
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 OF AMICI CURIAE WICOMICO COUNTY,
KENT COUNTY, AND CAROLINE COUNTY IN SUPPORT OF
RESPONDENT WORCESTER COUNTY**

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STATEMENT OF THE CASE

The parties adopt the Statement of the Case as presented in the brief of the Respondents.¹

QUESTION PRESENTED

- 1. Whether §§ 6-305 and 6-306 of the Tax Property Article of the Maryland Code are constitutional and do not violate Article XI-E, §1 of the Constitution of Maryland because County-provided tax setoff are not municipal affairs?**

STATEMENT OF FACTS

The parties adopt the Statement of Facts in the brief of the Respondents.

STANDARD OF REVIEW

This Court reviews the judgment of the Court of Special Appeals de novo. Jones v. State, 343 Md. 448, 457, 682 A.2d 248, 253 (1996).

ARGUMENT

- I. TAX-PROPERTY ARTICLE §6-305 AND § 6-306 DO NOT CONCERN “AFFAIRS OF ANY SUCH MUNICIPAL CORPORATION” PURSUANT TO ARTICLE XI-E, §1 OF THE MARYLAND CONSTITUTION WHEN ANALYZED IN THE CONTEXT OF THE HOME RULE AMENDMENT.**

The parties hereto adopt the Argument of the Respondents in its entirety. Caroline, Kent and Wicomico Counties submit on Article XI-E, §1 of the Maryland Constitution within the context of the Home Rule Amendment.

¹ The written consent of the parties to the filing of this *amicus curiae* brief are attached, pursuant to Maryland Rule 8-511(a)(1). *Amici Curiae* City of Salisbury, Town of Denton and Town of Chestertown filed a brief in support of Petitioners. The aforementioned municipalities are located, respectively, within Wicomico, Caroline and Kent Counties.

Article XI-E, §1 of the Maryland Constitution provides:

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.

The “general laws” requirement is only triggered when the law concerns “incorporation, organization, government or affairs of any such municipal corporation.” (emphasis added). The parties agree that the issue is whether Tax-Property Article §§ 6-305 and 6-306 concerns municipal affairs. “Affairs” is an undefined term within Article XI-E, §1. When analyzed in the framework of the Home Rule Amendment, it is unambiguous as to why the setting of County tax rates is not an “affair” requiring statewide uniformity.

“The theory behind the principle of home rule is that the closer those who make and execute the laws are to the citizens they represent, the better are those citizens represented and governed in accordance with democratic ideals.” Ritchmount Partnership v. Board of Supervisors of Elections for Anne Arundel County, 283 Md. 48, 56, 388 A.2d 523, 529 (1978), citing State v. City of Milwaukie, 231 Or. 473, 373 P.2d 680, 685 (1962). “There are two necessary elements for effective home rule. First, home rule must furnish local units with enough power to enable them to provide the required local services. Second, home rule must limit the power of the state legislature to enact local

laws which interfere with the exercise of this power by local officials.” See, Moser, County Home Rule Sharing the State's Legislative Power with Maryland Counties, 28 Md.L.Rev. 327, 329 (1968). The limitation imposed on the General Assembly, by Article XI-E, §1, in making “general laws” where the impact is “alike to all municipal corporations” is to prevent involvement in local matters which are not of State concern. The General Assembly has further limited its power, by establishing “one class of municipalities in the State, and every municipality is a member of that class.” Local Government § 4-102. County tax setoffs deal exclusively with local services and are not a State concern.

Respondent’s brief fully analyzes the legal precedent of defining an “affair” within Article XI-E, §1. Tax-Property Article §6-305 and § 6-306 are matters of County taxation, the core of which is local services. County taxation is a County matter. This is because “determination of the countywide nature of a service can only be made at the county level and not at the state level.” Griffin v. Anne Arundel County, 25 Md. App. 115, 124, 333 A.2d 612, 618 (1975) citing Report by the Committee on Taxation and Fiscal Affairs of the Legislative Council of Maryland in 1970. This conclusion was right a half century ago by the earliest legislative studies on the matter and remains true today. County leaders are able to evaluate, in the totality, whether the resources provided by a municipality are meaningful in reducing the services provided by the County.

A municipal police force is an example of where a service may be provided by a municipality, but does not alleviate the County of a burden. The work of a municipal police force reverberates throughout the County’s budget. The County, through the

Office of the State’s Attorney, is responsible for the prosecution of the criminal charges filed by the municipal police force. The County Sheriff’s Office is responsible with serving the subpoenas issued. The County’s Warden is responsible for the care and custody of the accused, if held without or unable to post bond while awaiting trial. When a disproportionate amount of crime originates in a municipality, though the actual act of policing may alleviate a burden on the County, the County’s other departments and budget are not alleviated.

The assessment of the effectiveness of the duplicitous services provided by a municipality is a local concern. It is not an “affair” within the context of Article XI-E, §1 of the Maryland Constitution.

II. TAX-PROPERTY ARTICLE §§ 6-305, 6-305.1 AND 6-306 DO NOT CLASSIFY STATE MUNICIPALITIES IN VIOLATION OF ARTICLE XI-E, §2 OF THE MARYLAND CONSTITUTION.

In addition to adopting the Argument of the Respondents, the parties answer the assertion made by *amici*. *Amici Curiae*, City of Salisbury, Town of Denton and Town of Chestertown, filed a brief in support of Petitioners. Additionally, that brief raised a new legal issue.² The new issue contends that Tax-Property Article §§ 6-305, 6-305.1 and 6-306 violate Article XI-E, §2 of the Maryland Constitution. *Amici* argue that the aforementioned statutes create a classification system, other than by population, which is prohibited by Article XI-E, §2. *Amici* contend that the statutes classify the municipalities

² This issue is not ripe for appeal under Maryland Rule 8-131.

by “situs and not by population.” Motion, at par. 21. *Amici* are incorrect in this conclusion.

Tax-Property Article §§ 6-305, 6-305.1 and 6-306 do not classify State municipalities in any manner. Tax-Property Article §§ 6-305, 6-305.1 and 6-306 concern only the setting of County tax rates. The statutes impact County citizens, whether residing within a municipality or not. Categorizing counties into “may” and “shall” statutes is not a classification of municipalities. To the extent that there is a classification, it does not concern the “affairs” of a municipality as required in Article XI-E, §1.

CONCLUSION

For the forgoing reasons, and those espoused by Respondents, *Amici Curiae* respectfully request that this Court affirm.

/s/ Andrew N. Illuminati

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This Brief contains 1,215 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. The brief is printed in a 13-point Times New Roman font.

April 21, 2021

/s/ Andrew N. Illuminati
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County Attorney for Wicomico County
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APPENDIX

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Dated April 7, 2021 Amicus Apx. 1

Consent Email from Bruce F. Bright to Andrew Illuminati
Dated April 12, 2021 Amicus Apx. 3

Andrew Illuminati

From: Victoria Shearer <shearer@ewmd.com>
Sent: Wednesday, April 7, 2021 9:48 PM
To: Andrew Illuminati
Cc: Paul D Wilber
Subject: RE: Tax Differential Amicus Brief

Hello Andrew:

Yes, I consent.

Thank you, Victoria

Victoria M. Shearer, Esq.
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From: Andrew Illuminati <ailluminati@webbnetlaw.com>
Sent: Wednesday, April 7, 2021 8:29 PM
To: Victoria Shearer <shearer@ewmd.com>
Cc: Paul D Wilber <pwilber@webbnetlaw.com>
Subject: RE: Tax Differential Amicus Brief

Good Evening, Tory,

Wicomico County wishes to file an *amicus* brief in COA-REG-0052-2020. On behalf of the County, I am seeking permission from Appellants to file the *amicus* brief. As you are aware, the City of Salisbury has filed a an *amicus* brief. Additionally, this brief may be in the form of a joint brief with Kent and Caroline Counties. Do you consent?

Thanks,

Andrew N. Illuminati
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Andrew Illuminati

From: Bruce F. Bright <bbright@ajgalaw.com>
Sent: Monday, April 12, 2021 2:27 PM
To: Andrew Illuminati
Cc: Paul D Wilber
Subject: RE: Tax Differential Amicus Brief

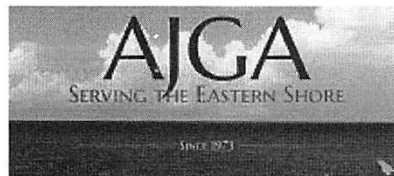
Andrew, Following up on below – Ocean City consents.
-BB

Bruce F. Bright
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From: Bruce F. Bright <bbright@ajgalaw.com>
Sent: Monday, April 12, 2021 1:50 PM
To: Andrew Illuminati <ailluminati@webbnetlaw.com>
Cc: Paul D Wilber <pwilber@webbnetlaw.com>
Subject: RE: Tax Differential Amicus Brief

Andrew – will have answer to you today.
-BB

Bruce F. Bright
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From: Andrew Illuminati <ailluminati@webbnetlaw.com>
Sent: Monday, April 12, 2021 1:35 PM
To: Bruce F. Bright <bbright@aigalaw.com>
Cc: Paul D Wilber <pwilber@webbnetlaw.com>
Subject: RE: Tax Differential Amicus Brief

Bruce,

Following up on my voice message, I have received consent from Appellee. Looking for consent from Appellants.

Thanks,

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From: Andrew Illuminati
Sent: Wednesday, April 7, 2021 8:28 PM
To: Bruce F. Bright <bbright@aigalaw.com>
Cc: Paul D Wilber <pwilber@webbnetlaw.com>
Subject: Tax Differential Amicus Brief

Good Evening, Bruce,

Wicomico County wishes to file an *amicus* brief in COA-REG-0052-2020. On behalf of the County, I am seeking permission from Appellants to file the *amicus* brief. As you are aware, the City of Salisbury has filed a an *amicus* brief. Additionally, this brief may be in the form of a joint brief with Kent and Caroline Counties. Do you consent?

Thanks,

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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 Webb, Cornbrooks, Wilber, Douse, Mathers & Illuminati, LLP, counsel for Amici Curiae, to print this document. I am an employee of Counsel Press.

On the 21st Day of April, 2021, the Brief for Amici Curiae in Support of Respondent Worcester County 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 within the time and method allowed by rule.

April 21, 2021

/s/ John C. Kruesi
John C. Kruesi, Jr.
Counsel Press