitutional portions, to the end that the differing treatment of municipalities (depending on the county in which they are located) is struck down, and all counties become "shall" counties under §6-305. Thus, §6-305(b), which limits the counties within which the municipalities "shall" be entitled to a tax differential or tax setoff,

should be stricken, as should §6-306 (the "may" provision) in its entirety.

Section 1-210 of the *General Provisions* Article of the Maryland Code requires this result since it provides that a finding of unconstitutionality as to certain statutory provisions does not affect the remaining portions of the statute "unless the court finds that the remaining valid provisions alone are incomplete and incapable of being executed in accordance with the legislative intent."

In 2011, this Court said on this subject:

> Even in the absence of a severability statute, "[t]here is a strong presumption that if a portion of an enactment is found to be invalid, the intent is that such portion be severed." *Board v. Smallwood*, 327 Md. 220, 245 (1992). Under our case law, the principal test is whether "'the dominant purpose of an enactment may largely be carried out notwithstanding the [enactment's] partial invalidity,'" *Board v. Smallwood, supra*, 327 Md. at 246, quoting *O.C. Taxpayers v. Ocean City*, 280 Md. 585, 601 (1977).

Jackson v. Dackman Co., 422 Md. 357, 383-84 (2011).

Here, none of the legislation at issue in any way limits the severability of its provisions. Indeed, to the contrary, by virtue of §1-210 of the *General Provisions* Article, "all Maryland statutes now [have severability clauses]." *State v. Schuller*, 280 Md. 305, 319 (1977).

Severing the discretionary provisions and mandating tax setoffs for all qualifying municipalities (in all counties) serves to ensure that the principal purpose of the legislation is carried out, as expressed in the numerous Legislative Reports and Resolutions discussed above. Thus, the 1978 Joint Resolution (E. 275) makes clear that the dominant purpose of the legislation was the establishment of tax differentials

to account for the fact that "the county may provide some of its services only in the unincorporated areas of the county and leave the furnishings of these services within the cities and towns to the municipal governments." Similarly, the 1982 amendment of §32A of Article 81 (E. 277-78) resolved that, "counties should eliminate the double taxation of municipal residents . . ."

Under the 1978 Joint Resolution, importantly, the State Department of Fiscal Services was "directed to conduct an annual review on the progress of counties in establishing tax differentials and to report their findings at the close of each fiscal year to the Legislative Policy Committee." That Resolution (and the annual Reports it requires), continues in effect to this day, forty years later.

To use the language of *Board of Supervisors of Elections v. Smallwood*, 327 Md. 220, 246 (1992), not only may "the dominant purpose of [the] enactment *largely* be carried out" but in fact the dominant purpose *has been* carried out for virtually all municipalities in the State, with the exception of those in Worcester, Kent and Wicomico Counties.[18]

This Court in *Gordon v. Commissioners of St. Michaels*, *supra*, applied these severance principles in a case in which it found the enactment in question unconstitutional under Article XI-E, § 1, because the act treated Talbot County

[18] The progress the General Assembly had sought in 1978 has been almost completely achieved, with the notable exception of the Defendant, Worcester County, Kent and Wicomico Counties. In 1979 only 8 counties were providing tax setoffs. In contrast, by 2017, only three counties fail to provide setoffs (E. 352).

municipalities differently than other municipalities. In addressing the issue of severability, this Court looked to an earlier resolution of the General Assembly passed in 1966 for a commission to be appointed to make a comprehensive review of the State's zoning laws and a subsequent report which proposed the elimination of this exception for Talbot County. Quoting *Shell Oil Co. v. Supervisor*, 276 Md. 36 (1975), this Court said:

> This Court has the duty, when finding that a statute is invalid in some respect, to separate the valid from the invalid provisions wherever possible . . . The test of severability is the effectiveness of a statute to carry out the original legislative intent without its invalid provisions. . . And where it appears that the Legislature would have enacted a statute even if it had known that certain provisions were invalid, the valid provisions of the statute should be separated from the invalid, and the statute enforced.
>
> * * *
>
> The passage by the General Assembly of the joint resolution in 1966 calling for a commission 'to make a comprehensive review of the State's planning and zoning laws, for the purpose of preparing a revision of th[o]se laws' coupled with the report of the commission appointed by the Governor pursuant to that resolution and the subsequent Legislative Council report reflect a legislative intent for a complete rewriting of the article on zoning and planning so that it would be uniform in its application throughout the State. Proposed for elimination were special provisions for various counties appearing in the old law....
>
> * * *
>
> From the very nature of Chapter 672 we conclude that the General Assembly would have enacted the statute even had it known that this provision in it relative to Talbot County was invalid. Therefore, we separate from Chapter 672 as invalid only that portion of the act which purported to grant special powers to municipalities in Talbot County. (Citations omitted).

In *O.C. Taxpayers for Equal Rights, Inc. v. Ocean City*, 280 Md. 585,

600 (1977), this Court said:

> [W]hen a statute contains both a general provision and an invalid exception, courts have often refused to sever when the severed statute would impose a duty, sanction or substantial hardship on the otherwise excepted class . . . However, when the legislature has otherwise indicated what its intent would have been if such an exception were held invalid, the courts have severed. . .
> (Citations omitted).

Here, of course, requiring that all municipalities be treated the same, as required by Article XI-E, § 1, imposes no "duty, sanction or substantial hardship" on any of them. Rather it provides them with the fairness in taxation that municipalities and lawmakers have sought in Maryland *for over 60 years*, and now have largely but not completely achieved throughout the State, albeit through voluntary (as opposed to mandated) action by many conscientious County governments.

Accordingly, §6-305(b), which limits those counties within which the municipalities "shall" be entitled to a tax differential or tax setoff, should be severed and struck down, as should §6-306 (the "may" provision), in its entirety. This will leave the "shall" provisions of §6-305 intact and applicable to all municipalities in the State.[19]

[19] Sections 6-305(k) and 6-305.1 of the Tax-Property Article, which relate only to Prince George's County and Frederick County respectively, may also be affected by the relief (and ruling) that Ocean City seeks in this case.

CONCLUSION

WHEREFORE, Petitioner Ocean City respectfully requests that this Honorable Court reverse the ruling of the Court of Special Appeals and declare that: (a) §6-305(b) of the *Tax-Property* Article and the entirety of §6-306 of the *Tax- Property* Article violate §1 of Article XI-E of the Maryland Constitution, and are invalid on that basis; (b) the remainder of §6-305 of the *Tax-Property* Article is constitutionally valid and is severed and continues in force as a public general law of this State, to the end that tax differentials or tax rebates are mandatory for the Town of Ocean City, in relation to the cost of the services and programs which are provided by the municipality which would otherwise be provided by the county; and (c) that Worcester County is required to comply with the newly constituted §6-305 of the *Tax-Property* Article.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This Brief contains 11,710 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/ Bruce F. Bright
Bruce F. Bright

CONSTITUTIONAL PROVISIONS AND STATUTES

CONSTITUTIONAL PROVISIONS

Maryland Constitution, Art. XI-A, § 4. Enactment of local laws prohibited on subjects covered by express powers.

From and after the adoption of a charter under the provisions of this Article by the City of Baltimore or any County of this State, no public local law shall be enacted by the General Assembly for said City or County on any subject covered by the express powers granted as above provided. Any law so drawn as to apply to two or more of the geographical sub-divisions of this State shall not be deemed a Local Law, within the meaning of this Act. The term "geographical sub-division" herein used shall be taken to mean the City of Baltimore or any of the Counties of this State.

Maryland Constitution, Art. XI-E, § 1. Special charters.

Except as provided elsewhere in this Article, the General Assembly shall not pass any law relating to the incorporation, organization, government, or affairs of those municipal corporations which are not authorized by Article 11-A of the Constitution to have a charter form of government which will be special or local in its terms or in its effect, but the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article. It shall be the duty of the General Assembly to provide by law the method by which new municipal corporations shall be formed.

STATUTES

Maryland Code, General Provisions Article, § 1-210. Severability.

(a) Except as otherwise provided, the provisions of all statutes enacted after July 1, 1973, are severable.

(b) The finding by a court that part of a statute is unconstitutional or void does not affect the validity of the remaining portions of the statute, unless the court finds that the remaining valid provisions alone are incomplete and incapable of being executed in accordance with the legislative intent.

Maryland Code, Tax–Property Article, § 6-303. Municipal corporation tax.

(a)(1) Except as provided in paragraph (2) of this subsection, in each year after the date of finality and before the following July 1, the governing body of each municipal corporation annually shall set the tax rate for the next taxable year on all assessments of property subject to municipal corporation property tax.

(2) If not otherwise prohibited by this article, the governing body of a municipal corporation may set special rates for any class of property that is subject to the municipal corporation property tax.

(b) The governing body of a municipal corporation may change a property tax rate that is fixed in its charter if: (1) the rate causes a loss of revenue because of exemption of property that is subject to the tax rate; or (2) a loss of revenue is caused by any special rate of municipal corporation property tax.

(c)(1) Unless otherwise provided by the governing body of the municipal corporation:

(i) there shall be a single municipal corporation property tax rate for all real property subject to municipal corporation property tax except for operating real property described in § 8-109(c) of this article; and (ii) the municipal tax rate applicable to personal property and the operating real property described in § 8-109(c) of this article for taxable years beginning after June 30, 2001 shall be 2.5 times the rate for real property.

(2) Paragraph (1) of this subsection does not affect a special rate prevailing in a taxing district or part of a municipal corporation

Maryland Code, Tax-Property, § 6-305. County rate, certain municipal corporations.

(a) In this section, "tax setoff" means: (1) the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipal corporation; or (2) a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs.

(b) This section applies only in: (1) Allegany County; (2) Anne Arundel County; (3) Baltimore County; (4) Garrett County; (5) Harford County; (6) Howard County; (7) Montgomery County; and (8) Prince George's County.

(c) The governing body of the county shall meet and discuss with the governing body of any municipal corporation in the county the county property tax rate to be set for assessments of property in the municipal corporation as provided in this section. After the

meeting if it can be demonstrated that a municipal corporation performs services or programs instead of similar county services or programs, the governing body of the county shall grant a tax setoff to the municipal corporation.

(d) In determining the county property tax rate to be set for assessments of property in a municipal corporation, the governing body of the county shall consider: (1) the services and programs that are performed by the municipal corporation instead of similar county services and programs; and (2) the extent that the similar services and programs are funded by property tax revenues.

(e) The county property tax rate for assessments of property located in a municipal corporation is not required to be: (1) the same as the rate for property located in other municipal corporations in the county; or (2) the same as the rate set in a prior year.

(f)(1) At least 180 days before the date that the annual county budget is required to be approved, any municipal corporation in the county that desires that a tax setoff be provided shall submit to the county a proposal that states the desired level of property tax setoff for the next fiscal year.

(2)(i) A request submitted under paragraph (1) of this subsection shall be accompanied by:

1. a description of the scope and nature of the services or programs provided by the municipal corporation instead of similar services or programs provided by the county; and

2. financial records and other documentation regarding municipal revenues and expenditures. (ii) The materials submitted under subparagraph (i) of this paragraph shall provide sufficient detail for an assessment of the similar services or programs.

(3) After receiving a proposal from a municipal corporation requesting a tax setoff under this subsection, the governing body of the county shall promptly submit to the municipal corporation financial records and other documentation regarding county revenues and expenditures.

(g)(1) At least 90 days before the date that the annual county budget is required to be approved, the county and any municipal corporation submitting a tax setoff request under subsection (f) of this section shall designate appropriate policy and fiscal officers or representatives to meet and discuss the nature of the tax setoff request, relevant financial information of the county and municipal corporation, and the scope and nature of services provided by both entities.

(2) A meeting held under paragraph (1) of this subsection may be held by the county representatives jointly with representatives from more than one municipal corporation.

(3)(i) The county officers or representatives may request from the municipal corporation officers or representatives additional information that may reasonably be needed to assess the tax setoff. (ii) The municipal corporation officers or representatives shall provide the additional information expeditiously.

(h)(1) At or before the time the proposed county budget is released to the public, the county commissioners, the county executive of a charter county, or the county council of a charter county without a county executive shall submit a statement of intent to each municipal corporation that has requested a tax setoff.

(2) The statement of intent shall contain: (i) an explanation of the level of the proposed tax setoff; (ii) a description of the information or process used to determine the level of the proposed tax setoff; and (iii) an indication that, before the budget is enacted, appropriate officials or representatives of the municipal corporation are entitled to appear before the county governing body to discuss or contest the level of the proposed tax setoff.

(i) Representatives of each municipal corporation in the county requesting a tax setoff shall be afforded an opportunity to testify before the county governing body during normally scheduled hearings on the county's proposed budget.

(j) Notwithstanding the provisions of subsections (d), (f), and (g) of this section: (1) a county and one or more municipal corporations may enter into an agreement setting different terms or timing for negotiations, calculations, or approval of a tax setoff; and (2) a county may grant a tax setoff to a municipal corporation that does not make a request in the fashion described in this section.

***

Maryland Code, Tax-Property, § 6-306. County rate, other municipal corporations.

(a) In this section, “tax setoff” means: (1) the difference between the general county property tax rate and the property tax rate that is set for assessments of property in a municipal corporation; or (2) a payment to a municipal corporation to aid the municipal corporation in funding services or programs that are similar to county services or programs.

(b) This section applies to any county not listed in § 6-305 of this subtitle.

(c) The governing body of the county shall meet and discuss with the governing body of any municipal corporation in the county the county property tax rate to be set for assessments of property in the municipal corporation as provided in this section. After the meeting if a municipal corporation performs services or programs instead of similar county services or programs, the governing body of the county may grant a tax setoff to the municipal corporation.

(d) In determining the county property tax rate to be set for assessments of property in a municipal corporation, the governing body of the county may consider:

(1) the services and programs that are performed by the municipal corporation instead of similar county services and programs; and

(2) the extent that the similar services and programs are funded by property tax revenues.

(e) The county property tax rate for assessments of property located in a municipal corporation is not required to be:

(1) the same as the rate for property located in other municipal corporations in the county; or

(2) the same as the rate set in a prior year.

(f)(1) At least 180 days before the date that the annual county budget is required to be approved, any municipal corporation in the county that desires that a tax setoff be provided shall submit to the county a proposal that states the desired level of property tax setoff for the next fiscal year.

(2)(i) A request submitted under paragraph (1) of this subsection shall be accompanied by:

1. a description of the scope and nature of the services or programs provided by the municipal corporation instead of similar services or programs provided by the county; and

2. financial records and other documentation regarding municipal revenues and expenditures.

(ii) The materials submitted under subparagraph (i) of this paragraph shall provide sufficient detail for an assessment of the similar services or programs.

(3) After receiving a proposal from a municipal corporation requesting a tax setoff under this subsection, the governing body of the county shall promptly submit to the

municipal corporation financial records and other documentation regarding county revenues and expenditures.

(g)(1) At least 90 days before the date that the annual county budget is required to be approved, the county and any municipal corporation submitting a tax setoff request under subsection (f) of this section shall designate appropriate policy and fiscal officers or representatives to meet and discuss the nature of the tax setoff request, relevant financial information of the county and municipal corporation, and the scope and nature of services provided by both entities.

(2) A meeting held under paragraph (i) of this subsection may be held by the county representatives jointly with representatives from more than one municipal corporation.

(3)(i) The county officers or representatives may request from the municipal corporation officers or representatives additional information that may reasonably be needed to assess the tax setoff.

(ii) The municipal corporation officers or representatives shall provide the additional information expeditiously.

(h)(1) At or before the time the proposed county budget is released to the public, the county commissioners, the county executive of a charter county, or the county council of a charter county without a county executive shall submit a statement of intent to each municipal corporation that has requested a tax setoff.

(2) The statement of intent shall contain:

(i) an explanation of the level of the proposed tax setoff;

(ii) a description of the information or process used to determine the level of the proposed tax setoff; and

(iii) an indication that, before the budget is enacted, appropriate officials or representatives of the municipal corporation are entitled to appear before the county governing body to discuss or contest the level of the proposed tax setoff.

(i) Representatives of each municipal corporation in the county requesting a tax setoff shall be afforded an opportunity to testify before the county governing body during normally scheduled hearings on the county's proposed budget.

(j) Notwithstanding the provisions of subsections (d), (f), and (g) of this section:

(1) a county and one or more municipal corporations may enter into an agreement setting different terms or timing for negotiations, calculations, or approval of a tax setoff; and

(2) a county may grant a tax setoff to a municipal corporation that does not make a request in the fashion described in this section.

APPENDIX

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Circuit Court for Worcester County
Case No. C-23-CV-18-000021

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2751

September Term, 2018

MAYOR AND CITY COUNCIL OF OCEAN CITY, et al.,

v.

COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, et al.

Friedman,
Beachley,
Gould,

JJ.

Opinion by Friedman, J.

Filed: October 13, 2020

This case concerns the constitutionality of the tax setoff laws contained in Sections 6-305 and 6-306 of the Tax-Property ("TP") Article of the Maryland Code. These tax setoff laws divide Maryland's counties into two main categories: in the first category are 8 counties in which the county must provide municipal residents with a tax setoff; and in the second category are 14 counties in which the county may, at its discretion, provide municipal residents with a tax setoff.[1] Ocean City is located in Worcester County—one of the counties in the second category that may, but is not required to, give municipal residents a tax setoff. For at least the last several years, Worcester County has, however, refused to give Ocean City a tax setoff. To avoid this outcome, Ocean City challenges the constitutionality of these tax setoff laws pursuant to Article XI-E of the Maryland Constitution, which broadly compels the General Assembly to treat municipalities uniformly. For the reasons that follow, we hold that because the tax setoff laws do not relate exclusively to local affairs, they do not violate the uniformity requirement of Article XI-E, §1.

FACTS

Ocean City is the largest municipality in Worcester County, Maryland. Taxpayers in Ocean City pay property taxes to both Ocean City and to Worcester County, but receive governmental services mostly from Ocean City. To compensate its taxpayers for this tax differential, Ocean City sought a tax setoff from Worcester County. Worcester County

[1] Frederick County operates under a slightly different tax setoff system that is not relevant to the disposition of this case. MD. CODE, TAX PROPERTY ("TP"), § 6-305.1. *See, infra*, n.7.

declined. Ocean City then filed suit seeking a declaration that the tax setoff laws are unconstitutional because they treat different municipalities differently. Worcester County moved to dismiss the complaint or, in the alternative, for summary judgment. Ocean City cross-moved for summary judgment. The circuit court found that the tax setoff laws are not "special or local in [their] terms or in [their] effect" relating to the government or affairs of municipal corporations under Article XI-E, § 1 of the Maryland Constitution and are therefore constitutional. Ocean City noted a timely appeal.[2]

DISCUSSION

I. TAX SETOFF LAWS

The problem of tax differentials is not a new problem. Almost 50 years ago, in *Griffin v. Anne Arundel County*, Judge John P. Moore[3] of this Court described what was by then already a longstanding problem. 25 Md. App. 115, 120 (1975). In 1959, the General Assembly created a commission to "study problems of City-County fiscal relationships," including:

> a study of possible tax differentials between the city and town residents whereby town residents might get lower county tax rates in consideration of the fact that many of their

[2] The State of Maryland was not a party to this litigation. Pursuant to Article V, § 6 of the Maryland Constitution, the Clerk of the Court of Special Appeals notified the Attorney General of Maryland that the State of Maryland has or may have an interest in this case and invited the Attorney General to submit his views. The Attorney General submitted his views in the form of an amicus curiae brief. We thank the Attorney General and the Office of the Attorney General for their helpful participation.

[3] Judge Moore, who served on the Circuit Court for Montgomery County from 1966 until 1973 and on this Court from 1973 until his untimely death in 1982, had previously served as a member of the Maryland House of Delegates from 1962 to 1966.

> governmental services are provided by the town and not by the county. There is currently no consistenc[y] among the several counties in Maryland as to the bases for county tax differentials for residents of incorporated municipalities and/or rebates by the various counties to the incorporated municipalities therein.

J. RES. 26, 1959 LEG., 351ST SESS. (Md. 1959). After a four-year study, the Commission concluded that the problem of tax differentials "was not amenable to any 'single solution and that any possible solutions would have to be developed on a County-by-County basis.'" *Griffin*, 25 Md. App. at 121 (quoting REPORT OF THE COMMISSION ON CITY-COUNCIL FISCAL RELATIONSHIPS 12 (Dec. 1963)). Judge Moore also discussed a 1970 Report by the Committee on Taxation and Fiscal Affairs of the Legislative Affairs of the Legislative Council of Maryland. *Griffin*, 25 Md. App. at 121-25. That Committee Report declined to recommend a statewide tax differential system, instead finding that "because of the variation in the types of governmental services provided by the local governments that determination of the countywide nature of a service can only be made at the county level and not at the state level." *Griffin*, 25 Md. App. at 124 (quoting the 1970 Committee Report).[4] Following those recommendations, the General Assembly in 1975 adopted the predecessor to the current tax setoff laws, requiring tax setoffs in some counties, but exempting others, including Worcester County. Acts of 1975, Ch. 715. In 1978, the General Assembly adopted a reporting system, which requires the Department of Legislative

[4] The *Griffin* Court then determined that Anne Arundel County's refusal to provide a tax setoff for the residents of Annapolis did not constitute an unconstitutional double taxation under either Article 15 or what is now Article 24 of the Maryland Declaration of Rights or the 14th Amendment to the U.S. Constitution. *Griffin*, 25 Md. App. at 126-38.

Services "to conduct an annual review on the progress[5] of counties in establishing tax differentials and to report [its] findings at the close of each fiscal year."[6] *See* Acts of 1977, J. Res. No. 31. Since the late 1970s, while the number of counties in each category has changed and the process by which municipalities apply for and receive tax setoffs has become more complicated, the general framework has remained consistent.

Today, as noted above, Maryland's counties are generally divided into two categories: 8 counties in which the county *must* provide municipalities a tax setoff, and 14 counties in which the county *may*, in its discretion, provide municipalities a tax setoff.[7] In Allegany, Anne Arundel, Baltimore County, Garrett, Harford, Howard, Montgomery, and Prince George's—if a municipality "demonstrates that it performs services or programs instead of similar county services or programs," then the county "shall" grant a tax setoff to the municipal corporation, which is to say, the existence (but not the magnitude) of the tax setoff is mandatory. TP § 6-305(b), (c).[8] If, on the other hand, the county is not listed

[5] By use of the word "progress," we infer that the General Assembly in 1978 intended that, over time, fewer and fewer counties would refuse to provide tax setoffs to the municipalities within them.

[6] At the time of trial, the latest annual report by the Department of Legislative Services was GAIL RENBORG & MICHAEL SANELLI, PROPERTY TAX SET-OFFS: THE USE OF LOCAL PROPERTY TAX DIFFERENTIALS AND TAX REBATES IN MARYLAND FISCAL 2017, DEP'T LEG. SERV. 1 (Jan. 2018), discussed further below.

[7] As previously noted above in n.1, Frederick County operates under a slightly different system. There, if a municipality demonstrates that it performs the same or similar services to those that the county provides, the county must grant a tax setoff based on a formula agreed to by both the county and municipality, but which must be phased in over a 3 to 5 year period. TP § 6-305.1(b)(1)-(3).

[8] In Maryland, the word "shall" in statutory materials constitutes a requirement or a duty. *Danaher v. Dep't of Labor, Licensing, & Regulation*, 148 Md. App. 139, 166 (2002)

in TP § 6-305(b), but the municipality "demonstrates that it performs services or programs instead of similar county services or programs," then the county "may" grant a tax setoff to the municipal corporation, which is to say, the tax setoff and its magnitude is optional. TP § 6-306(c).[9] By our calculations, for 8 counties—which include 66 municipalities—the tax setoff is mandatory; and for 14 counties—accounting for 91 municipalities—the tax setoff is optional. Worcester County and Ocean City are in the group for which the tax setoff is optional.

Except for the mandatory or optional nature of the tax setoffs, the procedures set forth in TP §§ 6-305 and 6-306 are the same and include detailed instructions for the submission of tax setoff requests by municipalities and the procedures that the county must follow in considering those requests. Specifically, municipalities are required to submit a detailed proposal for the desired level of property tax setoff. TP §§ 6-305(f); 6-306(f). Then, a meeting is held to discuss the "nature of the tax setoff request, relevant financial information of the county and municipal corporation, and the scope and nature of services provided by both entities." TP §§ 6-305(g); 6-306(g). Once the county budget has been set,

("When the word "shall" appears in a statute, it generally has a mandatory meaning."); DEPARTMENT OF LEGISLATIVE SERVICES, MARYLAND STYLE MANUAL FOR STATUTORY LAW 57-58 (2008).

[9] The word "may" in statute confers a right, power, or privilege. DEPARTMENT OF LEGISLATIVE SERVICES, MARYLAND STYLE MANUAL FOR STATUTORY LAW 57-58 (2008); *see also Walzer v. Osborne*, 395 Md. 563, 580 (2006) (describing the "unambiguous" nature of "shall" or "must" which means "for the thing to be done in the manner directed," compared to the use of "may" or "should") (quoting *Thanos v. State*, 332 Md. 511, 522 (1993) (quoting *Tucker v. State*, 89 Md. App. 295, 298 (1991))).

each municipal corporation that has requested a tax setoff receives a "statement of intent" from the county, which includes an explanation of the level of the proposed tax setoff, a description of the process used to determine this level, and an affirmation that the municipal corporation is entitled to appear before the county governing body to discuss or contest the level of the proposed tax setoff. TP §§ 6-305(h); 6-306(h). As we understand it, the tax setoffs are most frequently structured as either a tax rebate to the municipal taxpayers or as a subsidy to municipal government.

II. OVERVIEW OF ARTICLE XI-E OF THE MARYLAND CONSTITUTION

Since before the Revolution, the Maryland General Assembly was responsible for drafting municipal charters and passing local laws concerning municipalities in Maryland. By the early Twentieth Century, however, that responsibility had become overwhelming. Governor Theodore R. McKeldin convened a "Commission on the Administrative Organization of the State" in 1952 and charged it with reducing the amount of local legislation the General Assembly was required to consider. Acts of 1951, S.J.R. 11. The Sobeloff Commission, as it came to be known after its Chair, future Chief Judge of the Court of Appeals of Maryland, Simon Sobeloff, proposed adding a new article to the Maryland Constitution granting home rule to municipalities and requiring the General Assembly to adopt legislation for municipalities by laws of general applicability, rather than on a one by one basis. LOCAL LEGISLATION IN MARYLAND: SECOND REPORT OF THE COMMISSION ON ADMINISTRATIVE ORGANIZATION OF THE STATE 25 (June 1952) ("SOBELOFF REPORT"). The result was Article XI-E.

Article XI-E of the Maryland Constitution, adopted in 1954, creates municipal home rule. This Article "grant[s] municipalities the power to legislate on matters of local concern and government" and "restrict[s] the power of the General Assembly to treat municipalities differently and to enact binding non-uniform laws affecting incorporated cities and towns." MARYLAND MUNICIPAL LEAGUE, MARYLAND'S 157: THE INCORPORATED CITIES AND TOWNS 6-7. *See also Maryland-Nat'l Capital Park & Planning Comm'n v. Town of Washington Grove*, 408 Md. 37, 57-58 (2009) ("[T]he general purpose of Article XI-E ... was to permit municipalities to govern themselves in local matters") (quoting *Inlet Assocs. v. Assateague House Condo. Ass'n*, 313 Md. 413, 425 (1988)); M. Peter Moser, *County Home Rule – Sharing the State's Legislative Power with Maryland Counties*, 28 MD. L. REV. 327, 335 (1968) ("The principal purpose of [Article XI-E] was to provide broader autonomy to incorporated cities, towns and villages in Maryland and thereby to reduce the large volume of municipal legislation regularly enacted each year by the General Assembly."); *see generally,* DAN FRIEDMAN, THE MARYLAND STATE CONSTITUTION: A REFERENCE GUIDE 331 (2011).

Article XI-E consists of six sections. Section 1, which we will discuss in greater depth momentarily, acts as a prohibition on the General Assembly passing laws effecting municipalities, one municipality at a time. Instead, Section 1 requires that laws effecting municipalities must be framed as general laws, aimed at all municipalities (or at least all municipalities within a class). Section 2 says that the General Assembly may create up to

four classes of municipalities, divided by population.[10] Section 3 grants each municipality the power of local home rule, meaning each municipality is granted the power to adopt and amend charters and pass local laws. Section 4 discusses the process for adopting new municipal charters and amending existing municipal charters. Section 5 provides the two exceptions to Section 1, allowing the General Assembly to individually cap each municipality's property tax rate and debt limit. And, Section 6 allows all municipal charters and all local laws in effect before Article XI-E's adoption in 1954 to remain in effect until changed.

III. ARTICLE XI-E, § 1

> ...[11] [T]he General Assembly shall not pass any law relating to the incorporation, organization, government, or affairs of those municipal corporations ...[12] which will be special or local in its terms or in its effect, but the General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes provided for in Section 2 of this Article.[13]

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[10] As we will discuss below, however, the Maryland General Assembly has never created separate classes of municipalities and, since 1954, has legislated for a single class of municipalities.

[11] The introductory phrase, which we have deleted here, says "[e]xcept as provided elsewhere in this Article," and allows for the exceptions listed in Article XI-E, §5.

[12] The deleted text here concerns only the City of Baltimore, which is the only municipality allowed to adopt a charter form of government under Article XI-A. MD. CONST., ART. XI-A, §1.

[13] The last deletion is a sentence authorizing the General Assembly to legislate the manner by which new municipal charters are adopted. It is not relevant to the resolution of this case.

MD. CONST., Art. XI-E, §1.

Section 1 of Article XI-E is framed as both a prohibition and a grant of power. By its terms, the General Assembly is prohibited from legislating: (1) on a topic "relating to the incorporation, organization, government, or affairs of ... municipal corporations" that is (2) "special or local in terms or in its effect." But, the General Assembly is granted the power to legislate (1) on a topic "relating to the incorporation, organization, government, or affairs of ... municipal corporations;" (2) "by general laws" that apply alike in terms and effect to (3) all municipal corporations in one or more classes.[14] The phrase "relating to the incorporation, organization, government, or affairs of ... municipal corporation," which is repeated five times in Article XI-E, is left undefined. We generally understand the phrase to be drafted broadly, to mean all topics having to do with municipalities.

The framers of Article XI-E were explicit that they did not intend a fixed definition of the phrase "relating to the incorporation, organization, government, or affairs of ... municipal corporations." The Sobeloff Commission, which drafted the Constitutional Amendment, also wrote a Report explaining the purpose and intended interpretation of the Amendment. In that document, the Sobeloff Commission wrote:

[14] We note that the General Assembly of Maryland has plenary power to legislate on all topics not prohibited by the United States Constitution, federal law, or treaties or by the Maryland Constitution. *See Schisler v. State*, 394 Md. 519, 591 n.51 (2006) (citing *Brawner v. Supervisor,* 141 Md. 586, 119 A. 250, 255 (1922)); *Kenneweg v. Allegany Cty. Comm'rs*, 102 Md. 119, 122 (1905). As a result, the General Assembly, prior to the adoption of Article XI-E, §1, already had the power to legislate on topics related to municipalities by general laws. This grant of power, therefore, is merely illustrative of a pre-existing legislative power and not an actual grant of power or a limitation on the pre-existing power.

> The proposed constitutional amendment would not define matters of municipal [incorporation,] organization, government and affairs concerning which the General Assembly could pass no local laws. [Because] local affairs are not spelled out in the present Constitution, final determination as to what they are would continue to remain in the courts. Some states, in their home rule amendments, do attempt to list local powers, but such listings still must be made in general terms unless many pages are to be added to a state constitution. Also, the necessity for court interpretations of the listed powers probably could not be avoided. Furthermore, matters considered solely as local in nature must be reviewed as circumstances change. While regulation of traffic speeds was undeniably a local matter in 1800, today it is clearly of State concern to an ever-increasing extent. A reasonable listing of local powers today may seem very illogical twenty years from now. To ensure flexibility it seems preferable not to include a list of local powers in the Constitution. On matters of State concern, not affecting the government of municipalities as, for example, fish and game laws, the General Assembly would continue to enact local laws.

SOBELOFF REPORT at 37-38. This statement represents the view of the Sobeloff Commission that there was not to be a hard-and-fast definition of what was included in the phrase "relating to the incorporation, organization, government, or affairs of ... municipal corporations," but that it was meant to include all "local affairs," as they were or would be defined, and that courts were to decide what were local affairs. *Id.*

In the intervening period, the Court of Appeals has developed a standard that it applies to determine whether a matter is of local or of State concern, and how to deal with statutes that are of a mixed nature and concern both local and State matters:

> If the effect of local rules or municipal control is not great upon people outside the home-rule city, the matter is apt to be deemed local .... Contrariwise, if the effect of the regulation or the administration of a particular matter is likely to be felt by a considerable number of people outside the city and in a rather

> strong degree, courts are probably going to conclude that the concern is for the [S]tate.

Birge v. Town of Easton, 274 Md. 635, 644 (1975) (citing 1 C. ANTINEAU, MUNICIPAL CORPORATION LAW § 3.36). We take from this, two rules. *First*, the phrase "relating to the incorporation, organization, government, or affairs of ... municipal corporations," is read broadly, to encompass any local affair or local matter. And *second*, this broad interpretation of what is considered a local affair or local matter is, however, tempered by the limitation that if the effects of a local rule extend to a significant number of people outside of the municipality, it is no longer considered a purely local affair or local matter.[15]

ANALYSIS

As previously described, Ocean City's view is that the tax setoff laws, TP §§ 6-305 and 6-306, are unconstitutional because they treat different municipalities differently on the basis of the county in which they are located. Worcester County, supported by the Attorney General, argues that the tax setoff laws are constitutional. As we will discuss, under the constitutional test that we are compelled to apply, the tax setoff laws are constitutional.

The Court of Appeals in *Birge v. Town of Easton* set forth the test for deciding if a rule or statute "relat[es] to the incorporation, organization, government, or affairs of ... municipal corporations." 274 Md. at 644. *Birge* concerned the Town of Easton's efforts to

[15] Ocean City argues, in effect, that the *Birge* test is wrong and that nothing in the Constitution or its history requires that for a law to be subject to Article XI-E, §1, it must be "purely," "exclusively," or "solely" local in its terms or effect. We are not free, however, to disregard the Court of Appeals' teaching in *Birge*.

build its own electrical power system. The Town amended its charter to authorize the purchase of real property outside the incorporated town limits for use in connection with the electrical power system. *Id.* Birge, a Talbot County property owner, argued that Easton's charter amendment violated Article XI-E, § 3 because it was not "relat[ed] to the incorporation, organization, government, or affairs of [the] municipal corporation." *Birge*, 274 Md. at 644. The Court of Appeals adopted a test to distinguish purely local affairs from matters that effected the broader populace:

> If the effect of local rules or municipal control is not great upon people outside the home-rule city, the matter is apt to be deemed local .... Contrariwise, if the effect of the regulation or the administration of a particular matter is likely to be felt by a considerable number of people outside the city and in a rather strong degree, courts are probably going to conclude that the concern is for the [S]tate.

Birge, 274 Md. at 644 (citing 1 C. ANTINEAU, MUNICIPAL CORPORATION LAW §§3.36). The Court of Appeals found that the effects of Easton's purchase of real property outside the town limits had little or no effect on those living outside the Town:

> Considering the nature and needs of the Town's electric utility, its limited service area ... and the negligible effect upon nonresidents of the Town, we think the power granted by the charter amendment with respect to the Town's electric system is in the sense contemplated by Article XI-E a local matter involving the "incorporation, organization, government, or affairs" of the municipality.

Birge, 274 Md. at 645 (emphasis added). The *Birge* Court, therefore, held that the charter amendment was constitutional.[16]

[16] *Birge* was interpreting the phrase "relating to the incorporation, organization, government, or affairs of [a] municipal corporation" as it appears in Article XI-E, §3, not,

When we apply the *Birge* test to the tax setoff laws, TP §§6-305 and 6-306, we find that those statutes must necessarily be constitutional. Ocean City's goal in this litigation is not simply to have the tax setoff laws declared unconstitutional, but rather to make tax setoffs mandatory. *See* Complaint, ¶44 (seeking to sever TP §6-305(b) so as to "make tax differentials mandatory for every municipality in the State"). Or, stated otherwise, simply to require Worcester County to grant Ocean City a tax setoff. As a matter of simple math, however, that outcome compels the conclusion that this cannot be a purely local matter. If Worcester County is required to grant tax setoffs to Ocean City—either as a tax rebate to the Ocean City taxpayers or as a subsidy to Ocean City's government—property owners in Worcester County outside of Ocean City would necessarily have to pay more. Victor Tervala, *Two Approaches for Computing Property Tax Differentials for Property in Ocean City, Maryland*, INST. GOVERNMENTAL SERV. 1, 11-12 (May 1999) (If Worcester County grants Ocean City a tax set off, Worcester County "must raise taxes high enough to pay for it.").[17] This result is borne out in each of Ocean City's applications for tax setoffs that are

as we are considering, Article XI-E, § 1. *Birge*, 274 Md. at 644-45. Nevertheless, given the care the framers went to exactly repeat the phrase, we think it is clear beyond cavil that the phrase is intended to have precisely the same meaning whenever it appears in Article XI-E. Moreover, the structure of Article XI-E as a whole supports this interpretation. Section 1 withdraws the power from the General Assembly to legislate on municipal issues. Section 3 gives the municipalities the power to legislate on those same municipal issues. The idea was not to create a gap or an overlap in the permissible topics of legislation, but simply to transfer the power to legislate on those same topics to a different legislative body.

[17] Of course, Worcester County could choose instead to reduce county services to pay for the tax setoff to Ocean City, but the effect would still be felt by the nonmunicipal residents of Worcester County. For constitutional purposes, the effect is the same.

made part of the record. TOWN OF OCEAN CITY, TAX DIFFERENTIAL STUDY (Feb, 2013) (The tax differential requires a "$0.269 adjustment[, which] would cause the Ocean City tax rate to decrease $0.083 to $0.687 and require the remainder of Worcester County's tax rate to increase $0.186 to $0.956"); TOWN OF OCEAN CITY, TAX DIFFERENTIAL STUDY (Nov. 28, 2007) ("To adjust the current tax rate of 70 cents to be fair and equitable for Ocean City and Worcester County residents, it should be corrected to 64 cents (a decrease of 6 cents) for Ocean City residents and 86 cents (an increase of 16 cents) for Non-Ocean City residents"); *Letter to President Jeanne Lynch and the Worcester County Commissioners from James M. Mathias, Mayor, Ocean City* (Nov. 30, 1998) ("The methodology ... produc[es] a tax differential of $.25, whereby the county tax rate for Ocean City property owners should be reduced by $.10 and the county tax rate for non-Ocean City property owners be increased by $.15"). And when citizens of Worcester County outside of Ocean City are required to pay more (or receive less governmental services, *see* n. 17), that "is likely to be felt by a considerable number of people outside [Ocean City] and in a rather strong degree," and therefore, it is a "concern ... for the [S]tate." *Birge*, 274 Md. at 644.[18]

[18] Although this analysis alone is sufficient to sustain our holding, we note that there are four additional points that support the same conclusion:

- *First*, there is a presumption of the constitutionality of statutes. *Beauchamp v. Somerset County*, 256 Md. 541, 547 (1970); *Harvey v. Sines*, 228 Md. App. 283, 292 (2016). As such, Ocean City bears a heavy burden to overcome the presumption. *Beattie v. State*, 216 Md. App. 667, 678 (2016). This presumption of constitutionality is based, at least in part on the notion that the members of the General Assembly, who originally adopted the tax setoff laws in 1975 and those that have repeatedly amended those laws, thought that

We therefore hold that the question of whether counties must or may offer tax setoffs is not a purely local affair and need not comply with the restrictions on State legislation concerning local affairs found in Article XI-E, §1. We affirm the judgment of the circuit court.[19]

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those statutes were constitutional. This presumption is further reinforced by the relative longevity of the tax setoff laws and by the fact that the whole scheme of tax differentials has previously survived broad-based constitutional challenges, as described, *supra*, at n.4. *See Griffin,* 25 Md. App. at 126 (discussing various state and federal constitutional challenges).

- *Second*, we note that TP §§6-305 and 6-306 are framed as directed to counties and only indirectly to the municipalities within those counties. Although we are hesitant to make too much of this factor, as clever drafting can deceive, we think that the tax setoff laws are organized county-by-county, not municipality-by-municipality, suggests that they do not concern purely local affairs.

- *Third*, we note that the principal concern of the framers of Article XI-E was to stop the crush of local legislation in the General Assembly. *See, e.g.*, SOBELOFF REPORT, at 5-6. While Article XI-E has been largely, though not completely, successful in this task, the tax setoff laws, have not contributed much to the work of the General Assembly. Thus, their continued existence is not inconsistent with the intent of the constitutional framers.

- And, *fourth*, should there remain any doubt, we note that the framers of Article XI-E intended for the judiciary to have the final say on whether a law was constitutional or not. SOBELOFF REPORT, at 32. (Because "local affairs are not spelled out in the present Constitution, final determination as to what they are would continue to remain in the courts."). In our considered judgment, while the tax setoff laws clearly relate to local, municipal affairs, they also relate to matters of State and county affairs. As such, we believe that the General Assembly is entitled to legislate on those topics without the restrictions of Article XI-E, §1.

[19] Holding that the tax setoff laws are constitutional under the uniformity requirements of Article XI-E, §1, of course, doesn't mean we think the present system is right or fair. It means that those concerns must be addressed to another body.

JUDGMENT OF THE CIRCUIT COURT FOR WORCESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

E-FILED
Court of Special Appeals
Gregory Hilton
11/17/2020 11:22 AM

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

Mayor And City Council of Ocean City,	*	
Appellant	*	No. 2751, September Term 2018
v.	*	CSA-REG-2751-2018
	*	Circuit Court No. C-23-CV-18-000021
Commissioners of Worcester County, Maryland,	*	
Appellee	*	
	*	
	*	

* * * * * * * * * * * * *

MANDATE

On the 13th day of October, 2020, it was ordered and adjudged by the Court of Special Appeals:

Judgment of the Circuit Court for Worcester County affirmed. Costs to be paid by appellant.

STATE OF MARYLAND, Sct.:
I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this 17th day of November, 2020.

Gregory Hilton, Clerk
Court of Special Appeals

E-FILED
Court of Appeals
Suzanne C. Johnson,
Clerk of Court
2/8/2021 3:43 PM

MAYOR AND CITY COUNCIL OF OCEAN CITY, et al.	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
	*	**Petition Docket No. 378 September Term, 2020**
v.	*	
	*	**(No. 2751, Sept. Term, 2018 Court of Special Appeals)**
COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, et al.	*	**(No. C-23-CV-18-000021, Circuit Court for Worcester County)**

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above-captioned case, it is this 8th day of February, 2021

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, GRANTED, and a writ of certiorari to the Court of Special Appeals shall issue; and it is further

ORDERED, that said case shall be transferred to the regular docket as No. 52, September Term, 2020 (COA-REG-0052-2020); and it is further

ORDERED, that counsel shall e-file briefs and printed record extract in

accordance with Md. Rules 8-501, 8-502, 20-403, 20-404 and 20-406, petitioners' brief(s) and record extract to be filed on or before March 22, 2021; respondents' brief(s) to be filed on or before April 21, 2021; and it is further

ORDERED, that this case shall be set for argument during the June session of Court.

/s/ Mary Ellen Barbera
Chief Judge

MAYOR AND CITY COUNCIL OF OCEAN CITY, et al.	*	**IN THE**
	*	**COURT OF APPEALS**
	*	**OF MARYLAND**
	*	**Petition Docket No. 378**
v.		**September Term, 2020**
	*	
		(No. 2751, Sept. Term, 2018
	*	**Court of Special Appeals)**
COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, et al.	*	**(No. C-23-CV-18-000021, Circuit Court for Worcester County)**

WRIT OF CERTIORARI

STATE OF MARYLAND, to wit:

TO THE HONORABLE JUDGES OF THE
COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS, MAYOR AND CITY COUNCIL OF OCEAN CITY, et al. v. COMMISSIONERS OF WORCESTER COUNTY, MARYLAND, et al., No. 2751, September Term, 2018 was pending before your Court and the Court of Appeals is willing that the record and proceedings therein be certified to it.

YOU ARE HEREBY COMMANDED TO HAVE THE RECORD TRANSMITTED TO THE COURT OF APPEALS OF MARYLAND ON OR BEFORE February 22, 2021, together with this writ, for the said Court to proceed thereon as justice may require.

WITNESS the Chief Judge of the Court of Appeals of Maryland this 8th day of February, 2021.

/s/ Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

CERTIFICATE OF SERVICE

Court of Appeals
COA-REG-0052-2020

----------)
MAYOR AND CITY COUNCIL OF
OCEAN CITY, et al.,
Petitioners,
vs.
COMMISSIONERS OF WORCESTER
COUNTY, MARYLAND, et al.,
Respondents.
----------)

I, John C. Kruesi, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

Counsel Press was retained by AYRES, JENKINS, GORDY & ALMAND, P.A., counsel for Petitioners to print this document. I am an employee of Counsel Press.

On the **22nd Day of March, 2021**, the Brief and Appendix for Petitioners has been filed and served electronically to registered users via the Court's MDEC system. Additionally, on this date I will serve paper copies upon:

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via Express Mail, by causing 2 true copies of each to be deposited, enclosed in a properly addressed wrapper, in an official depository of the United States Postal Service.

Unless otherwise noted, 8 copies have been sent to the Court on this day via overnight delivery.

March 22, 2021

_____
John C. Kruesi, Jr.
Counsel Press