STATE OF MICHIGAN
IN THE COURT OF APPEALS

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.

Court of Appeals No. 334663

DEFENDANTS' BRIEF IN SUPPORT OF THEIR ANSWER TO PLAINTIFFS' COMPLAINT

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Dated: November 1, 2016

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STATEMENT OF JURISDICTION

Defendants agree that the allegations regarding the violation of the Headlee Amendment, Const 1963 art 9, §§ 25-34 are properly brought in this Court and this Court has original jurisdiction pursuant to Const 1963 art 9, § 32 and MCL 600.308a(1). Defendants do not agree that this Court has jurisdiction over all of the claims brought by the Plaintiffs as numerous allegations and requests for relief improperly sound in mandamus rather than relief that can be provided by the Headlee Amendment.

COUNTER-STATEMENT OF QUESTION INVOLVED

1. Have Plaintiffs stated a claim upon which relief can be granted by alleging that the state improperly included spending for funded mandate requirements under §§ 29 and 30 when they do not set forth with particularity which § 29 provision they are alleging, the type and extent of harm, any particular mandates, the specific activities/services/statutes involved, the amount of any purported shortfall, or any statutes relating to the purported mandates?

   Plaintiffs' answer: Yes.

   Defendants' answer: No.

2. Are Plaintiffs' claims barred under res judicata when their claims are based on mandates and legal requirements that existed during the pendency of previously resolved suits to enforce the Headlee Amendment that were litigated by more than 900 school districts and taxpayers since 2000?

   Plaintiffs' answer: No.

   Defendants' answer: Yes.

3. Have Plaintiffs properly invoked this Court's jurisdiction over Headlee Amendment claims pursuant to MCR 7.206(E) when they allege statutory violations of the Headlee Amendment implementing legislation, MCL 21.235 and MCL 21.241, which do not constitute violations of the Headlee Amendment itself?

   Plaintiffs' answer: Yes.

   Defendants' answer: No.

4. Does article 9, § 30 require the State to include all revenue paid to school districts, including the additional revenue allocated by Proposal A, in its calculation of the total proportion of state spending to local units of government?

   Plaintiffs' answer: No.

   Defendants' answer: Yes.

5. Should state funding to charter schools, which are public schools, be included in the calculation of total state spending paid to all units of local government required by art 9, § 30?

   Plaintiffs' answer: No.

   Defendants' answer: Yes.

6. Is spending sent to local governments for local transportation purposes properly included in the art 9, § 30 calculation?

   Plaintiffs' answer: No.

   Defendants' answer: Yes.

7. Does the State pay in excess of the minimum proportion of state spending required under art 9, § 30?

   Plaintiffs' answer: No.

   Defendants' answer: Yes.

INTRODUCTION

This taxpayer suit challenges Michigan's calculation of the proportion of total state spending paid to all local units of government under the Headlee Amendment. At its core, the complaint asserts a legal question—whether certain categories of state spending, including guaranteed state spending to local school districts required by Article 9, § 11 of Michigan 1963 constitution, are state spending to local government under § 30. Because the assertions are based on incorrect legal interpretations, this Court should dismiss the compliant.

Headlee actions are not meant to be filed with a scattershot approach as there are very specific requirements in MCR 2.112(M) that must be met. Plaintiffs' documents may appear voluminous but they are nothing more than redundant recitals of general allegations over multiple streams of funding in the amount of billions of dollars that has occurred for over two decades. The general overarching nature of the allegations lack any analysis or factual support, and, therefore, this Court should dismiss the complaint.

Many Headlee taxpayer suits have been litigated throughout the decades since the Headlee Amendment was passed. Hundreds of taxpayers and school districts have brought suit to enforce the provisions of the Headlee Amendment disputing the methodology and the resulting funding issued to local governments. This case is brought by the nonprofit Taxpayers for Michigan Constitutional Government and individual taxpayers on behalf of every unit of local government in the state because their claims go to the entire system of how money is distributed to local governments.

Plaintiffs' claims fail based on several dispositive questions of law that justify peremptory dismissal. As a preliminary matter, Plaintiffs' complaint fails to plead with particularity the factual basis for the alleged violation of the Headlee Amendment. Additionally, the present taxpayer suit is barred by the doctrine of res judicata because the taxpayer claims

here could have been brought and resolved in any number of prior taxpayer suits to enforce the provisions of the Headlee Amendment. And the claims for declaratory relief relative to the implementing act are not properly before the Court. Finally, of primary importance, the State properly calculates the proportion of total state spending paid to all units of local government, taken as a group, under the plain text of article 9, § 30.

Thus, Plaintiffs' complaint presents preliminary legal questions that are dispositively decided in favor of Defendants and the complaint otherwise fails to comply with the court rules. This Court should dismiss Plaintiffs' complaint in its entirety.

COUNTER-STATEMENT OF FACTS

I. The Headlee Amendment was born from Michigan's taxpayer revolt

Plaintiffs correctly note that the Headlee Amendment was born nearly forty years ago as part of the nationwide "taxpayer revolt". Michigan's taxpayers perceived excessive spending at both state and local levels and wanted relief in the form of lower taxes. *Durant v State Bd of Educ*, 424 Mich 364, 378 (1985) ("*1985 Durant*"). The Headlee Amendment provided the framework for such relief by creating a series of tax limitations that could only be exceeded by voter approval. The goal was to keep the size of government, and its ability to raise taxes, under direct taxpayer control. *Id*. at 383. The limitations are summarized in Const 1963 article 9, § 25 and implemented in §§ 29 and 30. *Durant v State Dep't of Educ (Durant II)*, 238 Mich App 185, 193 (1999).

The plain language of Headlee's implementing sections clearly demonstrate the goal of taxpayer control over government expansion and taxation. Section 26 keeps the size of state government in check, by limiting the State's total revenue raised from State created sources. If the limit is exceeded by more than 1%, the State must issue a refund to the taxpayers. Local governments are kept in check by § 31, which prohibits the creation of new taxes, or increasing existing taxes, without voter approval. *Michigan's Tax Expenditure Limit, Issues for Implementation*, Senate Fiscal Agency 1979, Ex A. To prevent local governments from indirectly raising taxes by over assessing properties for ad valorem tax revenue, § 31 also ties valuations of existing property to the rate of inflation among other limitations. *Id.* at 18.

Because of the limits placed on both state and local units of government, Headlee foresaw the possibility of the State shifting responsibility for services to local governments. *1985 Durant*, 424 Mich at 379. Section 29 prevents this as it requires the State to continue paying its same proportionate share to local governments for mandated programs, activities, and

services that it did in fiscal year 1978-79. Any increases in scope or newly created programs, activities, or services mandated by the State must be completely funded by an appropriation. In other words, the State must keep the status quo and cannot require local governments do anything more than was already being required in 1978-79 without first paying for it. *Durant II*, 238 Mich App at 208.

Section 30 follows § 29 and requires the State to maintain the same percentage of its total budget, minus federal aid, paid to local governments as existed in 1978-79. The State determined that proportion to be 41.61%; however, that was adjusted to 48.97% in 1993. Nothing in the plain text of § 30 limits the categories of state spending that are included in "total state spending paid to all units of local government," taken as a group, or requires the State to allocate a fixed percentage of money for a particular purpose or to a specific local unit of government. Section 30 just requires the State ensure that at least 48.97% of its total budget, excluding federal aid, is paid to local units of government in the statewide aggregate. The Legislature still has discretion over the actual dollar amount paid to a particular local unit of government and whether the money is required to be used for a particular purpose.

School aid funds paid to local school districts were included as "state spending to local government" in the State's calculation under § 30. Prior to the passage of Proposal A, the State School Aid Act provided two types of funding: restricted (also referred to as categorical) and unrestricted. *Durant II*, 238 Mich App at 194. Unrestricted aid constituted a general grant of funds based in part on pupil membership in the school district. *Id.* at 195. The amount of unrestricted funds allocated per pupil equaled the difference between the amount guaranteed (by the Legislature) and the amount of per pupil funds generated by local revenues. *Id.* The State only provided unrestricted funds to those districts that did not have enough of a local property tax base to meet the minimum guaranteed per pupil funding determined by the Legislature.

A. High Property Taxes and Inequitable School Funding Lead to Proposal A

Local property taxes were the primary source of funding for public school operations and capital financing. *School Financing Reform in Michigan Proposal A: Retrospective*, Office of Revenue and Tax Analysis, December 2002, Exhibit B. Despite Headlee's enactment, Michigan's property tax burden remained above the national average. *Id.* at 1. Between 1980 and 1993, the total property tax rate for school operations increased 135.5%, outpacing inflation at a 63.7% increase. *Id.* at 4. Despite increased taxes, public school enrollment declined 11% during that time. *Id.*

Despite having above average property taxes funding inequities among school districts continued to grow, even with the State providing aid to those districts with lower property tax revenues. *Id*. at 1. This prompted the Legislature to pass PA 145 of 1993 which eliminated the authority of school districts to levy millage on real property for local and intermediate school district operating expenses. *Durant II*, 238 Mich App at 196. This brought immediate property tax relief, but left public schools with nearly $7 billion in lost revenues. *Id.*

As a result, Proposal A was put on the ballot and the voters were asked to approve new revenue sources to fund public schools. *School Financing Reform in Michigan,* Ex B at 4, Exhibit ____. With Proposal A's passage, schools would now be primarily funded by the State with revenue generated from various state taxes including a 2% sales tax increase, 6 mill State Education Tax, 50 cent cigarette tax increase and a new real estate transfer tax. *Id.* For example, in fiscal year 2007, 75% of the funding received from local school districts came from the State, the remaining 25% from local revenues. *Adair v People*, 279 Mich App 507, 519-20 (2008). By contrast, in the 1989-1990 school year (pre-Proposal A), locally generated revenues funded 63% of school operation costs with state-generated revenues funding the remaining 37%. *Id.*

In addition to public school funding changes, Proposal A limited property tax increases by reducing millage rates and changing how property is assessed. *School Financing Reform in Michigan*, Ex B at 8. Taxes were calculated based on taxable value instead of equalized value. *Id.* at 10. Proposal A was successful in bringing property tax relief as average statewide millage rates decreased an average of 30.6%. *Id*. at 8. Instead of having above average property taxes and below average sales taxes, Michigan now had a tax system more in line with the "typical" tax system found in other states. *Id.* at 20.

II. Plaintiff's Claims on Unfunded and Funded Mandates

Plaintiffs claim in Count IV that Defendants violated the Headlee Amendment by including funding for state mandates, as required by § 29, in its calculation of spending in the form of aid to local governments under § 30. But Plaintiffs do not set forth the type of claim (maintenance of service or unfunded mandate), specific mandates at issue, type and extent of any harm, amount of the purported shortfall, or statutes relating to the unidentified mandates.

Furthermore, the examples of prior funded mandates that Plaintiffs cite (*Mahaffey v Attorney General*, 222 Mich App 325 (1997); *Durant II* (1999), and *Adair v Michigan*, 486 Mich 468 (2010) ("*Adair I*")) all concern mandates that existed during the pendency of the prior taxpayer litigation beginning with *Adair v State*, 470 Mich 105 (2004) ("*2004 Adair*"), which was filed in 2000. 930 plaintiffs in total - 465 public school districts and a taxpayer from each district - later filed three additional *Adair* lawsuits seeking declaratory judgment to enforce the Headlee Amendment that included claims the state failed to provide funding related to various school mandates, underfunded mandated activities, and improperly allocated that portion of the per pupil Proposal A foundation allowance over and above the base level required by Proposal A to satisfy the State's Headlee obligations. *Adair v State*, 497 Mich 89 (2014) (*Adair II*); *Adair v*

Mich Dep't of Ed, ___ Mich App ___ (2016) ("*Adair III*"). All three cases were resolved on the merits – *Adair I* in the plaintiffs' favor, *Adair II* and *III* in the State's favor based on pleading deficiencies and res judicata, respectively.

Finally, Plaintiffs seek mandamus as to the reporting requirements of MCL 21.235 and MCL 21.241. (Pls' Compl, Prayer for Relief, ¶ f.) Plaintiffs do not show a clear legal right to mandamus, and lack standing to allege statutory violations.

III. Charter Schools

Charter schools, also known as public school academies, have been available to Michigan students for over two decades. These schools allow any student, regardless of the independent ability to pay, to choose what school is best for them because charter schools are unable to charge tuition. The Michigan Supreme Court has found that the people of Michigan would have considered charter schools to be public schools in 1961 during the constitutional convention. *Council of Organizations & Others for Educ About Parochiaid v Governor*, 455 Mich 557, 576 (1997).

Plaintiffs argue that the people of Michigan would not have intended charter schools to be included as a "local government" as defined in Article 9, § 33 even though the definition is very broad and includes not just "school districts" but also "authorities created by the state, and authorities created by other units of local government." Additionally, charter schools are authorized by local government bodies such as local school districts, intermediate school districts, community colleges, and public state universities.

Plaintiffs complain that charter schools are not school districts under § 33 because of the fact that some are online schools. However, it is hard to fathom that the majority of the 1978 public could have imagined what would be available today because of the internet. Charter

schools are public schools, and they are open to all eligible Michigan students at no personal cost. These charter schools do not levy property taxes and rely solely on per-pupil funding. Any revenue generated by the property taxes, excluding the per-pupil funding for the charter school student, paid by the students and their families go to the local school district and not the charter school. All public schools in Michigan are state creations and charter schools are no different.

IV. State Trunk Line Road Fund

The State Trunk Line Highway System Act, often called Act 51, controls funding for various state transportation programs. MCL 247.651 et seq. Act 51 establishes separate funds, allocates revenue to those funds, and dictates how each must be used and among those is the State Trunk Line fund (STF). MCL 247.661. Despite its name, the STF is not limited to use on Michigan's state trunk line roads; the STF has numerous purposes. MCL 247.661(1).

The statute explicitly dedicates certain STF resources to counties, cities, villages, and townships for local transportation projects. By way of example, the STF provides for spending to local governments through the transportation economic development fund (TEDF) for local transportation projects (MCL 247.661(1)(b); for rail grade crossing projects on local public roads and streets (MCL 247.661(1)(c)); and loans to local governments for local projects. MCL 247.661(4). The STF is also a funding source for bonding and payments of bond interest for local governments associated with local transportation projects. MCL 247.661(1)(a)(iii); 247.668c(6); 247.668d.

The STF does, as the name indicates, also serve as a funding source for state trunk line road and bridge projects. MCL 247.661(1)(f)-(g). In order to construct, maintain, and improve roads that the State is responsible for, it may enter contractual agreements with private sector companies and local road commissions to complete work on a road, street, bridge, or related

projects. MCL 247.661(h). The State, through its Department of Transportation (MDOT), has contracted with various local road agencies and private sector companies to complete work on trunk line roads. (Patrick McCarthy Aff, Ex C.) The Legislature also provides that certain funds originating in the Michigan Transportation Fund (MTF) be dedicated for transfer to the STF where portions are then spent on local governments for local transportation projects. MCL 247.660(1)(e), (f), (l); (Patrick McCarthy Aff, Ex C.)

STF contractual payments for maintenance of state roads were not counted as state spending to local government for purposes of § 30. (Patrick Mc Carthy Aff, Ex C.) Transportation spending to local governments, including payments for local transportation projects or other transportation fund that flowed through the STF, were separately tracked and included in the budget § 201 report. (Patrick McCarthy Aff, Ex C.) Only $84 million from the STF was counted and reported as aid to local governments under Article 9, § 30.

SUMMARY OF ARGUMENT

Plaintiffs' allegations under §§ 25 and 30 of Article 9 of the Michigan Constitution appear, at first blush, to be unique. Plaintiffs do not list any specific mandate that they claim was unfunded or underfunded. Instead, through vague and unsupported allegations, Plaintiffs attack the entire formula and allocation of state spending. In essence, *you are doing it wrong and we challenge the Headlee part*. Simply announcing an unsupported legal position – a funding shortfall – without any factual or legal support is insufficient.

Beneath the annual budgetary decisions allocating state funds and the subsequent expenditures carrying out those directives is the same formula and same underlying analysis used in the budget process for decades. It is also the same funding system that was in place during dozens of Headlee cases decided by this Court. In that respect, this case is neither novel nor properly before this Court. Plaintiffs' allegations were or could have been addressed in prior litigation addressing Headlee as it relates to school funding, especially the plethora decided after Proposal A. Plaintiffs' claims are therefore, barred by res judicata as the multitude of previous lawsuits brought by hundreds of taxpayers and school districts either have or could have litigated and resolved these issues.

Beginning in 1994 and based on clear voter directives, certain property tax revenue was created at the state level (state revenue from a state source) to be spent on public schools (spending to local governments) due to Proposal A. This constitutional amendment was overwhelmingly approved by the people with full knowledge of the Headlee provisions. Plaintiffs repeatedly attempt to have this Court look away from the plain language of the Headlee Amendment by arguing that the voters would not have intended such a result. This argument is without merit as the intent of voters could not be clearer than the basic wording that they approved.

Plaintiffs complain that charter schools should not be considered payments to local governments for purposes of the Headlee Amendment. Plaintiffs again argue the "intent" of the voters divorced from the plain language of the Headlee Amendment. The Michigan Supreme Court held that voters at the 1961 constitutional convention would have considered charter schools to be public schools. Plaintiffs seemingly disregard this fact by arguing that in 1978, the same voting public that only 17 years earlier would have considered charter schools to be public schools would no longer believe that charter schools were "school districts" or "authorities created by the state" or "other units of local government." Charter schools are public schools, authorized by political subdivisions of the State, operated by public officers, and thus constitute local governments under § 30.

The State Trunkline Fund (STF) includes, on an annual basis and pursuant to Legislative appropriation, spending to local governments for local projects. The funds Plaintiffs refer to were accounted for separately and appropriately and were not included in the § 30 local government spending calculation. Plaintiffs' merely set forth a series of unsupported allegations which fall short of Headlee pleading requirements. Plaintiffs' trunk line claims fail legally, factually, and procedurally.

Finally, Plaintiffs basically allege that the State has not done anything correct with regard to the Headlee Amendment. However, Exhibit 1 of Plaintiffs' complaint actually shows that the State is not just meeting but exceeding the amount of funding to local governments by approximately $1.9 billion. Even if Plaintiffs had a sufficiently pled and supported claim, any calculation error would pale in comparison to the excess that is provided by the State to local governments. For the reasons stated above and set forth more fully below, Defendants ask that this Court dismiss Plaintiffs' complaint in its entirety.

STANDARD OF REVIEW

In an original action to enforce the Headlee Amendment, following receipt of the answer, the assigned panel may deny relief or grant peremptory relief without oral argument. MCR 7.206(E)(3)(b). Peremptory relief is appropriate because there is no genuine issue as to any material fact. The complaint presents a legal issue of whether certain categories of state spending are state spending to local government for purposes of article 9, § 30. Because the assertions are based on incorrect legal interpretations, this Court should dismiss the compliant.

ARGUMENT

I. Plaintiffs fail to sufficiently plead their claims

Plaintiffs' complaint and briefing lacks the specificity required by the court rules and the Michigan Supreme Court's Headlee Amendment precedent. Plaintiffs do not sufficiently identify the particular Headlee provisions they are challenging, and do not allege any specific mandates, specific amount of alleged underfunding, type or extent of harm, or state law provisions relating to any purported mandate/shortfall.

"It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Mitcham v Detroit*, 355 Mich 182, 203 (1959) (citation omitted). Similarly, in light of the heightened pleading requirements for Headlee claims, it is not Defendants' task to unravel and elaborate Plaintiffs' vague and unsupported claims.

A. Plaintiffs bear the burden of proof to plead their claims with particularity

The imposition of the burden of proof on a Headlee plaintiff is evident throughout Headlee cases. *Durant v Dep't of Ed (After Remand, On Third Remand*), 213 Mich App 500,

503 (1995); *Oakland Co v State*, 456 Mich 144, 166 (1997). Additionally, the requirement to demonstrate specific proof of an actual or anticipated funding shortfall is firmly rooted in Michigan's Headlee Amendment jurisprudence, and also codified in the Michigan Court Rules. *Adair II*, 497 Mich at 110.

MCR 2.706(E) governs actions to enforce the Headlee Amendment. Subsection (E)(1)(a) requires that a Headlee complaint "conform[ ] with the special pleading requirements of MCR 2.112(M)." In turn, MCR 2.112(M) requires that Headlee plaintiffs must identify with particularity:

- The factual basis for the alleged violation;
- For § 29 claims, the type and extent of harm;
- Whether the alleged violation involves the first or second sentence of § 29;
- For § 29 claims involving the second sentence, the activity or service involved;
- All statutes involved with the case.

The Michigan Supreme Court promulgated and has construed the above pleading requirements in accordance with its own Headlee precedents: "a plaintiff must allege and prove the specific amount of the purported funding shortfall in order to establish the 'extent of the harm' caused by the Legislature's inadequate funding." *Adair II*, 497 Mich at 108. (*See also Oakland Co*, 456 Mich at 166 ("future plaintiffs must allege the type and extent of the harm so that the court may determine if a § 29 violation occurred for purposes of making a declaratory judgment. In that way, the state will be aware of the financial adjustment necessary to allow for future compliance.")).[1] In *Adair II*, the plaintiff school districts brought an unfunded mandate claim under § 29 after the Legislature required that they report certain performance information,

[1] The 2004 *Oakland County* case preceded MCR 2.112(M), which was added in 2007. *Adair II*, 497 Mich at 106.

and appropriated funding amounts to reimburse the districts for the cost of the recordkeeping mandate. *Adair II*, 497 Mich at 95-97. The plaintiffs alleged that the appropriation was inadequate to compensate for the costs of the new requirements. *Id*. at 97. However, the plaintiffs indicated that they "would not attempt to prove a specific dollar amount of underfunding," but instead would "show through expert testimony that the Legislature's methodology to determine the requisite amount of funding was materially flawed." *Id*. at 99.

The Michigan Supreme Court rejected the plaintiffs' claims, holding that "[c]onsistent with prior caselaw and our court rules . . . a plaintiff must allege and prove the specific amount of the purported funding shortfall in order to establish the 'extent of the harm' caused by the Legislature's inadequate funding." *Id*. at 108. While the plaintiffs' expert concluded that the appropriation was lacking due to the state's inadequate and incomplete determination, the Court rejected the claim, reasoning that the plaintiffs' expert found alleged methodology problems, but "failed to offer *any evaluation of the extent of the shortfall*." *Id*. at 110. (Emphasis added).

B. Plaintiffs do not plead their unfunded mandate claims with any specificity, as required by the Court Rules and Michigan Supreme Court precedent

Here, like the *Adair II* plaintiff school districts, Plaintiffs have failed to state their claims with the requisite specificity, contrary to the dictates of the Court Rules and Michigan Supreme Court case law precedent. In their complaint and brief, Plaintiffs cite both sentences of § 29, and claim – without distinction of which provision they are alleging a violation – that payments to fulfill § 29's mandate funding requirement do not constitute payments in the form of aid to local governments. Furthermore, Plaintiffs allege that Defendants have included (unidentified) mandate payments in the calculation of aid to local governments, resulting in a shortfall (also unidentified). Plaintiffs cite various cases and drafters' notes, expound generally upon the intent of the Headlee Amendment as well as the consequences of subverting such intent, and allege that

the State should recalculate the proportion of local government spending. However, Plaintiffs' pleadings suffer the following defects:

- Plaintiffs fail to establish a factual basis for their claims.
    - Indeed, the sole factual allegation to be found in either the complaint or brief is paragraph 120, i.e., a conclusory assertion that for fiscal years 2015-2017, Defendants included state payments to local governments for judgments and settlements to resolve unfunded mandate lawsuits "and other appropriations" in its calculation of aid to local governments. Plaintiffs do not identify the particular judgments/settlement or "other appropriations."
- Plaintiffs fail to identify whether they are alleging a claim under the first sentence of § 29 (maintenance of support, or "MOS") or the second sentence (prohibition of unfunded mandates, or "POUM").
    - Plaintiffs appear to challenge the methodology concerning new mandates (POUM), and cite *1985 Durant*, 424 Mich 364, as the "leading case." (Pls' Br, at 40-41.) However, *Durant* dealt with first sentence of § 29, i.e., reduction of necessary costs for existing obligations (MOS), not new mandates. *Id*. at 379 (clarifying that "[t]he first sentence, *the one at issue in this case*, is aimed at existing services or activities already required of local government."). (Emphasis added).
    - Plaintiffs' unfunded mandate claims, therefore, are confused and unspecific. [2]
- Plaintiffs fail to identify the specific mandates/funding that are allegedly included in the purported miscalculation.
- Plaintiffs fail to identify the type and extent of the harm arising from the purported miscalculation.
- Plaintiffs fail to identify the activities or services involved with any particular mandates.
- Plaintiffs fail to identify any statutes relating to the purported mandates, which they allege without identification.

[2] Plaintiffs also mischaracterize the holding in *Oakland County v Department of Mental Health*, 178 Mich App 48 (1989). According to Plaintiffs, the case stands for the proposition that funding for state mandates cannot be included in spending to local governments for Headlee purposes. (Pls' Br, at 41-42.) However, the Court held that the funding could not be counted not because it related to state mandates imposed on local units of government, but because "the provision of mental health services is a state obligation." *Id*. at 59.

Unlike the *Adair II* allegations, however, Plaintiffs' pleadings purport to challenge not merely a particular mandate and its alleged lack of funding, but instead seemingly *any and all* (unidentified) mandates, as well as the *entire* calculation methodology under §§ 29-30. Defendants submit, therefore, that the pleading requirements serve an even greater purpose in this case than in the unfunded mandate cases. The *Adair II* pleadings failed such requirements, *Adair II*, 497 Mich at 108, 110; *a fortiori*, Plaintiffs' pleading shortcomings are fatal to its claims, which must be dismissed.

And this result makes sense in light of the underlying rationale of the heightened pleading requirements for Headlee claims. Although seemingly premised on legal issues, Plaintiffs' claims are not sufficiently pled either for a court to determine if a § 29 violation occurred (and thus, to craft a proper remedy), or to give the state notice that a financial adjustment is necessary for future compliance. *Adair II*, 497 Mich at 108.

II. Plaintiffs' claims are barred under the doctrine of res judicata

Plaintiffs' claims, which purport to raise §§ 29-30 allegations relating to state mandates, could have been brought and resolved in any number of prior Headlee cases, and, therefore, are barred under the doctrine of res judicata.

A. Prior taxpayer suits to enforce the Headlee Amendment

The history of Headlee litigation primarily comes from the *Durant* and *Adair* line of cases, which go back to initial filing of *Waterford Sch Dist v State Bd of Educ*, 98 Mich App 658 (1980), challenging a reduction of state aid per pupil funding for education as a violation of the Headlee Amendment, Article 9, §§ 25-34. Taxpayer suits have been pending in Michigan almost continuously for the past 30 years. Most recently this Court has addressed taxpayer suits to enforce the Headlee Amendment in the *Adair* cases:

- *2004 Adair*: the plaintiffs (taxpayers and school districts) brought a declaratory action alleging new and increased mandates relating to special education activities/services, and increased hours of pupil instruction. The Court found that several of the alleged mandates existed during the pendency of prior litigation, i.e., *Durant I* (1997), and thus dismissed the claims on res judicata grounds. The Court allowed one post-*Durant* claim to proceed for factual development, and dismissed the other claims because they alleged activities that were not mandates or were not new.

- *Adair I*: commenced in 2000, the plaintiffs – 930 in total, 465 public school districts and a taxpayer from each district – brought a declaratory action alleging that the state violated the POUM provision when it required the districts to collect, maintain, and report to the Center of Educational Performance and Information (CEPI) without appropriating sufficient funds to reimburse the districts for necessary costs of the new requirements. The Supreme Court agreed with the plaintiffs in finding a Headlee violation, and the Legislature appropriated a specific amount relating to CEPI compliance costs for the 2010-11 school year.

- *Adair II*: the plaintiffs – more than 450 school districts and a taxpayer from each district – brought a declaratory action challenging the appropriation to fund *Adair I* recordkeeping requirements. The Supreme Court affirmed summary disposition in favor of the State on the basis that the plaintiffs failed to meet their burden by refusing to prove a specific underfunding amount. (See *supra*, Part I.A.)

- *Adair III*: the plaintiffs – 465 school districts and a taxpayer from each district – again brought a declaratory action challenging the methodology for the CEPI appropriations. "Plaintiffs characterize[d] the funding scheme as an unconstitutional shell game." The Court of Appeals held that res judicata barred the plaintiffs' claims based on the action brought and decided in *Adair II*.

In short: the issue concerning the methodology for new mandate amounts/calculation has been fully litigated in various iterations for 30 years.

B. Application of Res Judicata

"The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action." *2004 Adair*, 470 Mich at 121. Furthermore, the doctrine "'relieve[s] parties of the cost and vexation of multiple lawsuits . . . ." *In re MCI*, 460 Mich 396, 431 n 7 (1999) (citation omitted).

The Supreme Court has concluded that res judicata applies to Headlee claims. *2004 Adair*, 470 Mich at 133; *Adair III*. The *2004 Adair* Court identified the elements for res judicata and its broad application:

> The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. *Sewell v Clean Cut Mgmt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).

2004 Adair, 470 Mich at 121.

In this case, all of the elements of res judicata are met, for which reason res judicata bars Plaintiffs' §§ 29-30 calculation/methodology challenges.

1. The prior actions were decided on the merits

All prior Headlee claims were fully resolved on the merits. In *Adair I*, the Court held that the State had committed a Headlee violation by failing to appropriate funding for CEPI compliance. In other words, the matter was fully adjudicated in the plaintiff school districts' favor, which determination constitutes a determination on the merits. *2004 Adair*, 470 Mich at 121 (prior matter was decided on merits when the Court "resolved the questions of the state's ability under Headlee to reduce funding, in the circumstances there presented, for existing programs."). In *Adair II*, the Court dismissed the plaintiffs' case on pleading grounds. Similarly, in *Adair III*, the Court dismissed based on res judicata grounds. As to both cases, involuntary dismissal operates as an adjudication on the merits under MCR 2.504(B)(3) ("[u]nless the court otherwise specifies in its order . . ., a dismissal under this subrule or a dismissal not provided for in this rule . . . operates as an adjudication on the merits"); *Adair III* (involuntary dismissal under MCR 2.504 operates as an adjudication on the merits.)

2. Both actions involve Plaintiffs' privies

Defendants acknowledge that Plaintiffs are not the same parties as in prior taxpayer suits to enforce the Headlee Amendment. But, the Michigan Supreme Court has held that, in a Headlee Amendment case, perfect identity of the parties is not required if their interests are adequately represented by the plaintiffs from the previous litigation. *2004 Adair*, 470 Mich at 122-23. Thus, subsequent actions may be barred as to the same parties *or their privies*. *Id.* "To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert." *Id*. at 122 (citation omitted). "The outer limit of the doctrine traditionally requires both a 'substantial identity of interests' and a 'working functional relationship' in which the interests of the nonparty are presented and protected by the party in the litigation." *Id*. (citation omitted). Concerning privity in Headlee cases, the *2004 Adair* Court explained as follows:

> In litigation concerning the MOS or POUM provisions of the Headlee Amendment, Const 1963, art 9, § 29, where a taxpayer or a local unit of government is suing the state, the issue is whether the Legislature's act is unconstitutional as it applies *not just to a single local unit of government*, but to *all local units affected by the legislation*. In such cases, the interests of all similar local units of government and taxpayers will *almost always be identical*. If the relief sought by one plaintiff to remedy a challenged action is indistinguishable from that sought by another, such as when declaratory relief is sought concerning an act of the Legislature *establishing the proportion of state funding for local government units*, the interests are identical.

Id. at 122. (Emphasis added).

Accordingly, the Michigan Supreme Court has found privity between different plaintiffs across Headlee claims. For example, in the *2004 Adair* case, the plaintiff school district/taxpayers brought a claim challenging new mandates and increased costs for existing mandates. *2004 Adair*, 470 Mich at 109. The Court examined whether the plaintiffs had privity with the plaintiffs in *Durant I* (1997). The *Durant* plaintiffs – seven taxpayers from a single school district – had previously challenged a reduction in state special education funding under

the § 29 MOS provision. *Id*. at 184. The Court found privity between the *2004 Adair* plaintiffs and the *Durant* plaintiffs:

> The taxpayer parties all have the same interest: that mandated activities are funded as they are required to be under the Headlee Amendment. . . . We find the school districts . . . also have the same legal interest protected by the *Durant I* plaintiffs and are similarly in privity. In this case, particularly because only declaratory relief, not damages, was sought, it is evident that all school districts have the same interest.

2004 Adair, 470 Mich at 123.

Like the *2004 Adair* plaintiffs *vis a vis* the *Durant* plaintiffs, Plaintiffs in this case have the same interests as the various plaintiffs across the *Adair* line of cases: i.e., to ensure that mandated activities are funded as required by the Headlee Amendment, and "establish[ ] the proportion of state funding for local government units." *2004 Adair*, 470 Mich at 122. Furthermore, Plaintiffs here seek essentially the same remedy as the *Adair* plaintiffs, i.e., declaratory relief.

Unlike the *2004 Adair* case in which the Court determined that the interests of over 400 school districts and taxpayers (over 900 plaintiffs total) were adequately represented by seven plaintiffs in a single school district, here it is the reverse: Plaintiffs (a nonprofit and 3 individual taxpayers) were represented by over 900 plaintiffs. *Id.* at 123. Furthermore, Headlee litigation has involved several iterations, asserted multiple bases of Headlee violations (including issues related to the interplay of the Headlee Amendment and Proposal A) and spanned 16 years (over 30 years if *Durant* is included). Therefore, the reasoning of the *2004 Adair* privity determination – i.e., that "[t]hese interests were presented and protected by the extensive and thorough litigation that occurred" in *Adair I-III* – applies with even greater force in this matter.

Finally, the finding that different taxpayers have privity across Headlee claims makes sense: one's interests may be adequately represented whether asserted on one's own, or by a local representative with the same interests.[3]

3. This action could have been brought/resolved in prior Headlee claims

Third, the matter in this case (the §§ 29-30 calculation/methodology) was, or could have been, resolved in any of the prior Headlee challenges involving mandates that Plaintiffs (apparently) claim were improperly included in the § 30 calculation.

Michigan applies the transactional test to determine if the matter could have been resolved in a prior case. *Id*. at 123. As the Supreme Court explained in *Adair*:

> The 'transactional' test provides that 'the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief.' …. Under this approach, a claim is viewed in 'factual terms' and considered 'coterminous with the transaction, regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; …. and regardless of the variations in the evidence needed to support the theories or rights.'

Id. at 124 (citations omitted).

Furthermore, "the determinative question is whether the claims in the instant case arose as part of the same transaction as did the [prior] claims." *Id*. at 125. "Whether a factual grouping constitutes a 'transaction' for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in *time, space, origin or motivation*, [and] whether they form a convenient trial unit . . . ." *Id*. (citation omitted).

[3] This point is especially pertinent in light of Justice Kelly's remark in the *2004 Adair* case that "the taxpayers are the real parties in interest here." 470 Mich at 135, n3 (Kelly, J., dissenting). Such remark takes on greater meaning because it was asserted in the context of Justice Kelly's admonition of the majority's broad application of res judicata to taxpayers who were not part of the prior *Durant* litigation.

Michigan courts have found that later Headlee actions could have been brought and resolved in prior Headlee actions. For example, in the *2004 Adair* case, the Supreme Court examined the plaintiff school districts' claims concerning new/increased mandates (discussed *supra*, Part II.B.ii), and determined that certain claims could have been asserted in the prior *Durant* litigation. The Court began by observing that "the statutory and regulatory requirements complained of in this case, and alleged to be 'new' or 'increased' activities since Headlee was enacted, existed during the pendency of *Durant I*." *Id*. at 125. Furthermore, "the requirements, like those in *Durant I*, have been imposed by the Legislature and executive bodies on local school districts for the purpose of providing public education. Thus, they are related to one another in 'time, space [and] origin.'" *Id*. Finally, "because the allegations in both this case and *Durant I* concern the Headlee Amendment, the claims are related by 'motivation' as well." *Id*.

Here, like the complained-of mandates in the *2004 Adair* case, the Court may fairly presume that the statutory and regulatory requirements that are the subject of Plaintiffs' claims (while unidentified) existed during the pendency of the *Adair I-III* actions. Unlike the specifically alleged mandates in *2004 Adair*, we do not know whether *all* new activities/mandates alleged by Plaintiffs were imposed during the pendency of *Adair I-III* because Plaintiffs do not identify any particular mandates. However, like the *2004 Adair* mandates that existed while *Durant* was pending, all Plaintiffs' cited cases/mandates existed during (and, in fact, predated) *Adair II-III*. Indeed, two of the cases Plaintiffs rely on – *Mahaffey* and *Durant II* (1999) – predate all the *Adair* cases, and the *Adair I* action itself naturally predates its successors *Adair II* and *Adair III*. Thus, it can be inferred that at least some of Plaintiffs' claims (and perhaps all, whatever they may be) had been imposed at the time of *Adair I-III*, for which reason the actions are related in space and time. *Adair*, 470 Mich at 125; *Washington v Sinai Hospital*, 478 Mich 412, 420 (2007). Furthermore, any mandates that Plaintiffs may allege

stem from the legislative budgeting and appropriation process, and would have to be imposed by the Legislature on local units of government, and thus would implicate the State's §§ 29-30 calculations/methodology. Therefore, Plaintiffs' action is related to the *Adair* cases in origin. *Id*.

Finally, both Plaintiffs' claims and the allegations in the *Adair I-III* cases concern the Headlee Amendment, and have the same goal, i.e., to provide the Legislature with a judicially determined amount that it must appropriate in order to comply with the Headlee Amendment. Thus, the same "motivation" is present in this matter and *Adair I-III*. *Id*. Consequently, Plaintiffs' claims would have had sufficient relation, and thus formed a convenient trial unit, with the prior Headlee claims.

For these reasons, Plaintiffs' action could and should have been brought in the prior Headlee actions. Therefore, this action is barred under res judicata.

III. Plaintiffs' statutory claims are not properly before this Court.

A. Plaintiffs do not properly invoke this Court's jurisdiction

Plaintiffs make several statutory claims concerning the State's obligations, and purported failures, to prepare certain reports under MCL 21.235; MCL 21.241; MCL 21.242. (Pls' Compl, ¶¶ 83, 86-90, 121.) However, these obligations are imposed not by the Headlee Amendment, but instead by the Headlee implementing legislation, Public Act 101 of 1979. Therefore, these claims are indisputably statutory claims, which as such do not rise to the level of constitutional (i.e., Headlee) violations. *Waterford School Dist v State Bd of Educ*, 130 Mich App 614, 624 (1983). Accordingly, Plaintiffs' claims are not properly alleged, and, therefore, fail to invoke the original jurisdiction of this Court set forth in MCR 7.206(E).

B. Plaintiffs lack standing to assert their statutory claims

Plaintiffs seek mandamus "directing the State of Michigan to fully comply with the reporting requirements of MCL 21.235 and MCL 21.241." (Pls' Compl, Prayer for Relief, ¶ f.) However, Plaintiffs lack standing as to these statutory claims. "Standing is the legal term used to denote the existence of a party's interest in the outcome of a litigation; an interest that will assure sincere and vigorous advocacy." *Waterford Sch Dist*, 98 Mich App at 662. "Traditionally, a private citizen has no standing to vindicate a public wrong or enforce a public right where he is not hurt in any manner differently than the citizenry at large." *Id*.

"A writ of mandamus is an extraordinary remedy." *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 366 (2012). A plaintiff must show that (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled, (2) the defendant has a clear legal duty to perform the act, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result. *Id*. See also *Stand Up For Democracy v Sec'y of State*, 492 Mich 588, 618 (2012).

Here, Plaintiffs have no legal right to the State's performance with respect to reporting as set forth in MCL 21.235 and MCL 21.241. The purposes of the reports relate to the Legislature, not to Plaintiffs or even taxpayers generally. MCL 21.235 and 21.241 both deal with Executive reports to the Legislature. In other words, the subject provisions, enacted by the Legislature for purposes of implementing a voter-approved constitutional enactment, govern the relations and obligations between two branches of government – i.e., the Executive and the Legislature – in light of the Headlee Amendment's enactment. Furthermore, even assuming there is a statutory violation, Plaintiffs cannot demonstrate any harm that is different from the Michigan public at large. *Waterford Sch Dist*, 98 Mich App at 662.

Accordingly, Defendants have no obligation to Plaintiffs under the subject statutory provisions, for which reason Plaintiffs' statutory claims do not offer them any basis for a remedy. Therefore, Plaintiffs lack standing to pursue these claims, which must be dismissed.

C. The Office of Auditor General is not a proper party to this action

Plaintiffs allege that the Office of Auditor General (OAG) failed to report a shortfall in local government spending. However, the OAG is not a proper party in this original action to enforce the Headlee Amendment.

A mandamus action requires, among other things, that the act be ministerial. *Coalition for a Safer Detroit*, 295 Mich App at 366. In this case, the OAG is responsible for reviewing the State Budget Office's Statement of the Proportion of Total State Spending from State Sources Paid to Units of local government ("Statement"), and preparing an independent accountant's review report. (Ex 1 to Pl's Br, at 2.) In substance, this means that the OAG reviews and determines how state funds are spent, and examines whether the Statement properly accounts for spending to units of local government. The OAG then concludes whether or not material modifications to the Statement are necessary. Such review "includes primarily applying analytical procedures to management's financial data and making inquiries of management." (*Id*.). The review is conducted "in accordance with *Statements on Standards for Accounting and Review Services* issued by the American Institute of Certified Public Accountants." (*Id*.). That duty is not found within or specific to any Headlee constitutional provisions.

The OAG acknowledges that the act of reviewing state expenditures and application of such expenditures may be considered ministerial – conducting the review itself is required. However, the OAG denies that its specific application of accounting principles and analytical procedures during its review, or its conclusions, are merely ministerial. On the contrary, the

OAG submits that such analysis is discretionary – it requires application of professional judgment in accordance with well-established guidelines and procedures to new information (i.e., budgets, line-item accounting/expenditures) every single year. The OAG has applied the same methods for its review and analysis for decades, for which reason any purported error in such methods is neither established nor even apparent. Furthermore, the OAG's review and analysis culminate in a statement of assurance, i.e., that the Budget Office's determination that the state has met its § 30 obligations requires no material modifications.

Finally, the OAG submits that the requested relief in this instance is inapposite. If this Court adopts Plaintiffs' § 30 interpretations, then the OAG will adopt those procedures and interpretations that the Court prescribes. The OAG submits that a mandamus action would be appropriate only in the event that it did not comply with this Court's ultimate determination.

MCR 2.207 allows a party to be dropped "by order of the court on motion of a party or on the court's own initiative at any state of the action and on terms that are just." Therefore, the OAG requests that it be dropped from this action.

IV. Exclusion of Proposal A and other mandated payments from state spending paid to all local governments is contrary to the plain language of article 9, § 30

There is no dispute that local school districts that receive guaranteed payments required by Proposal A are units of local government. Because the elector-approved Proposal A increased the applicable state taxes to fund public schools and guaranteed that each local school district receive minimum funding based on 1994-95 operating revenues, (Const 1963, art 9, § 11), overall state revenues and payments to local governments naturally increased.

Proposal A was simply a public school funding formula change. Instead of primarily funding schools with local property taxes, the voters decided to increase state taxes to fill the funding gap left by shifting the funding obligation from local taxpayers to the State. Proposal A

also guaranteed that the minimum funding at 1994-95 levels is paid to public schools. This voter approved change caused an increase in the total amount of money the State pays to local schools, but did not mandate an increase in overall state spending to local governments as a group and did not otherwise amend article 9, § 30. The additional revenue paid to public schools is included in the State's calculation of its § 30 obligation and has been since Proposal A went into effect.

Section 30's plain language not only permits the inclusion of the additional revenue that Proposal A created; when determining "total state spending to local governments" as a group, it requires it. Proposal A's guaranteed minimum funding in article 9 § 11 is a component of "total state spending" and it is paid to local units of government. To claim otherwise is specious and contrary to § 30's plain language and the intent of the voters who passed both the Headlee Amendment and Proposal A.

Excluding certain categories of spending paid to local governments from § 30, simply because the revenue was fostered by a voter ratified constitutional amendment that increased state funding to one particular category of local government, creates a non-existent exception to § 30's broad language, one that was absent from the text of Proposal A. In order to properly interpret § 30, the Court must ascertain the intent of the voters who passed the Headlee Amendment. *1985 Durant*, 424 Mich at 378. To determine intent, the Court should first look at the language of the constitution. *Id.* The Court may also look at how the Legislature implemented the amendatory language. *Durant II*, 238 Mich App at 212. Construction of a constitutional provision enacted as a result of voter initiative requires a special emphasis on the duty of judicial restraint. *Schmidt v Dep't of Educ*, 441 Mich 236, 241-42 (1992). The phrase, "state spending paid to local units of government," is broad and does not categorize or differentiate between different sources of revenue paid to local governments and does not further

distinguish between mandated or non-mandated payments. The same broad non-categorical definition appears in the Headlee implementation statutes. MCL 18.1304 provides:

> State spending paid to local units of government" means the sum of total state spending from state sources paid to a local unit of government. State spending paid to a local government does not include a payment made pursuant to a contact or agreement entered into for the provision of a service for the state or to state property, and loans by the state to a local unit of government.

Prior to Proposal A, the State included aid paid to school districts in its § 30 calculation. After Proposal A, the State continued to pay school aid to districts, it just paid more through increased foundation allowances required by Proposal A. Despite increasing the amount of aid the State pays to school districts, Proposal A did not amend any portion of the Headlee Amendment or amend § 30's language to exclude mandated payments from its application. The voters could have amended § 30 to exclude Proposal A revenue, or adjusted the percentage, but the voters did not do so. As such, there was no reason for the State to discontinue its inclusion of Proposal A school aid funding in calculating the § 30 percentage of money paid to local governments because the voters intended that all school aid funds paid to local school districts continue to be included.

This rationale also applies to the taxpayer's claim that the State improperly counts spending on mandates paid to local governments. The text of § 30 does not exclude payments to finance activities or services that the State requires of local government from the computation. Rather § 29 requires the State to disburse funds for specific payments to specific units of local government for the necessary cost of existing, new or increased activities or services. But nothing in the plain text of § 30 excludes those payments to particular units of local government for specific required activities from consideration "total state spending paid to local units of government" taken as a whole.

Counting Proposal A or other constitutionally mandated payments to any particular unit of local government as a component of "total state spending paid to all units of local government" has not been challenged for 32 years, but now Plaintiffs request this Court to extensively narrow the broad definition of "total state spending" by reading different revenue classifications out of § 30 in order to pick and choose which sources of revenue are used to calculate the percentage. Plaintiffs accuse the State of playing a "shell game" by following § 30's clear language; however, it is Plaintiffs that want to read non-existing language into a constitutional amendment.

In *1985 Durant*, the plaintiffs attempted to read additional language into § 29 arguing that the term "state law" included constitutional requirements. 424 Mich at 377. In holding that "state law" only includes state statutes and administrative rules and not constitutional requirements, the Court looked at § 29 and compared the sentences "state law" and "required by the Legislature or state agency". *Id* at 380. The Court declined to read the word "constitutional" into the plain language absent a definite pronouncement that constitutional requirements were to be included in § 29. *Id*.

In this case, there is no definite pronouncement in any portion §§ 25-34 that the additional school aid payments required by Proposal A or payments required under § 29 should be excluded from "total state spending" when determining compliance with § 30. Likewise, there is no pronouncement in Proposal A that any required payments to schools be excluded from § 30's percentage. As such, it is proper for the State to continue including all school aid funding paid to local schools in its § 30 calculations. The fact that the additional state spending for local schools caused overall allocations of total state spending to shift has no bearing on the calculation of the proportion paid to all units of local government as a group. But article 9 §§ 25-34 do not guarantee any particular unit or units of local government a certain dollar amount of

unrestricted aid from the State and still gives the State discretion to allocate dollars among all local governments. *1985 Durant*, 424 Mich at 393. The State cannot ignore the will of the voters who elected to primarily fund public schools with State taxes as opposed to local property taxes, simply because Plaintiffs do not like the fact the § 30 proportion increased.

Plaintiffs cite *Oakland County*, in support of its argument that Defendants have violated § 30 by including Proposal A revenue. 178 Mich App 48 (1989). *Oakland County*, however, only excludes from the § 30 percentage money paid to local governments to discharge a state obligation, or as part of a contract to perform services for the State or to state property. 178 Mich App 48, 55 (1989); MCL 183.1304(8). This makes sense. The State cannot include money paid to contractors to perform its obligations as spending paid to local units of government and should not count those payments where they choose to contract with a local government to perform a state obligation.

Providing public education is a local obligation, the State's obligation is to support the school districts established by local governments. *SS v State*, 307 Mich App 685, 698 (2014). Article 8, § 2 requires the Legislature to maintain and support a system of free public schools, but the local school district has the responsibility to provide the education of its pupils. *Id.* Further, public education is a constitutional requirement, not a state mandate under Article 9, § 29. *1985 Durant*, 424 Mich at 378. In this case, school aid funding clearly does not meet the "state obligation" exception so all school aid funding paid to local governments must be included in the § 30 percentage. Excluding the additional school aid funding generated by Proposal A from § 30 goes against the intent of the voters who passed both the Headlee Amendment and Proposal A.

A. The inclusion of Proposal A revenue in the Article 9, § 30 percentage is not a tax shift to local governments because it does not create an unfunded mandate

Plaintiffs' allegations that the State violated Article 9, §§ 25 and 30 attempts to disguise what is really a § 29 unfunded mandate claim. In order to have a tax shift, there must first be an unfunded mandate. Plaintiffs treat § 25 as an independent cause of action, however, the Court has interpreted § 25 to be an introductory paragraph with §§ 29 and 30 providing the substantive implementation. *Waterford School Dist*, 130 Mich App at 620. Plaintiffs have done this presumably due to their failure to meet the heightened pleading required to move forward with an unfunded mandate claim. Setting aside the fact that Proposal A was a constitutional amendment ratified by the voters, and not state legislative or administrative action; Proposal A was simply a public school funding formula change and the inclusion of its revenue in § 30 does not in turn create an unfunded mandate on local governments. Both Plaintiffs' complaint and brief are completely devoid of any factual allegations on what tax burden was shifted to local governments after Proposal A was enacted. Plaintiffs do not specifically allege any unfunded mandates, but rather theoretically argue the State's treatment of Proposal A revenue forces local governments to raise taxes in order to provide local services.

Nothing in § 30 requires the State to allocate a certain dollar amount, or a certain category of aid, to a particular local unit of government. Headlee's check on the State from shifting any tax burden to local government is § 29. As the *1985 Durant* Court interpreted § 29:

> Both sentences clearly reflect an effort on the part of the voters to forestall any attempt by the Legislature to shift responsibility for services to the local government, once its revenues were limited by the Headlee Amendment, in order to save the money it would have had to use to provide the services itself.

424 Mich at 668. Section 29 does not guarantee local governments money for operations or local services, it merely protects local governments from the State mandating it provide programs, activities, or services without paying for them.

Nothing in the Headlee Amendment requires the State to act as a guarantor of local governments' ability to fund operations or provide services. If a local government wishes to raise revenue for increased operation costs or providing additional services, not required by the State, it can do so by asking its constituents for a tax increase. This system provides the taxpayers greater control over their government's ability to raise taxes, a main goal of the Headlee Amendment. *1985 Durant*, 424 Mich at 669.

To the extent Proposal A could even be considered a tax shift, it did not violate § 25 as it was not a shift of the tax burden from the State to local governments. Rather, by passing Proposal A, the voters elected to take the burden of school funding away from local property taxes and placing the burden on the State through increased state taxes. The voters wanted less property tax burden while addressing funding inequities among school districts.

Additional discovery is not needed as there is no factual dispute that Proposal A revenue and other mandated payments to local government have properly been included in the State's calculation of its § 30 percentage of total state spending paid as aid to local units of government. Further, Plaintiffs fail to state a claim under § 25, and fail to meet the heightened pleading required to move forward with its disguised § 29 unfunded mandate claim. As such, Plaintiffs' complaint should be dismissed with prejudice.

V. Public charter schools are political subdivisions of the State and funding for charter schools is properly considered aid to local governments.

A. Charter schools are public schools

Charter schools have been operating in Michigan since the Charter Schools Act, 1993 PA 362, became law in 1994. The Michigan Supreme Court has ruled on the constitutionality of charter schools (also called "public school academies") and held that funding charter schools by the State was constitutional. *Council of Organizations & Others for Educ About Parochiaid v Governor*, 455 Mich 557 (1997). In that case, the plaintiffs challenged the Charter Schools Act which authorized the creation of public school academies by attempting to enjoin the distribution of public funds on the basis that the Act was unconstitutional. *Id.* at 560.

Council of Organizations clearly articulated the role of charter schools. A charter school is administered under the direction of a board of directors and the nonprofit corporation bylaws contained in the school's contract. *Id.* at 565. A person or entity that wishes to organize a charter school must submit an application containing the statutorily required information to an authorizing body. *Id.* Most important, the application is an agreement that the charter school will comply with state and federal law applicable to public bodies or school districts. *Id.* at 566. A charter school can be authorized by a school district and when done, the charter school agrees to be covered by the collective bargaining agreements that would apply to other employees of that school district. *Id.*

The Charter Schools Act "specifies four types of authorizing bodies: (1) the board of a school district, (2) intermediate school board, (3) the board of a community college, and (4) the governing board of a state public university." *Id.*, citing MCL 380.501(2). The authorizing body is not required to issue any charter school contracts, but if it chooses to, the contracts must be issued on a competitive basis when looking to the resources of the proposed charter school, the

population to be served and the educational goals of the charter school. *Id.* at 566-67, citing MCL 380.503(1). If approved, the authorizing body acts as the fiscal agent for the charter school. *Id.* at 567. The authorizing body is responsible for ensuring the charter school's compliance with the contract and law. *Id.*, citing MCL 380.507. The authorizing body may revoke the contract at any time the charter school fails to meet its obligations. *Id.*

A charter school must comply with all applicable law, including the Open Meetings Act (MCL 15.261 et seq), the Freedom of Information Act (MCL 15.231 et seq), and the Public Employment Relations Act (MCL 423.201 et seq). MCL 380.503(7). A charter school and its incorporators, board members, officers, employees, and volunteers have governmental immunity as provided in MCL 691.1407. MCL 380.503(8). An authorizing body and its board members, officers, and employees are immune from civil liability, both personally and professionally, for an act or omission in authorizing a charter school if the authorizing body or the person acted or reasonably believed he or she acted within the authorizing body's or the person's scope of authority. *Council of Organizations*, 455 Mich at 567. A member of the board of directors of a public school academy is a public officer and, before entering upon the duties of the office, must take the constitutional oath of office for public officers under Article II, § 1. MCL 380.503(11).

The Court highlighted the fact that "Subsection 501(1) states that 'public school academy is a public school under section 2 of Article VII of the state constitution of 1963, and is considered to be a school district for the purposes of section 11 of article IX of the state constitution of 1963." *Id.* Additionally, the Act prohibits any charter school from charging tuition, and if there are more applicants than space, the charter school must use a random selection process for the enrollment of students. *Id.* at 568.

The plaintiffs challenged the constitutionality of charter schools by asserting that they were not public because they were not under the immediate or exclusive control of the State and

the board of directors were not publicly elected or appointed by a public body. *Id.* at 571. The Court found the control issue was, essentially, irrelevant because the constitution did not require exclusive or immediate control. *Id.* at 572. However, on the issue of public funding, the Court found that the constitution only required the Legislature to maintain and support a system of public schools and that other states had recognized the need for the State to have some control in order to qualify for public funding. *Id.* at 572-73, citing 78 CJS, School and School District, § 2(b), pp 38-39. But, the Court found that charter schools met that requirement because "they are under the ultimate and immediate control of the state and its agents." *Id.* at 573. First, a charter can be revoked any time by the authorizing body for the school's failure to failure to comply with the contract or applicable law. *Id.* Second, all authorizing bodies are public institutions over which the State exercises control. *Id.* Third, the State controls the money and if the school meets the qualifications for funding, such funding is not unconstitutional and it qualifies as a public school. *Id.* at 573-74.

The Court found that any challenge to the fact that the board of directors of a charter school are private to be without merit. *Id.* at 575-77. The authorizing bodies are public and the public maintains control of the school through those authorizing bodies. *Id.* at 576-77.

Plaintiffs in this case repeatedly argue that charter schools would not fit in the broad definition of "local government" contained in § 33 as the public would have understood that to be in 1978. However, the Court in *Council of Organizations*, went even further back than 1978, and examined "the common understanding of what a 'public school' is, as adopted by the 1961 Constitutional Convention, for the first paragraph of § 2, and if we inquire into the common understanding of 'private, denominational or other nonpublic' school, as adopted by the voters in 1970 for the second paragraph of § 2, *we find that public school academies are 'public schools.*'" *Id.* at 576 (emphasis added).

The Court found that "we do not have a requirement in our state constitution that mandates that the school be under the control of the voters of the school district." *Id.* at 577. Additionally, the Court found that "our forefathers envisioned public education to be under the control of the Legislature, which is under the command of the entire state electorate." *Id.* While a charter school may have a private board of directors, the "board members are public officials and are subject to all applicable law pertaining to public officials." *Id.* at 585. Ultimately, the Court found that state payments to charter schools were proper and constitutional. *Id.* at 587.

B. Charter schools fit the broad definition of "local government" as defined in Article 9, § 33

Section 33 defines "local government" as "[a]ny political subdivision of the state, including but not restricted to, school districts…, authorities created by the state, and authorities created by other units of local government." By any measure, this is a very broad definition as it was intended.

Plaintiffs quote *Traverse City Sch Dist v Att'y Gen*, 384 Mich 390, 405 (1971) stating "it is not to be supposed that they [the people] have looked for any dark or abstruse meaning the words employed, but rather that they have accepted them in the sense most obvious to the common understanding…". Defendants assert that no further meaning that the plain text of Article 9, § 33 need to be considered. However, Plaintiffs essentially argue that the plain text of the Headlee Amendment is confusing because rather than argue that the words of § 33 bar charter schools from being considered local government, Plaintiffs immediately attempt to push toward an argument as to what the people would have believed it to say.

There is little dispute that schools have been a matter of local obligation for decades. Charter schools are doing nothing more than carrying out this local obligation for those residents

that choose to utilize it. Charter schools are funded the same as any other public school for purposes of § 507. *Council of Organizations*, 455 Mich at 573.

There is no dispute that money paid to local governments to carry out a state obligation is not to be included in the 48.97% calculation. *Oakland County v Department of Mental Health*, 178 Mich App 48 (1989). However, § 33 must be interpreted broadly because § 30 requires the "proportion of total state spending paid to all units of local governments" to be calculated each year. Thus, a narrow interpretation of local government could result in exclusion of entities that are clearly performing local functions for the benefit of residents from the § 30 calculation. Such a result cannot be said to be the intent of the voters or the common sense interpretation of the Headlee Amendment.

All schools in Michigan are clearly a creation of the state and "[e]xcept as provided by the state, they have no existence, no functions, no rights, and no powers." *East Jackson Public School v State*, 133 Mich App 132, 139 (1984). "The policy of the State has been to retain control of its school system, to be administered throughout the State under State laws by local State agencies organized with plenary powers to carry out the delegated functions given it by the Legislature." *Id*., quoting *Lansing School Dist v State Bd of Ed*, 367 Mich 591, 595 (1962).

MCL 18.1115(5) defined "unit of local government", and like the definition in § 33, "school districts" and "authorities" are included. But the Legislature added the requirement that the unit provide "local governmental services for citizens in a geographically limited area of the state and has the power to act primarily on behalf of that area." Charter schools fit this definition in two ways: First, charter schools are public schools and perform a local governmental service; second, while some charter schools may operate state-wide, they are still an authority created by the State to perform the local governmental service. Charter schools are not required to operate state-wide and a simple choice by a charter school to provide its services to all Michigan

residents does not result in that charter school performing a state function rather than a local function.

More importantly, charter schools are not part of traditional state government under the direction of the executive branch. Rather, as shown above, all public schools, including charter schools, are political subdivisions of the State authorized by political subdivisions of the state. The plain language of § 33 stating that "school districts" and "authorities created by the state" and "other units of local government" would clearly include charter schools in that broad definition.

C. The People would have considered charter schools as "local government" at the time of passage of the Headlee Amendment

Plaintiffs repeatedly argue that charter schools are different than the schools that were typical at the time of the ratification of the Headlee Amendment. Many things change throughout time but the question is not what the voters were used to, but instead what they would have found to be included in the definition. Plaintiffs complain that charter schools have little accountability compared to traditional schools. However, this argument was clearly rejected in *Council of Organizations* as the Court found that "because authorizing bodies are public institutions, the state exercises control over public school academies through the application-approval process." 455 Mich at 573.

Charter schools are subject to the ultimate form of in accountability as the only method of funding that is possible is through per-pupil funding. Therefore, if any student is not satisfied with the education, they can simply choose to go elsewhere and it will not cost them a penny. This is unlike a traditional school in that even when a student elects to go to a charter school, that traditional school still receives the local property tax revenue.

The characteristics of school districts and their powers in 1978 are confusing in nature. Whether a charter school has as much power or autonomy as a local school district in 1978 does not take away the fact that authorities created by the State could have as little or as much power as the State deems necessary and would still be a local government under § 33. It has long been the law of Michigan that school districts are "merely a State agency carrying out the distinctively governmental work of education." *King v School Dist*, 261 Mich 605, 609 (1933).

Plaintiffs complain that there are private entities that may handle portions of the operations of charter schools. However, charter schools, like other school districts, have the authority to contract for certain services. There is no requirement that lawn service or snow removal must be performed by school employees, or that a school district cannot contract these services to private entities. Charter schools, like any other public school, must comply with the school code and charter school board members are public officials who are subject to all applicable law pertaining to public officials. *Council of Organizations,* 455 Mich at 585. The mere fact that a charter school can contract with an educational management organization (EMO) does not change the analysis. The focus must be on the charter school, not a third-party, and the charter school is required to follow the school code and operates under the authorizing body. Any further decisions concerning the operation of the charter school, provided it complies with the applicable law, are merely management decisions to provide the best service to students possible.

MCL 18.1350 would require that the funding for charter schools be included in the calculation because schooling is typically a local function. MCL 18.1350(1) states that "[i]f state government assumes the financing and administration of a function, after December 22, 1978, which was previously performed by a unit of local government, the state payments for the function shall be counted as state spending paid to units of local government." Here, charter

schools must be counted toward the 48.97%, as schooling such as that provided by charter schools would be a function previously performed (and currently performed) by a unit of local government.

Any attempts by Plaintiffs to draw conclusions from non-applicable law should be disregarded. The Headlee Amendment is unique but straight-forward in the plain text of its requirements. The people enacted the Headlee Amendment with broad definitions that should be read in conformity with its broad nature.

VI. The State Trunkline Fund is used to maintain state trunk line roads and to fund Local Government transportation projects. The two purposes are separately and properly tracked for purposes of § 30

Act 51 controls Michigan's transportation funds, including the STF The STF provides funding for state and local transportation projects. Payments from the STF to local road commissions to maintain state roads are not counted as aid to local governments. Money allocated for local transportation projects is counted as spending to local governments. Plaintiffs' claims fail legally and factually.

A. Plaintiffs' conclusory statements fail legally and factually

Plaintiffs assert that the reported § 30 "aid to be paid to local governments" by or through the Michigan Department of Transportation includes money from the STF. (Pls' Compl at 69-70.) That is true and reported in the publicly available § 201 report. PA 84 2016, Art XVII, § 201. Plaintiffs next assert that "[s]upport and maintenance of state trunk line roads …is an obligation of the state and a state function." (Pls' Compl at 75.) The brief generally echoes the complaint stating that "maintenance and improvement of the trunk line roads system is . . . a state obligation and function." (Pls' Br at 37-38.) To the extent Plaintiffs mean state trunk line highways, these statements are also true. MCL 247.651a-b. But, as demonstrated, *supra*, section

VI(A)(2), payments for State obligations are not included in total state spending paid to local units of government for purposes of § 30.

Plaintiffs next assert that "the clear purpose of the [STF] is to maintain and improve state trunk line roads," citing to MCL 244.661. (Pls' Br at 38.) That statement is incomplete; the plain language of the statute provides for spending on state trunk line roads *and various other local projects*. In order to be accurate, Plaintiffs' statement should say "[one of] the clear purpose[s]" of the STF is maintenance of state trunk line roads, among other statutory allocations.

The same statute Plaintiffs reference, MCL 247.661, also appropriates funds for local bridge projects. MCL 247.661(1); MCL 247.660(1)(a), (1)(f). The local bridge fund is "for distribution only to cities, villages, and county road commissions" for local road and bridge projects. MCL 247.660(1)(f). Part of the STF is also earmarked for the transportation economic development fund for local transportation projects. MCL 247.661(1)(b); MCL 247.660(1)(j); MCL 247.901 et seq. The Legislature also provides grants from the STF for maintenance of local railroad grade and crossing projects that are "under the jurisdiction of . . . counties, cities, or villages." MCL 247.661(1)(c).

Not only is there explicit language appropriating money for these local transportation projects from the STF, there is no limiting language that requires the STF be used exclusively on state trunk line road projects. In fact, funds from the Michigan Transportation Fund (MTF) are also transferred to the STF for distribution under the provisions of MCL 247.661, including spending for local government transportation projects listed above. MCL 247.660(1)(e), (1)(l)(1).

B. Local spending listed in § 201 of the transportation budget does not include contractual payments for trunk line work

Plaintiffs allege that "Department of Transportation payments to county road commissions and others from the trunk line road fund cannot … be used in the" § 30 calculation. (Pls' Compl at 75.) Plaintiffs' allegation is wrong and fails to consider the various STF spending provisions for local transportation projects listed above. In total, transportation revenue spending on local government under § 30 was $1,438,800,000 for 2015, including $33,000,000 in grants to local programs, $26,828,400 from local bridge program, and $23,385,200 in economic development funds, all coming from or through the STF. 2016 PA 84, Art XVII § 201.

Plaintiffs are correct in stating that contractual payments to county road commissions for work on state roads should not be counted in the § 201 report as aid to local governments for Headlee § 30. That is why those payments were not included in the § 30 calculation. The 2015 MDOT budget included $310,692,000 for state highway maintenance. 2016 PA 84, Art XVII, § 110. The entire amount was appropriated from the STF and included MDOT expenses for state roads it maintains, as well as payments made to local road commissions for portions of state roads they maintains under contracts with MDOT. *Id*. (Patrick McCarthy Aff, Ex C.).

That treatment is consistent with statute and decisions of this Court. MCL 18.1304(3); *Oakland County v Dep't of Mental Health*, 178 Mich App 48 (1989). MDOT and the DTMB accounted for these distinct uses – contractual payments to local governments for work on behalf of the State versus aid to local governments– correctly by excluding the contractual payments from the § 30 calculation. 2016 PA 84, Art XVII, § 110; § 201; Patrick McCarthy Aff, Ex C.

Finally, the total STF spending to local governments for § 30 was approximately $84,000,000 from a total of approximately $29,000,000,000 state spending from state resources, or .2%. Given the overfunding of local governments relative to the § 30 requirement – roughly

55% rather than 48.97% – Plaintiffs transportation claims are not only factually and legally wrong, they are not mathematically dispositive under § 30. See *supra*, Section VII.

C. Plaintiffs' pleadings are unsupported, fall short of the specificity requirements and should be dismissed

MCR 2.112(M) requires that Plaintiffs asserting any "violation of Const 1963, art 9, §§ 25-34," including Plaintiffs' § 30 claims here, must "set forth with particularity the factual basis for the alleged violations . . . and indicate whether there are any factual questions that are anticipated to require resolution by the court." Further, Plaintiffs must "append to their pleadings copies of all ordinances and municipal charter provisions involved, and any available documentary evidence supportive of a claim or defense." MCR 2.112(M); MCR 7.206(E)(1)(a).

Plaintiffs make unsupported legal conclusions and provide no factual support for their claims. Plaintiffs had access to volumes of public documents through various state department and agency websites, including MDOT, DTMB, and annual budgets passed by the Legislature and signed by the Governor. MDOT even provides a search function for locality distribution reports and provides detailed fiscal year end spending, by fund. http://www.michigan.gov/documents/budget/FY15_DS6360AD_511920_7.TXT

Yet Plaintiffs have provided nothing to support their factual allegation that contractual STF payments were included in § 30. Not only is the allegation unsupported, it is contrary to the separate budget allocations for local government spending under § 201 and contractual payments under § 110 for Highway Maintenance. The STF funding was separately and properly accounted for, as was spending for trunk line road work, for which reason Plaintiffs' claims are without merit.

Plaintiffs' legal premise that the STF is limited to use on trunk line roads is erroneous. Legally, Act 51 does not limit the STF as Plaintiffs allege and, in fact, the Legislature has

explicitly appropriated from or through the STF for various local transportation purposes. Both legally and factually, Plaintiffs' transportation funding claims fail and should be dismissed.

VII. The State pays in excess of the minimum proportion of state spending required under § 30

The Headlee Amendment, article 9, § 30, requires that state spending to, or on behalf of, local units of government must not fall below a certain percentage of total state spending, which percentage was recalculated as 48.97%, effective fiscal year 1993. However, the State is allowed to reduce non-mandated funding so long as it meets its constitutional obligations under §§ 11 and 29. Furthermore, state spending paid to all units of local government in the 2015 fiscal year exceeded the amount required under § 30 by almost $1.9 billion.

A. The State may reduce non-mandated funding

There is nothing in the plain language of article 9, §§ 25-34 that requires the Legislature to continue to fund a local units of government at an amount in excess of constitutional requirements, and nothing that prevents it from reducing non-mandated funding at its discretion. The Legislature is free to supplement minimum funding required by the Headlee Amendment if it is so inclined, but the Headlee Amendment only guarantees the local government its proportionate share of the cost of mandated activities – it does not guarantee an overall net increase in state funding. *Adair v Michigan*, 302 Mich App 305, 321-23 (2013), citing *Durant II* (§ 29 of the Headlee Amendment did not preclude the use of foundation allowance to fund the state's Headlee obligations); *Durant III* (neither the Headlee amendment nor Proposal A constitutionally precludes the Legislature from allocating that portion of the foundation allowance that exceeds the base level required by Proposal A to fund Headlee obligations or additional non-mandated payments).

In short: so long as the state meets its § 11 obligation (guaranteed minimum per-pupil funding for schools), § 29 obligation (payments for mandated activities and services), and § 30 obligation (the 48.97% proportion), it may reduce any non-mandated funding to local governments or reallocate non-mandated funding among local governments. Thus, it is Plaintiffs' burden to allege the specific underfunding and how that determination was made. MCR 2.112(M); *Adair II*, 497 Mich at 110.

B. State spending in FY 2015 exceeded the amount required under § 30

Plaintiffs' Exhibit 1, Statement of the Proportion of Total State Spending from State Sources Paid to Units of local government, clearly establishes that the proportion of total state spending paid to units of local government for the 2015 fiscal year was $16,313,100,000, representing 55.25%. (Ex 1 to Pls' Br, at 4.) In other words, the state provided over $1.8 billion in excess of its requirements which would absorb most of Plaintiffs' claims. (*Id.*).

Therefore, even assuming that some items alleged to be improperly included in the § 30 calculation (e.g., charter school funds, trunk line road funding), a purported miscalculation as to either item would not rise to the level of a Headlee violation because the amount of state spending from state sources would still satisfy the 48.97% requirement when either item is removed from the calculation.

CONCLUSION AND RELIEF REQUESTED

Plaintiffs' claims fail based on several dispositive questions of law that justify peremptory dismissal. Plaintiffs have a high burden to meet in the form of pleading requirements. But Plaintiffs fail to plead with particularity the factual basis for the alleged Headlee Amendment violations. Additionally, this suit is barred by the doctrine of res judicata because the claims here could have been brought and resolved in any number of prior suits to enforce the provisions of the Headlee Amendment.

The plain text of the Headlee Amendment requires dismissal because the revenue received from Proposal A and the portion paid to charter schools are properly counted as aid paid to local governments. Proposal A was approved by the same voting public that ratified the Headlee Amendment, and Plaintiffs' attempts to argue that the voters did not intend what the plain language requires is contrary to law and common sense. Plaintiffs also misunderstand state trunkline funding, which is partially used to fund local transportation projects, and, therefore, is correctly included in the Article 9 § 30 calculation. Finally, the State exceeds the requirements set forth in § 30, and Plaintiffs cannot and have not demonstrated otherwise.

Much of Plaintiffs' complaint and briefing focus on broad allegations about the entire budgetary system of state government; however, Plaintiffs have failed to allege a sufficient factual basis, and instead rely on the forlorn claim that discovery is needed. As shown in this brief, no discovery is warranted – all pertinent facts are publicly available, and the pertinent law is well-established.

In light of the foregoing reasons, Defendants request that this Court peremptorily dismiss this case under MCR 7.206(E)(3)(b).

Respectfully submitted,

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Dated: November 1, 2016