STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

TAXPAYERS FOR MICHIGAN CONSTITUTIONAL GOVERNMENT, STEVE DUCHANE, RANDALL BLUM, and SARA KANDEL,

Plaintiffs,

v.

THE STATE OF MICHIGAN, THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET OF THE STATE OF MICHIGAN; and the MICHIGAN OFFICE OF THE AUDITOR GENERAL.

Defendants.

Supreme Court Case No._____
Court of Appeals Case No. 334663

APPLICATION FOR LEAVE TO APPEAL BY PLAINTIFFS TAXPAYERS FOR MICHIGAN CONSTITUTIONAL GOVERNMENT, STEVE DUCHANE, RANDALL BLUM, AND SARA KANDEL

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STATEMENT OF THE JUDGMENT/ORDER APPEALED

The Court of Appeals issued its published opinion on July 30, 2019. See Opinion attached as Ex. 1. The opinion denied summary disposition to the Plaintiffs on Counts I and II of their Complaint and granted summary disposition to the Defendants on these counts. The opinion further granted summary disposition to Plaintiffs on Count IV of the Complaint. Mandamus relief was also granted pursuant to Count IV. A partial concurrence and dissent was entered on the same date. See Partial Concurrence and Dissent (J. Meter) attached as Ex. 2.

The Defendants timely filed a motion for reconsideration on August 20, 2019. The motion was granted and a new published opinion was issued on October 29, 2019. See Opinion & Order (On Reconsideration) attached as Ex. 3. The new opinion again denied summary disposition to the Plaintiffs and granted summary disposition to the Defendants on Counts I and II of Plaintiffs' Complaint and again granted summary disposition and mandamus relief to Plaintiffs on Count IV of the Complaint. Two separate partial concurrences and dissents were also entered on October 29, 2019. See Partial Concurrence and Dissent (On Reconsideration) (J. Meter) attached as Exhibit 4 and Partial Concurrence and Dissent (On Reconsideration) (J. Borrello) attached as Exhibit 5.

Plaintiffs submit this application seeking leave to appeal that portion of the Court of Appeals' October 29, 2019 Opinion & Order denying summary disposition to the Plaintiffs on Counts I and II of the Complaint and granting summary disposition to the Defendants on Counts I and II.

This application is timely filed pursuant to MCR 7.305(C)(2). This Court has jurisdiction over this appeal pursuant to MCR 7.303(B)(1).

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. DO THE DEFENDANTS VIOLATE ARTICLE 9, § 25 AND § 30 OF THE MICHIGAN CONSTITUTION WHEN THEY INCREASE THE TAX BURDEN ON LOCAL GOVERNMENTS BY INCLUDING PROPOSAL A REVENUE, IN THE CALCULATION OF STATE SPENDING IN THE FORM OF AID THAT IS PAID TO UNITS OF LOCAL GOVERNMENT, WHEN:

    a. **PROPOSAL A REVENUE WAS ESTALISHED BY A TAX SHIFT** THAT ELIMINATED CERTAIN LOCAL TAXES AND, IN THEIR PLACE, CREATED NEW STATE TAXES;

    b. THE REVENUE FROM THE NEW STATE TAXES WAS SHARED WITH UNITS OF LOCAL GOVERNMENT TO REPLACE THE LOST REVENUE FROM THE ELIMINATED LOCAL TAXES;

    c. REVENUE FROM THE NEW STATE TAXES HOWEVER WAS THEN ALSO CREDITED AS STATE SPENDING IN THE FORM OF AID TO UNITS OF LOCAL GOVERNMENT UNDER § 30; AND

    d. **PROPOSAL A REVENUE WAS USED BY THE STATE TO REDUCE OTHER STATE SPENDING PAID UNDER § 30, CREATING AN INCREASED TAX BURDEN** ON UNITS OF LOCAL GOVERNMENTS AS A GROUP?

    Plaintiffs' Answer: Yes.
    Defendants' Answer: No.

2. DO THE DEFENDANTS VIOLATE ARTICLE 9, § 25 AND § 30 OF THE MICHIGAN CONSTITUTION WHEN THEY CREDIT PAYMENTS TO CHARTER SCHOOLS AS STATE SPENDING IN THE FORM OF AID TO UNITS OF LOCAL GOVERNMENT, WHEN:

    a. LOCAL GOVERNMENT IS **CONSTITUTIONALLY DEFINED AS POLITICAL SUBDIVISIONS OF THE STATE**;

    b. **CHARTER SCHOOLS ARE PRIVATE NONPROFIT CORPORATIONS** THAT ARE NOT POLITICIAL SUBDIVISIONS OF THE STATE;

    c. **UNDER THE RULE OF COMMON UNDERSTANDING, CHARTER SCHOOLS ARE NOT SCHOOL DISTRICTS**; AND

    d. THERE IS NO FUNCTIONAL EQUIVALENCY TEST FOR TERMS USED WITHIN THE MICHIGAN CONSTITUTION;

    Plaintiffs' Answer: Yes.
    Defendants' Answer: No.

I. GROUNDS FOR THE APPLICATION

Plaintiffs' application is supported by multiple grounds for appeal. This case is of paramount importance to Michigan taxpayers on matters of significant public interest and involves issues concerning the validity of legislative acts, the interpretation of provisions of the Michigan Constitution, and legal principles of major significance to Michigan's jurisprudence. The Court of Appeals decision further directly conflicts with a decision of the Michigan Supreme Court.

The grounds for Plaintiffs' application are summarized as follows:

A. The Issues Involve A Substantial Question About The Validity Of A Legislative Act. (MCR 7.305 (B)(1))

The issues raised by the Court of Appeals denial of summary disposition to Plaintiffs and granting summary disposition to the Defendants on Counts I and II of the Complaint involve substantial questions concerning the validity of certain legislative acts.

Each year, the Executive branch submits a state budget to the Michigan legislature and then the legislature undertakes the process of reviewing and legislatively adopting the state budget. See Management and Budget Act (PA 431 of 1984 as amended), MCL 18.1101, et. seq. The legislature is charged with enacting a state budget each year. See Const 1963 art 4, § 31, MCL 18.1323, and 18.1367.

The Management and Budget Act requires that the "executive budget submitted to the legislature and the budget **enacted by the legislature** shall be in compliance with section 30 of article IX of the State constitution of 1963." MCL 18.1349 (emphasis added).

Each year however the state budget is neither submitted nor enacted in compliance with Const 1963, art 9, § 30. **The Defendants' noncompliance calls into the question the validity of each budget enacted by the state legislature** for over a decade. The Defendants have indicated that the alleged noncompliance will continue into the future.

Article 9, § 30 requires that the "proportion of total state spending paid to all units of local government, taken as a group, shall not be reduced below that proportion in effect in fiscal year 1978-79." Const 1963, art 9, § 30. The Defendants improperly include certain spending within the state's calculation of the total spending paid to all units of local government, taken as a group.

As stated in Count I of Plaintiffs' Complaint, spending from revenue generated by Proposition A taxes cannot be included within the calculation of total spending paid to all units of local government and as stated in Count II, spending paid to public school academies must likewise be excluded from this calculation. By including these expenditures, the state improperly inflates the reported proportion of total state spending paid to all units of local government. When these items are excluded from the state's calculations, the state is clearly not meeting its art 9, § 30 obligations to Michigan's taxpayers.

B. The Issues Raised Are Of Significant Public Interest And Are Brought Against The State, Its Agencies, And Officials. (MCR 7.305 (B)(2))

The issues raised are of clear and significant public interest. Whether the state is meeting its obligations under art 9, § 30, impacts every taxpayer in this state and impacts the fiscal health of all units of local government, as a group.

The failure of the state to meet its art 9, § 30 obligations directly results in the marked decreases in revenue sharing that all units of local government have experienced over the past three decades. These losses in revenue directly result in declines in local services, public safety issues, and infrastructure experienced by taxpayers in every community across the state.[1] At the

[1] See generally, Southeast Michigan Council on Gov'ts, *By the Numbers: A Comparative Look at Michigan's Local Government Revenues and Expenditures*, (July 2017), available online at https://semcog.org/desktopmodules/SEMCOG.Publications/GetFile.ashx?filename=ByTheNumbersAComparativeLookAtMichigansLocalGovernmentRevenuesAndExpendituresJuly2017.pdf (Noting that in 1992, Michigan ranked 16th in the nation in per capita expenditures for police protection; 22nd in 2002, and 38th today. *Id*. at 27).

same time, the revenue declines burden local communities, pressuring local government to increase taxes and exact an ever expanding array of assessments and service fees to maintain existing levels of activity and services to residents.

Significant public interest in the issues raised is evidenced by the appearance of the Michigan Municipal League, the Michigan Association of Counties, and the Michigan Townships Association as amici in the court below. Together, these organizations represent nearly every city, county, and township in Michigan and each has experienced the burdens and pressures forced upon them to make-up lost state spending in the form of aid to all units of local government.

Significant public interest is further evidenced by the extensive press coverage that this case has generated in the media. The issues in this case have been the subject of numerous news stories in statewide publications, including the Detroit News, Detroit Free Press, Crain's Detroit Business, MLive, Bridge Magazine, the Macomb Daily, the Oakland Free Press, and an array of other news outlets.[2]

The State of Michigan is a Defendant in this case and each of the other Defendants are agencies of the state.

C. The Issues Raised Involve A Legal Principle Of Major Significance To The State's Jurisprudence. (MCR 7.305 (B)(3))

The issues raised in this case are of major significance to the state's jurisprudence. This case is the only known case directly challenging state activities as violating art. 9, § 25 and § 30 of the Headlee Amendment. Any determination of the issues in this matter will impact understandings of the Headlee Amendment for years to come.

[2] See Taxpayers for Michigan Constitutional Government's media page for links to various news coverage related to this case. TMCG, Media page, available online at http://www.michcongov.org/media.

This case involves myriad significant jurisprudential questions. Just some of those questions include:

- The substance and scope of the prohibition against tax shifts that burden local government found in art 9, § 25;
- The substance and scope of state spending that is properly considered as paid in the form of aid for the purpose of calculating the art 9, § 30 proportion;
- Application of the long-standing rule of common understanding to constitutionally defined terms, such as those found in art 9, § 33; and
- Whether private corporations can be found political subdivisions of the state and the implications of such a finding throughout Michigan jurisprudence.

The significance of this case to Michigan's jurisprudence is further shown by the appearance of the Governmental Law Section of the State Bar of Michigan as amici in the Court of Appeals. The section's membership includes attorneys that represent local governments throughout Michigan. The section's appearance was in recognition of the clear significant impact any determinations on the issues raised will have on "interpretation of the 1963 Michigan Constitution as it applies to Michigan municipalities, specifically under § 30 of the Headlee Amendment." Court of Appeals Case No. 33466, *Brief of Amici Curiae*, Doc #99, at 1 (Filed 03/13/2018).

D. Delay In Final Adjudication Is Likely To Cause Substantial Harm To Michigan Taxpayers And Their Local Communities. (MCR 7.305 (B)(4)(a))

As noted in subsection B above and the discussion in the following sections, the ongoing harm to Michigan taxpayers is pervasive and substantial. The Defendants' practices impact every community in this state and that impact directly translates to increased local taxes, increased assessments, and increased fees for services. This is the very type of harm that the Headlee Amendment was intended to prevent when adopted by Michigan voters. Each year that a

resolution of the legality of Defendants' actions is delayed causes financial harm to the households of Michigan taxpayers and causes them to receive less services, less protections, and less public infrastructure in their community.

E. The Decision Of The Court Of Appeals Is Clearly Erroneous And Will Cause Material Injustice And The Decision Conflicts With A Supreme Court Decision. (MCR 7.305 (B)(5)(a) & (b))

The decision of the Court of Appeals is clearly erroneous on Counts I and II of Plaintiffs' Complaint. The decision is in direct conflict with prior decisions of this Court and there is no question that it will cause material injustice to taxpayers through the state.

On Count I, the Court of Appeals found that state funding disbursed to local school districts through Proposal A reflects a time to time rebalancing of how Const 1963, art 9, § 30 revenue sharing is distributed among all units of local government. See Ex. 3, Opinion (On Reconsideration), at 7. The finding clearly conflicts with this Court's decision in *Schmidt v Dep't of Education*, 441 Mich 236; 490 NW2d 584 (1992). In *Schmidt*, this Court found that the anti-shifting provision of art 9, § 25 "prevents the state from shifting the tax burden to local government" and that "the aggregate antishifting purpose [is] embodied in the text of § 30." *Id*. at 255. The Court found that "[i]t also may be read to incorporate an absolute prohibition of any shifting to local government." *Id*.

The Court of Appeals' decision nominally acknowledges *Schmidt*, but then proceeds to apply § 30 in isolation from the anti-shifting language of § 25 and anti-shifting purpose of the Headlee Amendment. In this case, there has clearly been a tax shift from local governments to the state — Proposal A was adopted to replace tax revenue lost to local governments when the state prohibited certain local taxes for school districts. The tax burden arises when, at the same time, the state included spending paid from Prop. A revenue in its calculation of the art. 9, § 30

proportion — including this spending displaces and supplants other state spending previously paid to local governments forcing them to increase taxes, assessments and fees to replace the lost revenue. The Court of Appeals decision wholly ignores any analysis of the tax shift that clearly occurred and does not undertake any analysis of the resulting tax burden that was forced upon taxpayers of local governments. In effect, the Court of Appeals decision reads the anti-shifting provisions of § 25 and the anti-shifting purpose of the Amendment out of art 9, § 30 and cannot be reconciled with this Court's decision in *Schmidt*.[3]

Count II raises the issue of whether public school academies (i.e. charter schools) are local governments under art 9, § 30 of the Headlee Amendment. The Amendment defines local governments as "political subdivisions of the state" and recognizes school districts as one form of political subdivisions. Const 1963, art 9, § 33. The Court of Appeals was thus required to determine whether charter schools are political subdivisions of the state in the same manner as school districts.

The decisions of this Court have long held that constitutional language is interpreted based on the "rule of common understanding." *Traverse City Sch Dist v Att'y Gen*, 384 Mich 390; 185 NW2d 9 (1971). The rule requires that constitutional language be given the meaning that "the great mass of the people" would have given the language *at the time of ratification*. *Id*. (emphasis added). The Courts Of Appeals however did not apply the rule of common understanding. Instead, the Court of Appeals found that because the Headlee Amendment did not contain express language barring the legislature from re-defining the term 'school district', the legislature is free to change the meaning of the term.

[3] Plaintiffs do not contend that Prop. A revenue cannot be paid to local school districts, rather that the revenue cannot be paid in a manner so as to reduce amounts previously paid as part of the art. 9. § 30 proportion.

The Court of Appeals' approach clearly conflicts with inviolable principles of constitutional construction holding constitutional language retains its meaning *forever*, that the *legislature cannot amend the state constitution* by enactment of a statute, and that changing the meaning of constitutional language *requires amendment*. See *AG ex rel Brotherton v. Common Council of Detroit*, 148 Mich. 71, 100; 111 NW 860 (1907) ("Conditions, the ideas, and wishes of the people may change, but Constitutions do not. What they mean when adopted they mean forever, unless changed by amendment.") and *Pillon v Attorney General*, 345 Mich 536, 547; 77 NW2d 257 (1956) (The legislature does not have "any right to amend or change a provision in the Constitution").[4]

Furthermore, the Court of Appeals decision clearly conflicts with this Court's decision in *Paquin v City of St Ignace*, 504 Mich 124, 934 NW2d 650 (2019). In this case, the Attorney General argued that charter schools are local governments/political subdivisions of the state because charter schools function similar to school districts. The Court of Appeals' decision effectively agreed. *Paquin* however holds that the rule of common understanding determines whether an entity is a local government/political subdivision of the state. *Id*. at 136. By state law, charter schools are required to be private nonprofit corporations. Under no circumstances can private nonprofit corporations be found a local government/political subdivision of the state and the decision of the Court of Appeals clearly conflicts with this Court's decision in *Paquin*.

[4] Plaintiffs do not claim that the State cannot make payments to charter schools. Rather, Plaintiffs claim that such payments cannot be counted as spending in the form of aid to Local Governments, which are expressly defined as *political subdivisions* of the State.

II. CONCISE STATEMENT OF THE CASE

Plaintiff taxpayers bring this lawsuit to enforce the Headlee Amendment to the Michigan Constitution of 1963. In 1978, the Headlee Amendment was placed on the ballot as Proposal E and was approved by voters. The Headlee Amendment added ten sections to the Constitution, art. 9, §§ 25 to 34. These sections establish a balanced fiscal framework for local governments, limiting them in their ability to raise local taxes, but protecting them against state action imposing financial burdens upon them and their taxpayers.

Specifically, art. 9, § 25 and § 30 require the state to annually maintain a minimum level of spending in the form of aid that is paid to all units of local government ("constitutional aid"). Under the Headlee Amendment, the minimum level that the state is required to pay is the *proportion* of state spending that was paid to local governments in 1978, the base year. The base year proportion is 48.97%.[5] As a result, the Michigan Constitution requires that 48.97% of all state revenues from state sources must be spent in the form of aid paid to local governments in Michigan.

The State of Michigan consistently violates its constitutional obligation to make the minimum proportional payments all units of local government. Relying upon faulty interpretations of art. 9, § 25 and § 30, the state miscalculates the amount of spending in the form of aid that is paid to local governments. As a result, local governments to their material detriment have been shorted millions of dollars over more than two decades and the shortage exerts extreme pressures on local governments to makeup the lost revenue with new taxes, assessments, and fees.

A. Statement Of Proceedings.

[5] Following the adoption of the Headlee Amendment, the base year proportion was initially set at 41.6%. Following a legal challenge, the base year proportion was revised during the 1990s to the present rate of 48.97%.

On September 7, 2016, Plaintiffs filed their Complaint as an original action before the Michigan Court of Appeals based on Defendants' violations of the Headlee Amendment to the Michigan Constitution.

Plaintiffs' Complaint alleges that the Defendants have repeatedly violated Const. 1963, art 9, § 25 and § 30 by improperly including various expenditures within their calculations of the amount of state spending in the form of aid that is paid to local governments. The Complaint alleges that the state improperly counts the following items as spending in the form of aid that is paid to local governments:

a. Spending of Proposal A ("Prop. A") revenue (at Count I);
b. Spending on Public School Academies (i.e. charter schools) (at Count II; and
c. Spending on state mandates paid to local governments pursuant to art 9, § 29 (at Count IV).[6]

By improperly including such expenditures in their calculations of spending in the form of aid that is paid to local governments, the state thereby reduces the constitutionally required proportion of spending in the form of aid that is actually paid to local governments. Furthermore, by improperly including such spending, the state also shifts the tax burden to local governments.

On December 6, 2017, the Plaintiffs and Defendants filed cross-motions for summary disposition on the claims of the Complaint. The parties extensively briefed the issues and the Governmental Law Section of the State Bar of Michigan, the Michigan Municipal League, the Michigan Association of Counties, and the Michigan Townships Association appeared as amici filing a brief in support of the Plaintiffs.

[6] At Count III, Plaintiffs also alleged that the State improperly includes spending paid to maintain State trunk line roads. After a limited period of discovery, the Plaintiffs agreed to voluntarily dismiss the claims of Count III.

Oral argument was held on January 22, 2019. At oral argument, Plaintiffs waived their request for compensation from the state for past violations of the Headlee Amendment.

The Court of Appeals issued its published opinion on July 30, 2019. The opinion denied summary disposition to the Plaintiffs on Counts I and II of their Complaint and granted summary disposition to the Defendants on these counts. The opinion further granted summary disposition to Plaintiffs on Count IV of the Complaint and granted mandamus relief on Count IV. A partial concurrence and dissent was entered on the same date. The partial dissent would have also granted summary disposition to Plaintiffs on Count II of the Complaint.

The Defendants timely filed a motion for reconsideration on August 20, 2019. The motion was granted and a new published opinion was issued on October 29, 2019. See Ex. 3. The new opinion again denied summary disposition to the Plaintiffs and granted summary disposition to the Defendants on Counts I and II and again granted summary disposition and mandamus relief to Plaintiffs on Count IV of the Complaint. The partial dissent of Judge Peter M. Meter again would have also granted summary disposition to Plaintiffs on Count II and the new partial dissent of Judge Stephen L. Borrello would have granted summary disposition to the Defendants on all counts of the Complaint.

As a result, the Court of Appeals entered declaratory judgment in favor of the Plaintiffs on Count IV, enjoining the Defendants from counting state mandates funded pursuant to art 9, § 29 as spending in the form of aid paid to local governments under § 30 and granted mandamus relief requiring the Defendants to comply with the annual disclosure and reporting duties of the Headlee Amendment's implementing legislation at MCL 21.235(3) and MCL21.241. The Court of Appeals further entered judgment in favor of the Defendants on Count I and Count II of the Plaintiffs' Complaint.

Plaintiffs' application seeks leave to appeal the Court of Appeals' denial of summary disposition to Plaintiffs on Count I and Count II and the court's entry of summary disposition in favor of the Defendants on these two Counts.

B. Statement Of Facts.

The facts related to Count I and Count II are not in genuine dispute by the parties. The Defendants include spending from Prop. A revenue and spending paid to charter schools within the total amount of state spending in the form of aid that is paid to all units of local governments each fiscal year. The Defendants have engaged in this practice for many years and, in the absence of a ruling, will continue to do so in the future.

1. The Requirements Of The Art 9, § 25 And § 30.

In 1978, Michigan voters adopted the Headlee Amendment that added art. 9, §§ 25 to 34 to the Michigan Constitution. The Amendment sets forth specific prohibitions:

> The state is prohibited … from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government. [Const 1963, art 9, § 25].

The Amendment further states the proportional payment requirement, as follows:

> The proportion of total state spending paid to all units of Local Government, taken as a group, shall not be reduced below that proportion in effect in fiscal year 1978-79. [*Id*. at § 30].

The constitutional requirements of art. 9, § 30 were also codified by the Management and Budget Act at MCL 18.1349.

The Amendment defines "local government" as:

> *[A]ny political subdivision of the state*, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government. [*Id*. at § 33].

2. Calculating the Proportion of State Spending in the Form of Aid That Is Paid to Local Governments Under Art 9, § 25 and § 30.

The mechanics of calculating the proportion of total state spending that is paid in the form of aid to all units of local government are not difficult. The proportion is arrived at by a fractional equation where total state spending in the form of aid that is paid to local governments is divided by total state spending from all state revenue sources. The numerator is thus the total of all properly included state payments that are paid in the form of aid to local governments and the denominator is the total of all state spending from all state revenue sources. If the numerator includes prohibited payments in its amount, the proportion of total state spending that is paid in the form of aid to local governments is improperly inflated. Under these circumstances, local governments are short-changed by the state and significant financial burdens are imposed on local governments. This practice undermines the balanced framework of the Headlee Amendment.

The Defendants inflate the proportion of state spending in the form of aid that is paid to local governments by improperly including spending from Prop. A revenue and spending paid to charter schools within the numerator. Defendants concede that they include spending in these two categories within the numerator for purposes of determining the art 9, § 30 proportion.

3. The Role Of The DTMB And Auditor General.

The Department of Technology, Management and Budget (DTMB) is the office that is assigned responsibility to develop and implement the state's budget. Each year, the DTMB generates faulty calculations of spending in the form of aid that is paid to local governments for purposes of meeting the Headlee Amendment's requirements.

The State of Michigan's fiscal year begins on October 1st and ends on September 30th of the following calendar year. MCL 18.1491. As part of the budget process for each fiscal year, the DTMB is required to compile an itemized statement of total state spending from state revenue

sources and of spending in the form of aid that was paid to local governments during the previous year. MCL 18.1497. The itemized statement is to ensure that the state is meeting the proportion of spending that is required to be paid to local governments under art. 9, § 25 and § 30. If the DTMB finds that the proportion of spending in the previous fiscal year was less than required by the Constitution, the DTMB is required to report the amount of additional payments to units of local government that are necessary to meet the requirements of art. 9, §25 and § 30. See *Id*.

The DTMB then transmits the itemized statement to the Office of the Auditor General ("OAuG"). *Id.* The OAuG then reviews and comments upon the DTMB's statement before it is published by submission to the legislature. *Id.*

Each year, the DTMB inflates its calculations of proportion of state spending in the form of aid that is paid to local governments by including spending from Prop. A revenue and including spending paid to charter schools within the numerator of its calculations. As a result, the DTMB has never reported that the state failed to meet the requirements of art. 9, §25 and § 30. Each year, the OAuG also fails to report any shortfall in the required spending. The DTMB and OAuG's failure to report a shortfall in the proportion of state spending that is paid to local governments is based upon faulty understandings of art. 9, § 25 and § 30.

4. Relevant Facts On Count I Of Plaintiffs' Complaint.

In 1993, the Michigan legislature enacted Public Act 145 of 1993 ("PA 145"), which restricted local governments from levying certain taxes for school operations. The new law eliminated an estimated $6.9 billion from school finances and led to a crisis in school funding. The legislature placed Proposal A of 1994 ("Prop. A") on the ballot to replace local governments' lost revenue. The measure was approved by voters. Proposal A replaced local property taxes with

an increase in the sales, cigarette and use taxes and the addition of an education tax on the taxable value of property and a real estate transfer tax (together "Prop. A revenue"). S.J.R. S of 1994.

After the adoption of Prop. A, the DTMB began including spending from Prop. A revenue that is paid to school districts and public school academies within the total amount of state spending in the form of aid that is paid to units of local government to satisfy the requirements of Mich. Const. art 9, § 25 and § 30. Including spending from Prop. A revenue resulted in that spending supplanting and reducing other spending in the form of aid to local governments that was paid to meet the requirements of art 9, § 25 and § 30.

Commenting on Prop. A, Richard Headlee, the namesake and a drafter of the Headlee Amendment, concluded that "the proposal had turned into a major tax shift." Charlie Cain, *Headlee Criticizes Proposal A As Tax Shift And Tax Increase*, The Detroit News, May 14, 1993, at 2B.[7] Richard Headlee states further:

> The constitution guarantees local governments 41.6 percent of all state revenues for local programs. Without recalculation of the Section 30 requirements, the state would count the $1.8 billion of sales tax revenue as spending for local governments, thereby *gutting Section 30* and protection of local government revenue sharing. [*Id*].

Richard Headlee's comments have been proven to be prescient and the Defendants have engaged in this practice, gutting the requirements of § 30 and placing extreme burdens on local governments as a result.

Notably, the Court of Appeals decision in this case cites S. Fino, *A Cure Worse Than the Disease - Taxation and Finance Provisions in State Constitutions*, 34 Rutgers L.J. 959 (2003) for

[7] See attached Exhibit 6. At the time of Richard Headlee's comments, the constitutional proportion of state spending required to be paid in the form of aid to Local Governments was 41.6%. The subsequent resolution of the *Oakland Cnty v Dep't of Mental Health*, 178 Mich App 48, required the DTMB to recalculate the proportion of spending that must be paid to Local Governments and set it at 48.97%.

the proposition that state spending of Prop. A revenue and including it within the numerator of the state's calculations simply reflects a time to time rebalancing of how Const 1963, art 9, § 30 revenue sharing is distributed among all units of local government. Ex. 3 at 7. Professor Susan P. Fino disagrees that her article or the opinions stated therein supports this conclusion.

Based on Prof. Fino's knowledge, experience, and research, Proposal A funding disbursed to local school districts that is then credited as art 9, § 30 revenue sharing to units of local government is a violation of the Headlee Amendment's provision prohibiting any shifting of the tax burden to local government. See *Affidavit of Prof. Fino*, at 3, attached as Exhibit 7. As her article explains, Michigan's Constitution, and other state constitutions, have been amended to place restrictions on state taxation and spending. These restrictions often fail however because too often, state officials develop a range of schemes to avoid the restrictions. *Id*. In her opinion, crediting disbursements from Prop. A revenue as art 9, § 30 revenue sharing to units of local government is an example of one such scheme that violates the language and intent of the Headlee Amendment's restrictions. *Id*., at 3-4.

5. Relevant Facts On Count II Of Plaintiffs' Complaint.

The DTMB also includes state spending paid to charter schools when calculating the amount of required constitutional aid that is paid to local governments each fiscal year. The Defendants again admit and do not dispute that the state includes payments to charter schools when calculating the amount of state spending in the form of aid that is paid to local governments.

The Headlee Amendment defines local governments as "political subdivisions of the state", including "school districts", among other political subdivisions. Under the Public School Academies Act, charter schools are not political subdivisions of the state or school districts, as commonly understood by the voters at the time the Headlee Amendment was adopted in 1978.

The Public Schools Academy Act expressly requires that charter schools be organized as private nonprofit corporations under Michigan's nonprofit corporations act (1982 PA 162, MCL 450.2101 *et. seq.*). MCL 380.502(1). As a result, charter schools are organized as private nonprofit corporations and are administered under either a private board of directors, private education management organizations, or some combination of both pursuant to a contractual agreement. Private nonprofit corporations simply cannot be found to be political subdivisions of the state.

Moreover, the Headlee Amendment's implementing legislation defines "units of local government" as:

> [A] political subdivision of this state, including school districts … **if the political subdivision has as its primary purpose the providing of local governmental service for citizens in a geographically limited area of the state and has the power to act primarily on behalf of that area**. [MCL 18.1115(5). See also *Schmidt v Department of Educ*, 441 Mich 236, 299; 490 NW2d 584 (1992) (Levin, J., dissenting) (discussing "geographically limited" nature of local governments under art. 9, § 29).]

The legislature's definition reflects clear common understandings at the time that the Headlee Amendment was adopted. Under this definition, units of local government are political subdivisions of the state only if they are required to serve and act on behalf of geographically limited areas. MCL 18.1115(5). The Amendment's implementing legislation represents the legislature's understanding of what constitutes a "unit of local government" based upon its knowledge of the people's understanding of this term in 1978. Since that time, the legislature has consistently defined political subdivisions of the state (including school districts) and units of local government, as serving geographically defined areas of the state.

There simply is no dispute that, at the time that the Headlee Amendment was adopted by Michigan taxpayers, political subdivisions of the state were commonly understood to possess the power to act on behalf of and provide local services for citizens within geographically limited areas

of the state. School districts in 1978 operated under elected boards accountable to local citizens at local elections and exercised delegated sovereign powers from the state, including the power to tax as well as comprehensive police and eminent domain powers. Charter schools deliver their educational services to citizens who choose to patronize them rather than those within geographically limited areas of the state. No credible argument can be advanced that charter schools possess the required characteristics of a political subdivision of the state or a school district.

Michigan Attorney Generals' published opinions consistently find that charter schools are not school districts. Attorney General Mike Cox determined that "a public school academy is not a "school district."" OAG, 2003-2004, No. 7154, at 122 (March 31, 2004). Similarly, Attorney General Frank J. Kelley had also found that "it is clear that the legislature did not intend to equate PSAs with school districts as a general proposition. OAG, 1995-1996, No. 6915, p 204 (September 4, 1996). No Michigan court or subsequent attorney general has found differently.

The idea that charter schools are political subdivisions of the state and operate as school districts is counter to the very basis upon which the charter school movement was founded. Charter schools began and continue to operate **as an alternative to school districts operated by local government.** Charter schools purposefully seek to **bring the competition and innovation of private enterprise into the field of education.** Finding that charter schools are political subdivisions of the state thus conflicts with every charter schools' founding goals and operating principles.

6. If Prop. A Spending Or Payments To Charter Schools Were Excluded From Defendants' Calculations, The State Is Not Meeting Its Obligations Under Art 9, § 25 And § 30.

As shown in the Court of Appeals, the data compiled by Plaintiffs experts — former state

Treasurer, Robert Kleine, and former Director of the state House of Representatives' House Fiscal Agency, Mitchell Bean — finds that excluding the state's spending of Prop. A revenue and spending on payments to charter schools reduces payments to local governments below the amounts required by art. 9, § 30. See Court of Appeals Case No. 33466, *Plaintiffs' Brief In Support Of Motion For Summary Disposition*, Doc #71, at 7-12 (Filed 12/06/2017) and Ex. 5, 6, & 7 referenced therein (Filed 12/06/2017).

III. SUMMARY OF THE ARGUMENT

The Defendants thwart the will of the people by failing to make the proper amount of constitutionally required payments to local governments under the Headlee Amendment, Constitution of 1963, Article 9, §§ 25 to 34. Funds unconstitutionally retained by the state have, therefore, been available to annually satisfy state budgetary and programmatic objectives while local governments have been severely underfunded and burdened by the state's actions. Taxpayers did not intend this when they adopted the Headlee Amendment and did not intend this result when they enacted Prop. A.

The Headlee Amendment establishes a balanced fiscal framework for local governments, limiting them in their ability to raise local taxes, but protecting them against state action imposing financial burdens on them and their taxpayers. Michigan taxpayers, the primary beneficiaries of the Headlee Amendment, are authorized under art. 9, § 32 to enforce the Headlee Amendment to ensure the state's strict compliance with its terms in upholding the balanced fiscal framework. The state has consistently failed to comply.

Article 9, § 25 and § 30 of the Michigan Constitution prohibit the state from reducing the proportion of state spending in the form of aid that is paid to local governments below the proportion existing at the time the Headlee Amendment was adopted. The proportion of total state

spending in the form of aid that is required to be paid to local governments is 48.97%. Defendants have repeatedly violated art. 9, § 25 and § 30 by improperly including various expenditures within their calculations of the amount of state spending in the form of aid that is paid to local governments. The Defendants thereby artificially inflate the reported proportion that is paid to local governments. The state's inflated reporting hides the fact that the proportion of state spending in the form of aid that is paid to local governments has, in violation of the state Constitution, markedly fallen below pre-Headlee Amendment levels.

First, Article 9, § 25 prohibits the state from including amounts generated by a tax shift that places a direct or indirect tax burden on local governments. The prohibitions found in § 25 are intended to protect Michigan taxpayers by prohibiting the state from shifting the tax burden, directly or indirectly, to local governments, who may be required to pass the burden onto local taxpayers through increased local taxes and fees.

Proposal A payments arise from a tax shift that sharply limited local governments' ability to collect certain local property taxes collected by school districts, while imposing new state taxes to replace lost local property tax revenues. The tax shift — replacing local governments' tax revenues with state payments from revenues raised by new state taxes — burdens local governments when the DTMB includes the new state payments within under its art 9, § 30 calculation, thereby supplanting and replacing other payments previously made to meet the proportional aid requirements.

Counting payments from this tax shift in calculating the § 30 proportion **sharply reduces** other state payments that were previously paid to local governments to support other activities and services. This creates an artificial surplus of state revenues that are kept by the state and used for the state's own purposes but imposes a tax burden on residents within units of local government.

In effect, local governments were held harmless by the state's replacing revenue from local taxes with revenue from state taxes. However, local governments **as a group** were shorted when the state then also counted the revenue from the new state taxes within art. 9, § 30 calculations of the amount of state spending in the form of aid that is paid to local governments. This is precisely the type of shifting of the tax burden that the Headlee Amendment was intended to prohibit.

Michigan taxpayers did not approve this shifting of the tax burden to local governments when they adopted Prop. A and they did not intend any such results. The result arises not from any inherent conflict from the Headlee Amendment and the provisions of Prop. A, but rather arises solely from the Defendants' crediting the tax-shift revenue as spending in the form of aid under § 30.

Second, the state further miscalculates art. 9 § 30 spending in the form of aid that is paid to local governments by including ineligible payments to charter schools. Payments to charter schools are improper because charter schools are not a unit of local government under art. 9, § 33 of the Headlee Amendment. For charter schools to qualify as local governments, they must be school districts that are political subdivisions of the state, as these terms were commonly understood at the time the Headlee Amendment was adopted.

In 1993, the state enacted elementary and secondary school reform that radically departed from the state's traditional public educational structure by establishing public school academies, commonly referred to as charter schools, **to compete with** school districts. By law, charter schools are required to be private nonprofit corporations. Private nonprofit corporations are not political subdivisions of the state and are not school districts.

While the state is certainly free to engage in such experimentation, the radical break from common understandings of school districts prevents charter schools from being found to be local

governments for purposes of the Headlee Amendment.

In 1978 at the time the Headlee Amendment was adopted, school districts were commonly understood to be political subdivisions of the state possessing the power to act on behalf of and provide local services for citizens within geographically limited areas of the state. Charter schools have none of these characteristics and thus are not school districts as commonly understood in 1978 and as intended under the Headlee Amendment and its implementing legislation.

Consequently, the DTMB's action of including state funds paid to charter schools within the proportion of aid that is paid to local governments under art. 9, § 30 also wrongfully inflates the proportion of state spending in the form of aid that is paid to local government and, in fact, reduces payments to local governments.

As a result, each of these actions of the Defendants violate art. 9, § 25 and § 30 of the Michigan Constitution.

IV. DISCUSSION

A. Headlee Amendment Requirements Establish A Balanced Framework For Local Governments That Must Be Enforced.

The Headlee Amendment limits the power of local governments to increase property taxes. See Const 1963, art 9, § 25. The Headlee Amendment's drafters recognized that the revenue limitations could have unintended harmful effects if not coupled with specific prohibitions. The drafters therefore prohibited the state from: (1) imposing unfunded mandates upon local governments; (2) reducing the proportion of spending in the form of aid that is paid to local governments; and (3) directly or indirectly shifting the tax burden onto local governments. See Const 1963, art 9, § 25. See also *Schmidt v Dep't of Educ*, 441 Mich 236, 254-255; 490 NW2d 584 (1992).

As a result, the Headlee Amendment creates a balanced framework. The framework gives

control of tax increases to the voters while ensuring that existing activities and services of local governments will be maintained and any future state mandated requirements that impose costs on the local governments will be fully funded by additional state payments. The framework however can only function correctly if all three prohibitions are observed. If one is ignored or falters, then the intent of the voters who adopted the Amendment is defeated and without these prohibitions, the revenue limitations imposed by the Amendment are no longer economically viable.

If all three of the Headlee Amendment's prohibitions are not faithfully observed, the Amendment's framework unravels with harmful effect. In the presence of strict tax limitations on local governments, a reduction in funding for existing activities and services of local governments by reducing the proportion of state spending paid to them results in lost revenue and pressures local government to increase taxes, assessments, or fees collected from local taxpayers. A shift of the tax burden likewise forces local governments to choose between increasing local taxes to maintain existing obligations or cutting existing activities and services. In each instance, the outcome places severe stress upon the finances of local governments. In each instance, the outcome is one that the voters who approved the Headlee Amendment sought to prevent.

Thus, the framework established by the Headlee Amendment balances its limitations on local governments' power to raise taxes with a corresponding check on state governments' power to reduce funding or transfer of costs to local governments by prohibiting unfunded mandates, prohibiting reductions in the proportion payments in the form of aid, and prohibiting tax shifts. In so doing, the Headlee Amendment controls revenue growth while maintaining funding for existing programs and requiring identifiable funding for new activities and services. In this way, the Headlee Amendment provides a viable economic framework that prevents local governments from experiencing the severe economic distress that can result from the unbridled costs of unfunded

state mandates, irresponsible cuts in state aid, and unseen shifts in the tax burden to local governments.

The Court of Appeals failed to recognize that the Amendment's provisions are not isolated requirements, but are part of a whole that effects a balanced framework, the components of which must be strictly observed.

B. Proposal A Revenue Must Be Excluded From Calculations Of Spending In The Form Of Aid That Is Paid To Local Government To Meet The Requirements Of Art. 9, § 30.

The Defendants violate the Headlee Amendment by including "tax shift" funding that burdens local governments as spending in the form of aid that is paid to local governments.

The inclusion of prohibited tax-shift funding in 9, § 30 calculations arises from the state's adoption of Prop. A. The people of the State of Michigan adopted Prop. A to replace millions of dollars of lost local taxes with millions of dollars in new state taxes. Proposal A was adopted to replace lost local taxes that had become prohibited by the enactment of PA 145 of 1993.[8] Under Prop. A, the state was permitted to levy a variety of new state taxes and the state is required to send the revenue raised from the new state taxes back to local governments, mostly in the form of education funding from the School Aid Fund. Through Prop. A, local governments were held harmless for the loss of revenue from eliminated local taxes that had previously paid for school operations. Local Governments as a whole however were then shorted by the state when the new state payments were also counted as spending in the form of aid under art. 9, § 30.

Between 1994 and 1995, the first year following the implementation of Prop. A, reported state payments to units of local government increased by 52%. This reported increase was caused

[8] PA 145 of 1993 restricted Local Governments from levying taxes for school operations, eliminating an estimated $6.9 billion in local revenue,

by the DTMB including payments from revenue generated by Prop. A in its calculations of the proportion of spending paid to local governments to meet the requirements of art. 9, § 25 and § 30. **However this 'new revenue' to local governments was an illusion as local governments, as a group, did not see any increase in revenue.** Rather, the amounts collected had simply been re-categorized as state payments when they that revenue had previously been collected and disbursed locally. The only change that had occurred was that local government revenue that had previously been collected locally (and was not therefore been counted as state spending) had been shifted on the accounts' ledger to now be counted as state spending in the form of aid paid to local governments. This had the effect in future years of greatly reducing the amount of state spending in the form of aid that is paid to local governments to meet the requirements of art. 9, § 25 and § 30.

By including Prop. A payments in this calculation, the state supplanted other state spending previously paid to local governments, placing a tax burden on local governments to further raise local taxes to offset lost state revenue. This shifting tax burden created a cushion so that the state could reallocate resources away from local governments and appropriate those revenues for their own uses. Using the Prop. A funds as a buffer to keep the state above the proportion of spending required to be paid to local governments by art. 9, §25 and § 30, the state balanced its own budget while forcing local governments to make a difficult choice: cut services or raise taxes. This is precisely the practice that Michigan taxpayers intended to prohibit by adopting the Headlee Amendment's anti-shifting provisions.

This accounting practice violates the Headlee Amendment and allows the state to retain revenues previously paid to local governments to fill shortfalls in the state's annual budget and fund state programmatic objectives. In effect, Michigan taxpayers, as a group, now pay the same

amount of tax to support local schools as they were paying before Prop. A, but have had other state payments to support other local services cut.

Notably, the Headlee Amendment also imposes a substantive taxing and revenue limitation upon the state in art. 9, §§ 26 and 27. The state is allowed to circumvent this limitation on its own taxing authority by capturing funds previously spent on local governments. Retaining funds required to be paid to local governments has helped the state to avoid financial stress of its own during lean times and has transferred that financial stress to local governments across the state.

The accounting maneuver outlined above is specifically prohibited by art. 9, § 25, which provides that the "state is prohibited… from [directly or indirectly] shifting the tax burden to local government." Const 1963, art 9, § 25. While the state can continue to fund public education with taxes levied under Prop. A, the state cannot count the Prop. A revenue toward its obligation to meet the payments required by art. 9, § 30.

1. Including Proposal A Revenue Within Calculations Of Required Constitutional Aid, Constitutes A Prohibited Shift Of The Tax Burden To Local Government.

The balanced framework that limits local governments from imposing new taxes, but also prevents the state from shifting a tax burden onto them is memorialized in the Michigan Constitution, which specifically prohibits the state "from shifting the tax burden to local government." Const 1963, art 9, § 25. Further fortifying this position, the drafters' notes accompanying the Headlee Amendment are unequivocal:

> Section 25 specifically prohibits the state from circumventing the intent of the amendment by shifting tax burdens from the state to local government levels. Any action by the state which would result, **directly or indirectly**, in increased local taxation through a shift in funding responsibility is **clearly prohibited** by this Section. [Drafters' Notes at 2-3 (emphasis added), attached as Exhibit 8].

As previously discussed, in order for the intent of the people to be properly expressed, each part

of the Headlee Amendment must be upheld. *Schmidt*, 490 NW2d at 591.

The Michigan Supreme Court has clearly spoken in *Schmidt* as to what constitutes a tax shift that places a tax burden on local governments under art. 9, § 25.[9] As emphasized in *Schmidt*, the clear intent of the voters when adopting Headlee was to preclude the legislature from shifting any funding obligation onto local governments. *Schmidt*, 490 NW2d at 590. The Court reasoned that because the voters intended that the state provide full funding for any new mandated service or activity, the voters also intended that the state be precluded from circumventing that prohibition by shifting the tax burden to local governments. *Id.* at 592. The Court goes on, stating that when art. 9, § 25 and §30 are read together they create "absolute prohibition of any shifting to local government." *Schmidt*, 490 NW2d at 592.

The Michigan Supreme Court had previously confirmed this position in *Durant*, where the Court held that:

> [T]he people have said that shifting of the tax burden to local taxpayers is a matter of constitutional dimension; it is banned; and, through § 32, the ban must be enforced. The people having spoken through their constitution, the policy debate is no longer open. [*Durant v State*, 456 Mich 175, 220; 566 NW2d 272, 291 (1997)].

Under the Court's analysis in *Schmidt*, the DTMB's treatment of Prop. A revenue shifts the burden onto local taxpayers by forcing local governments to raise taxes in order to provide the same local services. This practice is strictly prohibited by the Michigan Supreme Court's understandings of the Michigan Constitution.

After the adoption of Prop. A, the DTMB began including the Prop. A revenue within the state's calculation of spending in the form of aid paid to local governments to meet the

[9] While *Schmidt* was a case involving unfunded mandates prohibited by art. 9, § 29, the Court undertook a thorough analysis of tax shifts prohibited by art 9, § 25.

requirements of art. 9, § 30. The net effect is that local taxpayers throughout Michigan pay a state tax to replace their local property tax in order to support public schools, while having their corresponding state tax payments used by DTMB to reduce state revenue from other sources previously paid to their local governments.

As noted above, Richard Headlee, the namesake and a drafter of the Headlee Amendment, concluded that "the proposal had turned into a major tax shift." Charlie Cain, *Headlee Criticizes Proposal A As Tax Shift And Tax Increase*, The Detroit News, May 14, 1993, at 2B.[10] Michigan voters prohibited tax shifts for the very reason that Richard Headlee posits - shifting of funding responsibility between the state and local governments in this manner allows the state to decrease the revenue it sends to local governments for local programs. It allows the state to impose its priorities on local governments and force local governments to cope by either raising taxes, assessments, and fees or cutting local programs, activities, and services.

DTMB's treatment of Prop. A revenue as included within constitutional aid to local governments circumvents the prohibition against the state shifting its tax burden onto units of local government, placing a major burden on units of local government. Ultimately, it forces local governments to raise local taxes in order to maintain local services. However, the balanced fiscal framework of the Headlee Amendment limits the ability of local governments to raise local property taxes, the precise reason why tax shifts are prohibited by the Headlee Amendment. Ex. 8, at 10-11.

This accounting scheme, which amounts to a shell game, allows the state to cut funding for all local governments by the amount the state provides from Prop. A revenue to schools without affecting its compliance with art. 9, § 30 requirements. The DTMB's treatment of the Prop. A

[10] See attached Exhibit 6.

revenue allows the state to budget for additional state programming in the economic boom years or to balance the state budget by cutting funding to local governments in lean years. The losers in all of this are local governments which must absorb the cuts in state aid while having very limited options for raising replacement revenues. This results in severe economic distress for local governments.

The violation of the Headlee Amendment by DTMB's miscalculations of constitutional aid is determined entirely by its effect on local governments and Michigan taxpayers and not by DTMB's intent. **There would be no question that the state legislature and DTMB violate the letter and spirit of the Headlee Amendment if they intentionally engaged in a scheme to eliminate a local property tax and replaced it with a state tax for the purpose of reducing the amount of state revenues paid in the form of aid to local governments and then used the savings for other state purposes**. Plaintiffs are not alleging that the state intentionally withheld state revenues required to be paid to local governments under Art 9, § 30 to evade their responsibilities under the Michigan Constitution. Rather, Plaintiffs maintain that DTMB is creatively or mistakenly interpreting the eligibility of payments to be included in calculating constitutional aid. However, whether the error is intentional or innocent is of no consequence in this case. In both cases, a violation of the Headlee Amendment has occurred with material damage to local governments and their taxpayers.

In summary, DTMB's treatment of Prop. A revenue violates the Headlee Amendment, specifically 9, § 25 and § 30. Counting spending from Prop. A revenue that is paid to local governments in order to satisfy the requirements of art. 9, § 25 and § 30 constitutes a tax shift prohibited by art. 9, § 25. Therefore, the Prop. A revenue must be excluded from the state's calculation of constitutional aid required by art. 9, § 25 and § 30.

2. There Is No Inherent Conflict Between The Headlee Amendment And The Requirements Of Proposal A.

The state's position is untenable that Prop. A, adopted by the people in 1994 to reform public school financing, was intended to substantially reduce state revenue paid under Headlee to their local governments. Prop. A did not amend Headlee and it made no mention of cutting state support for local governments upon which taxpayers rely.

Although Prop. A was adopted after the Headlee Amendment of 1978, it did not alter its enforceability. There is no conflict between enforcing both the balanced fiscal structure of the Headlee Amendment and, at the same time, enforcing public school funding reform instituted by Prop. A. The two Amendments are consistent. The drafters of Prop. A expressed no intent to include Prop. A funding in the state's calculation of the proportion of spending that is paid to local governments to meet art. 9, § 25 and § 30 requirements. Likewise, the drafters of Prop. A did not express any intent to alter or amend the Headlee Amendment. On the contrary, the drafters expressed intent to amend art. 9, §§ 3, 5, 8, 11 and 36, but specifically made no express or implied reference to art. 9, §§ 25 to 34 of the Headlee Amendment.

Michigan taxpayers were totally unaware when Prop. A was placed upon the ballot in 1994 that state tax revenues taken out of their pockets and paid to the state to replace their former payments to local school districts would be used by DTMB to reduce state payments to local governments that provide their other daily services. If taxpayers were made aware, they would not have supported Prop. A.

The DTMB's practice was not disclosed or transparent to voters and taxpayers when Prop. A was placed upon the ballot and adopted in 1994. It is inconceivable that the voters and taxpayers of Michigan would have supported Prop. A, if they were aware that the state would use the new state taxes they would be required to pay to reduce state payments upon which they relied to

support basic services of other local governments. Nothing in the Prop. A ballot proposal or informational material made them aware. The ballot language read as follows:

> A PROPOSAL TO INCREASE THE STATE SALES AND USE TAX RATES FROM 4% TO 6%, LIMIT ANNUAL INCREASES IN PROPERTY TAX ASSESSMENTS, EXEMPT SCHOOL OPERATING MILLAGES FROM UNIFORM TAXATION REQUIREMENT AND REQUIRE ¾ VOTE OF LEGISLATURE TO EXCEED STATUTORYILY ESTABLISHED SCHOOL OPERATING MILLAGE RATES
>
> The proposed constitutional amendment would:
>
> 1) Limit annual assessment increase for each property parcel to 5% of inflation rate, whichever is less. When property is sold or transferred adjust assessment to current value.
> 2) Increase the sales/use tax. Dedicate additional revenue to schools.
> 3) Exempt school operating millages from uniform taxation requirement.
> 4) Require ¾ vote of legislature to exceed school operating millage rates.
> 5) Activate laws raising additional school revenues through taxation including partial restoration of property tax.
> 6) Nullify alternative laws raising school revenues through taxation including an increase in income tax, personal tax exemption increase, and partial restoration of property taxes.
>
> Should the proposal be adopted?
>
> Yes [ ]
>
> No [ ].

See *Ballot Language*, attached as Exhibit 9. The Prop. A State Proposal Notice contained the following statement: "A Proposal Offered By The State Legislature To Amend Sections 3, 5, 8, 10 and 11 of Article 9 And Add Section 36 To Article 9 Of The State Constitution." *Id.*

The Headlee Amendment was a Michigan taxpayers' initiative. It was placed upon the ballot by taxpayers in 1978 and approved by the voters. Headlee is intended to protect Michigan taxpayers in two ways. First, the ability of the state and local governments to indiscriminately

raise taxes on Michigan taxpayers is limited. Second, Michigan taxpayers are protected from the state placing tax burdens directly or indirectly on its local governments or reducing state financial support for local services below the proportion of state revenue provided to its local governments when Headlee was adopted in 1978, requiring that 48.97% of all state revenue be spent on local governments, as a group, annually.

A violation of Sec. 25 of Headlee resulting from the diversion of state revenues previously spent on local governments to the state's own use arose when Prop. A was adopted in 1994. Under Public 143 of 1993 operating in tandem with Prop. A, a tax shift was instituted on Michigan taxpayers that allowed the state to substitute new state taxes for the local property tax to support local public school operations. Thereafter, the state's accounting under Headlee for Prop. A school financing was turned into a bonanza for state finances that had a crippling effect on local governments resources.

After the adoption of Prop. A, the state counted the tax shift funding of public schools as state payments to local governments under Sec. 30 of Headlee. This allowed the state to reduce its Headlee payments of state revenues previously made to local governments. The loss to local governments was substantial and resulted in a financial windfall for the state. A tax burden was placed upon local governments to replace lost state revenues. Prop. A in 1994 asked taxpayers to restructure public school financing in Michigan. Taxpayers had no knowledge, let alone intent, that their local property tax shifted to a state sales tax would be used to reduce previous state spending upon their local governments.

3. The Court Of Appeals Decision Errs In Finding Spending Of Prop. A Revenue To Be A Rebalancing Of Revenue Distributed Among All Units Of Local Government.

The Court of Appeals erred in its consideration of whether spending of Prop. A revenue

that is paid to local governments may be included within the state's calculations of payments to meet the requirements of art. 9, § 25 and § 30.

In reaching its holding on Count I of Plaintiffs' Complaint, the Court of Appeals found that "[t]he inclusion of Proposal A funding in § 30 spending reflects a constitutionally sanctioned rebalancing of the distribution of that revenue sharing." Ex. 3, at 7. The court based its decision on a finding that:

> [V]oters intended … that the State be free from time to time to rebalance how § 30 revenue sharing is distributed among "all units of Local Government, taken as a group" so long as the overall proportion of funding remains at the constitutionally-mandated level. The inclusion of Proposal A funding in § 30 spending reflects a constitutionally sanctioned rebalancing of the distribution of that revenue sharing. [*Id.*]

There is no dispute that the state may reallocate funding among all units of local governments as a group, as long as the proportion of state spending that is paid to local governments as a group that existed in fiscal year 1978-79 is maintained. See *Durant v State Bd of Ed*, 424 Mich 364, 393; 381 NW2d 662 (1985). However, there is no reallocation that occurred in this case and the decision entirely fails to identify any such reallocation.

As noted above, the state did not reallocate monies from some units of local government to school districts through Prop. A. Rather, it eliminated certain taxes raised locally for school funding (and that were retained by local governments, as a group) and replaced the local taxes with new state taxes that were also allocated for school funding. The new state taxes simply replaced local governments' eliminated local tax revenue. There was no net gain or loss among individual units of local government and no reallocation of payments among various units of local governments. Rather, there was a shifting of the taxing authority from local governments, as a group, to the state.

As stated in Section II.B.4, the Court of Appeals decision in this case cites S. Fino, *A Cure Worse Than the Disease - Taxation and Finance Provisions in State Constitutions*, 34 Rutgers L.J. 959 (2003) in support of the court's reasoning. Professor Susan P. Fino, the author of that article, disagrees that her article or the opinions stated therein supports the court's conclusion. Rather, she holds the opinion that crediting spending from Prop. A revenues as spending in the form of aid under art 9, § 30 is the very type of scheme too-often developed by state officials to evade the purpose, intent, and language of restrictions that voters sought to impose when they adopted the Headlee Amendment. See Ex. 7, at 2-4.

The Court of Appeals decision further errs by reading the anti-shifting prohibitions out of the Headlee Amendment. As stated by this Court, the text of § 25 "evidences **the aggregate antishifting purpose embodied in the text of § 30**. It also **may be read to incorporate an absolute prohibition of any shifting to local government**." *Schmidt*, 441 Mich at 254 (emphasis added). The decision wholly fails to address the anti-shifting prohibition of the Amendment as recognized in *Schmidt* and instead, entirely isolates § 30 from any anti-shifting purpose. Ex. 3, at 7. The analysis of the Court of Appeals simply cannot be reconciled with the language of § 25 and the principles established in *Schmidt.*

While the decision lightly acknowledges the anti-shifting purpose § 25 and § 30, the court undertakes its analysis of § 30 isolated and removed from this purpose and suggests that only a strained reading of § 30 could bar Prop. A payments from the Defendants' calculations. *Id*. Plaintiffs submit that the prohibited tax shift that occurred is fairly straight-forward — or at least as straightforward as prohibited tax shifts are likely to be. Revenue collected from local taxes was shifted to the state through new state taxes and the payments from the state to replace local governments' lost revenue from the eliminated local taxes was then used to further reduce other

payments to local governments causing a tax burden on them, as a group. Admittedly, this requires close reading of what occurred. The issues presented involve the Headlee Amendment, fiscal restraints, and anti-shifting prohibitions. None of these topics can are readily gleaned. They require close analysis and that is what the voters required when they enacted the Headlee Amendment's balanced framework as part of the Michigan Constitution. This Court is well-suited to undertake such an analysis and to uphold the constraints imposed on the Defendants by our state's Constitution.

C. Charter Schools Are Not Local Governments. As A Result, State Spending Paid To Them Must Be Excluded From State Calculations Under Art. 9, § 30.

Charter schools are in no way local governments, political subdivisions of the state, or school districts of any kind for purposes of the Headlee Amendment. Charter schools are formed as private Michigan non-profit corporations; have self-perpetuating boards composed of privately selected members; do not have sovereign powers; do not serve or act on behalf of citizens within limited geographic areas; and are in no way under the control of the local electorate. As a result, state spending paid to charter schools must be excluded from calculations of constitutional aid for purposes of art. 9, § 30.

The language of art. 9, § 30 expressly identifies the constitutional aid numerator as "total state spending paid to all units of **Local Government**." Const, 1963, art. 9, § 30 (emphasis added). Local governments are specifically defined by the Headlee Amendment as: "any political subdivision of the state, including, but not restricted to, school districts." Const 1963, art 9, § 33. Under universally recognized principles of grammatical construction, the plain language of art 9, § 33 requires that, to meet the definition of local government under the Amendment, an entity **must be** a 'political subdivision of the state.' See Court of Appeals Case No. 33466, *Plaintiffs' Brief In Answer To Defendants' Combined Motion For Summary Disposition*, Doc. # 87, at 24,

and Exhibit 11 referenced therein (filed 01/25/2018).

Whether charter schools are a political subdivision of the state can be answered by referencing the plain language of the Public School Academies Act, by application of the rule of common understanding, by reference to Headlee Amendment's implementing legislation, relevant case law, and Michigan Attorney General Opinions. None of these sources support a finding that charter schools are local governments under the Headlee Amendment.

1. The Public School Academies Act Requires Charter Schools To Be Private Nonprofit Corporations, Not Local Governments and Not Political Subdivisions of the State.

The Public School Academies Act requires charter schools to be organized as private nonprofit corporations. The Act reads as follows:

> A public school academy **shall be organized and administered** under the direction of a board of directors in accordance with this part and with bylaws adopted by the board of directors. A public school academy corporation **shall be organized under the nonprofit corporation act**, 1982 PA 162, MCL 450.2101 to 450.3192. [MCL 380.502(1)].

Each charter school is governed by private boards of directors. See MCL 380.502(3)(b) and MCL 450.2501. Each charter school is managed by private boards of directors or private educational management organizations or a combination of both. Educational management organizations may be organized as partnerships, for-profit, nonprofit companies or other entities, but all are private corporations. See MCL 380.503c. In some cases, charter schools operate under a combined configuration of directors and an EMO. In all cases, charter schools operate pursuant to a contractual agreement between the private companies and the authorizing body, which require the private companies to administer, manage and operate the school themselves or through private subcontractors. See *Id*.

The requirement that charter schools be organized as private nonprofit corporations is conclusive on this issue. By law, charter schools must be private nonprofit corporations. A private nonprofit corporation is simply not a local government and is not a political subdivision of the state.

The requirement that charter schools be a private corporation is entirely consistent with the purposes served by such schools. The Public School Academies Act was purposefully adopted to provide an alternative to school districts by bringing the competition of private enterprises into the education. Finding them to simply be another form of government is antithetical to charter schools' very purpose.

Simply put, a charter school cannot be both a private nonprofit corporation and a local government under the Headlee Amendment. To reach such a finding, one has to ignore the long-stablished rule of common understanding and then either adopt a prohibited functional equivalency test or find, against the existing rules of constitutional construction, that the meaning of constitutional terms can be altered and amended at-will by the legislature.

2. The Rule Of Common Understanding Finds That Charter Schools Are Not School Districts.

Michigan courts have long recognized that the primary rule of constitutional construction is the rule of common understanding. *Traverse City Sch Dist v Att'y Gen*, 384 Mich 390, 405; 185 NW2d 9 (1971). Citing Justice Thomas Cooley, the Court describes the rule and its primacy within our constitutional system:

> A constitution is made for the people and by the people. **The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it** 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it**, the intent to be arrived at is that of the people**, and it is not to be supposed that they have looked for any dark or abstruse meaning in

> the words employed, **but rather that they have accepted them in the sense most obvious to the common understanding,** and ratified the instrument in the belief that that was the sense designed to be conveyed.' Citing (Cooley's Const Lim 81)." (Cooley's Const Lim 81). [*Traverse City Sch Dist v AG*, 384 Mich at 405 (emphasis added). See also *Council of Orgs And Others For Educ About Parochiaid*, 455 Mich 557, 569, 576, 583; 566 NW2d 208 (1997) (Examining the common understanding of what a 'public school' was at the time of the 1961 Constitutional Convention.)].

Under the rule of common understanding, certain principles are clear. First, "a provision must be given the interpretation that the great mass of people would give it. The intent to be arrived at is that of the people." *Traverse City Sch Dist*, 384 Mich at 405. Next, courts "must construe [constitutional provisions] as the people did in their adoption." *Lockwood v Comm'r of Rev*, 357 Mich 517 at 555 (1959) (emphasis added). And, finally, "the circumstances surrounding the adoption of the constitutional provision … may be considered" to clarify a term's meaning. *Traverse City Sch Dist*, at *Id*.

Justice Cooley further instructs that written instruments should receive an unvarying interpretation and uniform practical construction, notwithstanding changes in circumstances:

> A **constitution is not to be made to mean one thing at one time, and another at some subsequent time** when the circumstances may have changed as perhaps to make a different rule in the case seem desirable A principal share of the benefit expected from written constitutions would be lost if the rules they established were so flexible as to bend to circumstances or be modified by public opinion." [1 Cooley's Constitutional Limitations (8th ed), at 123-4 (emphasis added)]

Charter schools cannot be considered school districts under art. 9, § 33 of the Headlee Amendment because they do not comport with the voters' common understanding of that term at the time of the Amendment's adoption in 1978.

In 1978, the commonly understood meaning of the term "school district" was a public school system operating within geographically limited areas of the state under an elected governing

board empowered to act on behalf of these regions. See 1976 SC 380.626; 1147, 73. 111, 211, 317 and 411; 85, 143, 250, 361 and 431 (describing school district residents and boundaries, elected boards, and school boards' power to act on behalf of the district for Primary, Fourth, Third, Second and First Class Districts). See also *Detroit Edison v East China Sch Dist*, 366 Mich 638; 115 NW2d 298 (1962); and *Foster v Bd of Educ*, 326 Mich 272; 40 NW2d 310 (1949) (elected school boards' operation within defined geographical territories and school districts' power to borrow funds after a vote of qualified electors).

The implementing legislation of the Headlee Amendment confirms the common understanding of school districts as political subdivision of the state, based on school districts having as their **primary purpose** serving residents of a limited geographic areas and the power to act on behalf of persons in that area. The implementing legislation defines "units of local government" as:

> [A] political subdivision of this state, including school districts ... **if the political subdivision has as its primary purpose the providing of local governmental service for citizens in a geographically limited area of the state and has the power to act primarily on behalf of that area**. **[**MCL 18.1115(5) (emphasis added)].

These defining characteristics of a political subdivision of the state are further confirmed by court decisions and findings of the Michigan Attorney General. In *People v Egleston*, 114 Mich App 436; 319 NW2d 563 (1982), the Court of Appeals considered the following factors to reach a conclusion that a community college district constituted a political subdivision of the state:

> The attributes which are generally regarded as distinguishing a political subdivision are its existence for the purpose of discharging some function of local government, **its prescribed area** and **its authority for self-government** through officers selected by it. [Id. at 440 (citing *Dugas v Beauregard*, 155 Conn 573, 578; 236 A2d 87 (1967), *McClanahan v Cochise College*, 25 Ariz App 13, 16; 540 P2d 744 (1975)].

Egleston accurately reflects voters' commonly held understandings of a political subdivision of the state shortly after Headlee's enactment.

Likewise, the Michigan Attorney General has found similarly:

> The political divisions of the state are those which are formed for the more effectual or convenient **exercise of political power within the particular localities** … These distinctive marks are, I think, that they **embrace a certain territory and its inhabitants**, **organized for the public advantage**, and **not in the interest of particular individuals or classes**; that their chief design is the exercise of governmental functions, and that **to the electors residing within each is, to some extent, committed the power of local government, to be wielded either mediately or immediately, within their territory, for the peculiar benefit of the people there residing**. Bodies so constituted are not merely creatures of the state, but parts of it, exerting the powers with which it is vested for the promotion of those leading purposes which it was intended to accomplish, and according to the spirit which actuates our republican system. They are themselves commonwealths; and therefore are properly entrusted with the sovereign power of taxation to meet their own necessities. [OAG 1963-1964, No. 4037, p 3 (January 2, 1963) (internal citation and block notation omitted).]

In 1978, voters' common understanding of the term "school districts" was either Primary, Fourth, Third, Second, or First Class Districts. 1976 SC 380.11. Each possessed the above-stated characteristics. Charter schools do not.

The legislature provides for all charter schools to operate and serve citizens outside of any bounded geographically limited areas. Schools authorized by the governing boards of state public universities and federal tribally controlled community college boards can be located anywhere in the state and take students from any location. MCL 380.502(2)(c),(d) and 552(17)(b). Charter schools authorized by community colleges and located on the grounds of active or closed federal military installations outside the bounds of any community college district can also issue contracts for charter schools to operate absent location limits. *Id*. at § 502(2)(c) (providing that charter

schools authorized by community college boards shall not operate in a school district organized as a school district of the first class). The private nonprofit corporations established by charter schools in furtherance of their public purposes similarly have no location restrictions. *Id*. at § 504a(f). Even school districts, intermediate school districts, community college boards and two or more agencies acting jointly can each authorize one cyber school to operate and serve up to 10,000 students outside any defined geographic areas. *Id*. at § 552(6)(a)-(c) and (e).

That charter schools do not have **a primary purpose** of serving citizens in a geographically limited area of the state and do not have the power to act primarily on behalf of that area's residents is confirmed by two Attorneys General of the State of Michigan. Michigan Attorney General Mike Cox found:

> General powers school districts, MCL 380.11a(1) and first class school districts, MCL 380.401, occupy territory within defined geographical boundaries and have residents who live within those boundaries. See MCL 380.626. Public School Academies, in contrast, have no defined geographical territory assigned to them. **Accordingly, section 1147, which gives a school-aged person who is a "resident of a school district" the right to attend school in that district, has no application to public school academies.** [OAG, 2003-2004, No 7154, p 122 (March 31, 2004) (emphasis added)].

This Attorney General's opinion affirmed a prior determination of that office also finding that "the Legislature did not intend to equate [charter schools] with school districts as a general proposition" when it opined that "[charter schools are not school districts] for all purposes of the [Revised School] Code; particularly for purposes of section 1147." *Id*. (affirming OAG, 1995-1996, No 6915, p 204 (September 4, 1996)).

In 1978, Michigan voters also would have understood that school districts possessed significant sovereign powers. *Fizer v Onekama Consol Schs*, 83 Mich App 584, 587; 269 NW2d 234, 236 (1978) (Taxing authority) and *Bd of Educ v Michigan Bell Tel Co*, 51 Mich App 488,

491, 495; 215 NW2d 704, 705-6 (1974) (Police and eminent domain powers).

Charter schools possess insufficient sovereign powers when measured against school districts in 1978. First, school districts in 1978 possessed full taxation power. 1976 SC 380.1211(1). In contrast, charter schools cannot levy taxes in any form for any purpose. MCL 380.503(9). Moreover, there is no citizen oversight in the governance structure of charter schools. The schools are accountable to their directors, not residents of a defined geographic area. That charter schools possess neither the taxation power nor citizen oversight differentiates them from local governments contemplated by the Amendment's drafters. See Ex. 8, at 3.

In addition to exercising a comprehensive police power throughout their respective governmental units, the governing boards of school districts in 1978 regulated personnel, health and transportation matters for the districts. 1976 SC 380.1231-2, 1252 and 1321(regulating employees, nursing services and transportation). Conversely, charter schools possess no general police power or regulatory powers. MCL 380.504(2).

Importantly, the legislature excludes the descriptor 'political subdivision of the state' from its detailed definition of charter schools, despite extensive use of the term throughout Michigan statutory law to describe school districts and other public entities.

Under the Headlee Amendment, local governments must be political subdivisions of the state. An examination of the Headlee Amendment's implementing legislation, relevant case law, and Michigan Attorney Generals' opinions consistently reflects voters' common understandings for these terms at the time of the Amendment's enactment and voters' understandings departs drastically from the way the legislature defines charter schools and the substantive characteristics of those schools.

3. This Courts' Holding in Paquin v City of St Ignace Prohibits Functional Equivalency Tests When Applying Constitutional Terms

In this case, the Defendants argued that charter schools are political subdivisions of the state because they are the functional equivalents of school districts. This Court has rejected functional equivalency as a basis for determining the meaning of constitutional terms.

In *Paquin v. City of St. Ignace*, this Court reaffirmed long-standing principles of constitutional interpretation, writing that:

> The interpretation of a constitutional provision is a question of law, which we review de novo. The primary objective of constitutional interpretation is to realize the intent of the people by whom and for whom the constitution was ratified. Accordingly, we seek the common understanding of the people at the time the constitution was ratified. This involves applying the plain meaning of each term used at the time of ratification. [504 Mich 124, 129-30; 934 NW2d 650 (2019)]

In *Paquin*, the Court considered whether a federally recognized Indian tribe was the functional equivalent of a local government under Const 1963, art 11, § 8 (barring certain persons from holding elective office in local government). *Id*., at 128. The Attorney General argued that because the tribe functioned as a local government, the tribe should be found equivalent to a local government under art 11, § 8. *Id*. at 135. The Court however rejected the functional equivalency argument of the Attorney General.

The Court reasoned to agree:

> To agree [with Attorney General's functional equivalency argument] **would be to write language into our Constitution that is not there** and that the people of this state did not choose to include. **Nowhere in our Constitution does it state that local-government equivalency suffices**; the provision simply states "local . . . government." **It is thus irrelevant to note all of the functions that the Tribe provides that are similar to that** of, for example, the city of St. Ignace—that **the two entities function similarly in some respects does not make them the same**. [*Id*.]

These principles apply equally in this case.

To find that charter schools are political subdivisions of the state or school districts as those terms are used in art. 9, § 33 would be to write new language into the Headlee Amendment. Whether they function similarly is irrelevant. The entities are not the same. Charter schools are private nonprofit corporations and not school districts as that term was understood at the time that the Headlee Amendment was adopted by the voters of this state.

That charter schools did not exist in 1978 further argues against a finding that they are included within the Amendments' definitions. As noted by the Court in *Paquin*:

> **That the Tribe defies easy characterization lends further support to the finding that its inclusion under the term "local . . . government" would be to reach for a strained interpretation of that term**. Because the cornerstone of constitutional interpretation is to seek the common understanding of the people, we therefore find that the Tribe is not a "local . . . government" as that term is used in Const 1963, art 11, § 8. [*Paquin*, 504 Mich at 136].

Since charter schools similarly defy easy categorization, the same result should follow — a finding that charters schools are not local governments as that term is used in Const 1963, art 9, § 30.

The Court of Appeals failed to recognize this Court's holding in *Paquin* and entirely failed to apply the principles stated in that case.

4. The Court Of Appeals Decision Violates Clear Constitutional Principles Of This Court.

In the present action, the Court of Appeals' decision clearly erred in finding that "state funding of PSAs constitute[d] state funding of a local unit of government for the purpose of calculating state aid under the Headlee Amendment." Ex. 3, at 7.

The court's decision errs by incorrectly identifying the issue as a school funding question; failing to apply the correct rules of constitutional interpretation and, as noted above, by failing to apply the holding of *Paquin* to the facts of this case.

Significantly, the Court did not hold that charter schools *were* school districts, political subdivisions of the state, or local governments under the Headlee Amendment. Rather, the decision bypassed any analysis of art. 9, §§ 30 and 33's terms. Instead, the court mischaracterized Plaintiffs' claims as involving a question of charter school *funding*. This case however does not involve charter school funding issues.

There is not dispute that the Public School Academies Act provides that charter schools are "schools districts" **for the limited purpose of receiving funding** under art 9, § 11 of the state Constitution.[11] No provision of art 9, § 11 requires that all payments from the school aid fund must also constitute spending in the form of aid paid to units of local government under art 9, § 30.

Plaintiffs in this case do not argue that charter schools cannot receive funding from the state under art 9, § 11. They can. Rather, Plaintiffs argue that the state's payments to charter schools are not payments to local governments as that term is used in the Headlee Amendment and as a consequence cannot be counted as spending in the form of aid paid to units of local government under art 9, § 30. By injecting the issue of school funding into the analysis, the court bypassed core constitutional principles and erred in its decision.

As noted above in a quote from Justice Cooley, "[a] constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have

[11] Absent from the Act however is any reference to charter schools being school districts for any purposes of the Headlee Amendment.

changed." 1 Cooley's Constitutional Limitations (8th ed), at 123-4. The meaning of words used are determined by "applying the plain meaning of each term used at the time of ratification." *Paquin*, 504 Mich. at 129-30. And, the plain meaning is that which "most obvious to the common understanding" at the time of ratification. *Traverse City Sch Dist*, 384 Mich at 405. The Court of Appeals decision ignored each of this principles.

The Court of Appeals, in fact, specifically found that "[i]t is unlikely that the Headlee voters specifically intended that aid to PSAs would count as state aid to local governments considering." Ex. 3, at 8. Applying the rules of constitutional interpretation, this finding alone compels a determination that charter schools are not local governments for purposes of the Headlee Amendment. Yet, the court went further and recognized that charter schools are not political subdivisions of the state under the Headlee Amendment, noting that "PSAs are not geographically limited, are not governed by an elected board and cannot levy taxes." Ex. 3, at 8, fn 6. Despite these findings, the decision did not reach a determination that charter schools are neither local governments nor political subdivisions of the state.

Instead the court found that the legislature can change the meaning of constitutional terms at will unless a particular provision explicitly states otherwise.

The decision found that "[b]ecause state funding for PSAs is considered aid to a school district … we see no basis to not count those monies" under the Headlee Amendment. Ex. 3 at 8. The court further reasoned that:

> [T]here is no language in the Headlee Amendment showing an intent to limit this ongoing authority of the state to define … school districts … and [we] find no evidence [on the record] that would demonstrate an intent … to limit the state's authority to define … school districts or to specifically bar the state from later defining the term "school district" to include PSAs. [Ex. 3, at 8-9]

There was equally no evidence on the record to establish that the fundamental characteristics of

school districts as political subdivisions of the state had ever been fundamentally changed by the legislature during the history of the state, until the significant changes enacted by the Public Schools Academies Act. In the absence of a history of such changes, it is entirely unreasonable to conclude that voters would have anticipated such changes when they adopted the Headlee Amendment in 1978.

More importantly, the court's reasoning defies each of the above-stated fundamental rules of constitutional construction and turns them on their heads. The decision finds that constitutional terms can be changed by the legislature and can mean one thing at one time and yet another at a later time when circumstances have changed.

This is clearly contrary to the fundamental principles articulated by Justice Cooley. See also *Pfeiffer v Bd of Educ*, 118 Mich 560, 564, 77 NW 250 (1898) (Constitutional terms "could not mean one thing at the time of its adoption, and another thing today, when public sentiments have undergone a change." citing *McPherson v. Secretary of State*, 92 Mich 377 (16 L.R.A. 475, 31 Am. St. Rep. 587)). The court's interpretation further contradicts the rule of common understanding by finding that the meaning of constitutional terms is understood by the changing will of the legislature rather than by examining the plain meaning constitutional terms as they would have been understood by the voters at the time of ratification.

It has long been understood that the meaning of constitutional terms cannot be changed by a statute enacted by the legislature. Rather, courts hold that changing the meaning of constitutional language requires amendment. See *AG ex rel Brotherton v. Common Council of Detroit*, 148 Mich. 71, 100; 111 NW 860 (1907) ("Conditions, the ideas, and wishes of the people may change, but Constitutions do not. What they mean when adopted they mean forever, unless changed by amendment.") and *Pillon v Attorney General*, 345 Mich 536, 547; 77 NW2d 257 (1956) (The

legislature does not have "any right to amend or change a provision in the Constitution"). The Court of Appeals failed to apply these principles when it denied summary disposition to Plaintiffs on Count II of their Complaint.

CONCLUSION & RELIEF

The Court of Appeals clearly erred in reaching its decision on Count I and on Count II of Plaintiffs' Complaint.

The court failed to properly consider the anti-shifting purpose of the Headlee Amendment and failed to apply the language of art 9, § 25, embodied in §30. Spending from Prop. A revenue that is paid to local governments clearly results from a tax shift that burdens local government when included within calculations of payments in the form of aid to local governments under §30 that then supplants and reduces other payments previously made to local governments, as a group. As a result, Plaintiffs request that this Court overturn the decision of the Court of Appeals and direct that judgment be entered in favor of the Plaintiffs on Count I.

The court further erred in applying the incorrect standards to the question of whether public school academies are local governments under the Headlee Amendment. Public school academies (i.e. charter schools) are clearly not political subdivisions of the state and cannot be found to be local governments under §30. State spending that is paid to public school academies therefore cannot be included within calculations of spending in the form of aid that is paid to local governments for purposes of §30. As a result, Plaintiffs request that this Court overturn the decision of the Court of Appeals and direct that judgment be entered in favor of the Plaintiffs on Count II of their Complaint.

Respectfully Submitted,

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Date: December 10, 2019

STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

TAXPAYERS FOR MICHIGAN CONSTITUTIONAL GOVERNMENT, STEVE DUCHANE, RANDALL BLUM, and SARA KANDEL,

Plaintiffs,

Supreme Court Case No._____
Court of Appeals Case No. 334663

v.

THE STATE OF MICHIGAN, THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET OF THE STATE OF MICHIGAN; and the MICHIGAN OFFICE OF THE AUDITOR GENERAL.

Defendants.
_____/

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2019, I:

a. Electronically filed the attached *Application For Leave To Appeal By Plaintiffs Taxpayers For Michigan Constitutional Government, Steve Duchane, Randall Blum, And Sara Kandel* with the Clerk of the Michigan Supreme Court using the MiFILE system, which will send notification of such filing to all electronic case filing participants;

b. Mailed via first class mail with the United States Postal Service and emailed the attached *Application For Leave To Appeal* to all other parties; and

c. Electronically filed *Notice of Filing of the Plaintiffs' Application* with the Clerk of the Michigan Court of Appeals.

Respectfully Submitted,

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