STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Borrello, P.J., and Meter and Shapiro, JJ.

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

Plaintiffs-Appellees/Appellants,

v

STATE OF MICHIGAN, DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET, and OFFICE OF AUDITOR GENERAL,

Defendants-Appellants/Appellees.
_____/

Supreme Court No. 160658, 160660

Court of Appeals No. 334663
Original Action

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other State governmental action is invalid.

BRIEF OF APPELLEES STATE OF MICHIGAN, DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET, AND OFFICE OF AUDITOR GENERAL

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STATEMENT OF JURISDICTION

State of Michigan, Department of Technology, Management and Budget, and Office of Auditor General (State Defendants), agree with Taxpayers for Michigan Constitutional Government, Steve Duchane, Randall Blum, and Sara Kandel's (Plaintiffs) Statement of Jurisdiction.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Must state payments to satisfy mandates under Headlee § 29 be included within "total state spending paid to all units of Local Government, taken as a group" under Headlee § 30?

   Appellants' answer: No.

   State Appellees' answer: Yes.

   Court of Appeals' answer: No.

2. Are state payments to public schools included within "total state spending paid to all units of Local Government, taken as a group" under Headlee § 30?

   Appellants' answer: No.

   State Appellees' answer: Yes.

   Court of Appeals' answer: Yes.

3. Are state payments to public school academies included within "total state spending paid to all units of Local Government, taken as a group" under Headlee § 30?

   Appellants' answer: No.

   State Appellees' answer: Yes.

   Court of Appeals' answer: Yes.

4. Is mandamus applicable here as it relates to the Auditor General?

   Appellants' answer: Yes.

   State Appellees' answer: No.

   Court of Appeals' answer: Did not answer.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Const 1963, art 9, § 11:

> There shall be established a state school aid fund which shall be used exclusively for aid to school districts, higher education, and school employees' retirement systems, as provided by law. Sixty percent of all taxes imposed at a rate of 4% on retailers on taxable sales at retail of tangible personal property, 100% of the proceeds of the sales and use taxes imposed at the additional rate of 2% provided for in section 8 of this article, and other tax revenues provided by law, shall be dedicated to this fund. Payments from this fund shall be made in full on a scheduled basis, as provided by law. Beginning in the 1995-96 state fiscal year and each state fiscal year after 1995-96, the state shall guarantee that the total state and local per pupil revenue for school operating purposes for each local school district shall not be less than the 1994-95 total state and local per pupil revenue for school operating purposes for that local school district, as adjusted for consolidations, annexations, or other boundary changes. However, this guarantee does not apply in a year in which the local school district levies a millage rate for school district operating purposes less than it levied in 1994.

Const 1963, art 9, § 25:

> Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval. The state is prohibited from requiring any new or expanded activities by local governments without full state financing, from reducing the proportion of state spending in the form of aid to local governments, or from shifting the tax burden to local government. A provision for emergency conditions is established and the repayment of voter approved bonded indebtedness is guaranteed. Implementation of this section is specified in Sections 26 through 34, inclusive, of this Article.

Const 1963, art 9, § 29:

> The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state

appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs.

Const 1963, art 9, § 30:

The proportion of total state spending paid to all units of Local Government, taken as a group, shall not be reduced below that proportion in effect in fiscal year 1978-79.

Const 1963, art 9, § 33:

Definitions. The definitions of this section shall apply to Section 25 through 32 of Article IX, inclusive.

"Total State Revenues" includes all general and special revenues, excluding federal aid, as defined in the budget message of the governor for fiscal year 1978-1979. Total State Revenues shall exclude the amount of any credits based on actual tax liabilities or the imputed tax components of rental payments, but shall include the amount of any credits not related to actual tax liabilities. "Personal Income of Michigan" is the total income received by persons in Michigan from all sources, as defined and officially reported by the United States Department of Commerce or its successor agency. "Local Government" means any political subdivision of the state, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government. "General Price Level" means the Consumer Price Index for the United States as defined and officially reported by the United States Department of Labor or its successor agency.

Const 1963, art 9, § 34:

The Legislature shall implement the provisions of Sections 25 through 33, inclusive, of this Article.

MCL 18.1303:

* * *

(5) "Proportion" means the proportion of total state spending from state sources paid to all units of local government in a fiscal year, and shall be calculated by dividing a fiscal year's state spending from state

sources paid to units of local government by total state spending from state sources for the same fiscal period.

MCL 18.1304:

* * *

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

MCL 18.1305:

(1) "Total state spending" means the sum of state operating fund expenditures, not including transfers between funds.

(2) "Total state spending from state sources" means the sum of state operating fund expenditures not including transfers between funds, federal aid, and restricted local and private sources of financing.

INTRODUCTION

Headlee § 30 is, at its simplest, a pie. The entire pie is all state spending each year from state revenue sources. The pie is only cut into two pieces: state aid paid to locals for local use and state spending for state level programs. Section 30 does not deal with details nor does it further divide those two pieces of the pie. In reviewing § 30, there are only three relevant questions:

1. *Is it state spending from a state revenue source*?
   If yes, it is part of the "total" pie under § 30.
2. *Was it paid as aid to locals for local use*?
   If yes, it is part of the "local aid" slice of the § 30 pie.
3. *Was the locals' piece of pie* ***at least*** *48.97% of the entire pie*?
   If yes, § 30 is satisfied.

Nothing in § 30 requires any inquiry about whether a local government has been given enough statewide taxpayer dollars to support a specific use—it does not deal with mandates nor does it deal with local programs of choice. Section 30 deals with total spending, in aggregate statewide, and is unconcerned with further detail.

So, whether it is state spending from Proposal A to public schools, including charter schools, state funding of mandates, or state funding of local discretionary programs—it all counts under § 30. That should be the end of the inquiry because there is no "gap" in the plain language. If one starts (as Plaintiffs do) with the purpose of finding support for a guaranteed level of statewide funding for local discretionary use in perpetuity, then there is missing language—a "gap" between what the language says and what Plaintiffs want it to say. But if § 30 is read without inserting conditions the result is clear: no such guarantee exists.

And the plain text is confirmed by all relevant authorities: the purpose of the provisions, the subsequent caselaw applying the provisions, and the Drafters' Notes—each a thread that together form a "cable-like" steel braid of law that this Court has relied on, all supporting the State Defendants' position. The first and strongest thread is the plain language of Headlee § 30 and Proposal A of 1994, which both support the State Defendants' position. There is no ambiguity nor any support for Plaintiffs' position in the plain language. The inquiry should stop here.

But even if one looks beyond the plain language, the Headlee Amendment's purpose was to lower taxes, increase voter control over future or increased taxes, and to make the government (whatever level) fiscally responsible for its own decisions. State Defendants' position supports these goals; Plaintiffs' position does not. Proposal A, also a voter-approved constitutional amendment, was intended to further reduce property taxes and to prioritize more equitable funding for public education from the remaining tax revenue. It created state revenue and directed that the money be spent on public education. That state level revenue spent primarily on local schools is, by definition, § 30 spending. The same is true for charter school funding (which is from the School Aid Fund in accordance with the Constitution), and funding for state mandates.

Nor are State Defendants aware of a single case holding that the state must provide local governments with funding to support their programs of choice or that § 30 addresses certain categories of state aid payments. No case, before this one, ever excluded state payments to locals for local programming—whether mandated

or voluntary. And every known case touching on funding for local discretionary use has rejected any such requirement: only state mandates placed on local governments *must* be funded by statewide taxpayers. Local "programs of choice" are, at the end of the day, up to local governments to approve and support through their own taxpayers and all state aid payments—whether to cover a state mandate or for local discretionary use—count as state aid just as they did in 1978–79.

The final thread, the Drafters' Notes, also supports State Defendants' position. In discussing mandate funding (under § 29 where it belongs), the Notes reflect an understanding that the Legislature may move funding from discretionary aid to state aid to support a mandate. They also reflect an understanding that a future increase in mandate spending could impact the proportion of the state's total budget that ends up being state aid to locals. But the Notes did not say the 1978–79 ratio would change; that is a set floor. The only way § 29 funding can have *any* implication under § 30 is if the aid payments count in the first instance; if the Court of Appeals' holding were true these payments would not affect § 30 in any way.

In summary, the plain language of § 29 and § 30, alone, supports the State Defendants' position and is dispositive. And so does every other individual strand of Michigan law: voters' intent, caselaw, and the Drafters' Notes all form a single braided cable supporting the State Defendants. This Court should hold that state payments to local units of government for public education, including public school academies, and to pay for state mandates in compliance with Headlee § 29 are all part of the aggregate "total" state aid calculation contemplated in Headlee § 30.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

The State Defendants hereby rely on the Statement of Facts and Proceedings set forth in their Combined Brief on Appeal.

STANDARD OF REVIEW

Statutory interpretation and application of Michigan's Constitution are questions of law that this Court reviews de novo. *Ford Motor Co v Dep't of Treasury*, 496 Mich 382, 389 (2014); *In re Sanders*, 495 Mich 394, 404 (2014).

ARGUMENT

I. State spending for public schools pursuant to Proposal A of 1994 must be included in the Headlee § 30 calculation.

Headlee's primary purpose, "relieving the electorate from overwhelming and overreaching taxation," both at the state and local level, gave the voters direct control and promoted transparency in the taxation process. *Durant v Michigan,* 456 Mich 175, 214 (1997) (*1997 Durant*). See also *Waterford School Dist v State Bd of Ed*, 98 Mich App 658, 663 (1980). As this Court also recognized in *Airlines Parking, Inc v Wayne County*, 452 Mich 527 (1996):

> The Headlee Amendment was "part of a nationwide 'taxpayers revolt' . . . to limit legislative expansion of requirements placed on local government, to put a freeze on what they perceived was excessive government spending, and to lower their taxes both at the local and the state level. [*Id.* at 533, quoting *Durant v State Bd of Ed*, 424 Mich 364, 378 (1985) (*1985 Durant*).]

The parties agree on one point: Headlee created a balanced framework. The disagreement lies in that framework's specific components.

The State Defendants' components come from Headlee's plain language, which does not distinguish between different categories of "state spending" paid to local governments under § 30. Plaintiffs' components, on the other hand, do not rely on Headlee's plain text, but instead require that additional language be read into § 30 of the Constitution.

A. The State has consistently applied both Headlee and Proposal A as required by its plain language.

Proposal A did not change Headlee's overall framework, it merely reallocated—at the voters' direct mandate—education funding from mostly locally generated property taxes, to state level taxes. Headlee capped government growth by giving the people greater control over new or increased taxation (at both the state and local levels). Proposal A increased statewide funding of school districts, reduced the funding burden on local governments, and capped the rate by which ad valorem property taxes may increase as a function of a property's true cash value.

Proposal A was simply a voter-approved public school funding formula change. This increased the total amount of money the State pays to local schools, but it did not change the formula for calculating § 30's proportion. Nor did it change who was responsible for providing educational services; local schools remained responsible for delivery of public education, as evidenced by the People's choice to describe Proposal A money as "aid to school districts." The additional revenue paid to public schools is included in the State's calculation of its § 30 obligation and has been since Proposal A of 1994 first went into effect.

In passing Proposal A, the voters intended further reduction of their local property taxes while increasing equity in school funding statewide. See *WPW Acquisition Co v City of Troy*, 466 Mich 117, 121–122 (2002) ("this language operates to generally limit increases in property taxes on a parcel of property . . . by capping the amount that the 'taxable value' of the property may increase each year, even if the 'true cash value,' . . . rises at a greater rate.") The State's implementation of Proposal A in conjunction with Headlee is proper and makes sense in light of the clear established goals of both constitutional provisions. Together, the result has been lower taxes, voter approved (or rejected) tax increases for local programming, state funding for state required local activities, and more equitable statewide public education funding. This is how Headlee and Proposal A were intended to work together.

The fiscal problem for certain local governments is not a "shell game" that the State contrived to avoid Headlee's revenue limits; rather, it is that ad valorem taxation is tied to the true cash value of property. As this Court discussed in *WPW Acquisition*, Proposal A capped the rate by which a property's taxable value can increase. In times of recession when property values decline, so does a local government's revenue and, due to Proposal A's capping of taxable value, the subsequent recovery of property values does not immediately correlate to recovery of pre-recession tax revenue for local governments. Conversely, state taxes, which depend largely on sales and use taxes, tobacco taxes, personal income taxes, and corporate incomes taxes, correlate much more directly with the state of the economy

and recover much more quickly than local ad valorem taxes. This results from both Headlee and Proposal A working in tandem as intended, not an accounting "shell game" developed to increase state revenue at the expense of local governments.

B. Proposal A revenue must be included in calculating the § 30 proportion.

Article 9, § 30 deals with "total state spending" and dictates what "proportion" of that spending must be "paid to all units of Local Government." Because the State sends its revenues generated by Proposal A to units of local government, Proposal A revenues straightforwardly constitute part of the State's total "spending" that is "paid to" units of local government. Plaintiffs cannot cite any text in § 30 that says otherwise.

And nothing in Proposal A changes that conclusion. Plaintiffs argue that the voters never intended Proposal A funding to count toward § 30's "state spending" for "aid to local governments," the "proportion" of which "shall not be reduced." Const 1963, art 9, §§ 25, 30. (Pls' Br, p 22.) This argument has no merit. Nor was the proportion reduced.

The language in the later-ratified Proposal A mirrors, almost exactly, the words of § 25 and the two provisions carry the same fundamental import. To be precise, § 25 states, "[t]he state is prohibited . . . from reducing the proportion of state spending in the form of aid to local governments," and art 9, § 11 states, "[t]here shall be established a state school aid fund which shall be used exclusively for aid to school districts . . . as provided by law." The redundancy in the use of the phrase "aid to" strongly indicates that "aid to" school districts, which are specifically

designated as local units of government in art 9, § 33, means the exact type of "aid to" local governments included in art 9, § 30.

Moreover, art 9, § 11 states that "the state shall guarantee that the total state and local per pupil revenue for school operating purposes for each local school district shall not be less than the 1994-95 total state and local per pupil revenue for school operating purposes for that local school district . . . ." This language, read together with art 9, § 29, operates consistently with that provision to ensure that state and local funding levels of 1994–1995 would continue, much like art 9, § 29 did for 1978 levels of state aid for required activities. Courts have made this clear:

> The language employed in art 9, § 11 is clear and uncomplicated. Assigning each word and phrase its common meaning, the great mass of the people would have understood from the amending language that art 9, § 11 "guarantees" that the state will provide each "local school district" with a minimum or base level of funding that cannot be less than "the 1994–95 total state and local per pupil revenue for school operating purposes[.]" [*Durant v Michigan*, 251 Mich App 297, 307 (2002).]

It does not make sense to conclude that money paid pursuant to a "guarantee[] that the state will provide . . . a minimum or base level of funding" does not qualify as "state spending paid to . . . units of Local Government" under art 9, § 30. To the extent Plaintiffs complain this shifted a tax burden onto local governments, their complaint is with the voters[1] who ratified Proposal A.

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[1] Section 29 addresses "state" mandates. This Court has rejected attempts to include constitutional provisions under § 29. *1985 Durant*, 424 Mich at 380 ("[T]he extensive procedural requirements for placing an amendment such as this one on the ballot, lend further support to a restrictive view of the term 'state law.' Ballot proposals are carefully scrutinized in this state to eliminate any possibility of confusion. Absent a definite pronouncement that constitutional requirements were to be included under [§ 29], we are unable to so conclude.").

Further, when Proposal A was decided by the voters, the Legislature had just passed Public Act 145 of 1993 that shouldered a large portion of the funding for school operations. See *Durant v Michigan (On Remand),* 238 Mich App 185, 194–197 (1999) (*1999 Durant*). The guarantee in art 9, § 11 only makes sense if there was a concern that the new funds generated by Proposal A might be used to entirely displace the funds from Public Act 145, a concern that can only exist if Proposal A's revenue sources are correctly viewed as "state spending" under art 9, § 30.

Finally, Plaintiffs' argument fails in light of another provision of Proposal A, art 9, § 10. There, the Constitution requires that the "legislature" must "use[]" 15% of sales taxes "of tangible personal property . . . exclusively for assistance to townships, cities and villages . . . ." Const 1963, art 9, § 10. The pre-Proposal A version of this provision set aside only $^1/_8$, or 12.5% of sales-tax revenue for assistance to local governments. Read together with art 9, § 11, it is clear that § 10 provides additional revenue "for assistance to townships, cities and villages," and nothing in its provisions indicates that the voters intended this assistance to be treated as anything other than "state spending" under art 9, § 30, or that the former 12.5% had been treated as anything other than "state spending" before the passage of Proposal A.

Plaintiffs' reading of Proposal A does not comport with common sense or the historical development of the proposal's ratification into the Constitution. The plain language of art 9, § 11 indicates that state revenues provided in 1995–1996 would be just as much "state spending" as the state revenues provided in 1994–1995, and

nothing in the language of art 9, § 11 indicates that the voters would think otherwise. Plaintiffs seek to reshape the Constitution's plain language to match their policy preferences, in the process contradicting the voters' intent.

C. Inclusion of Proposal A revenue in calculating the § 30 proportion is not a prohibited shifting of the tax burden.

As previously argued, Proposal A was a public school funding formula change enacted directly by the people via constitutional amendment. Instead of funding public schools primarily through local property taxes, the voters decided to primarily fund schools through state collected taxes to be distributed on a statewide foundational grant basis, both to lower their property tax burden and to restore equity between school districts. While it is true that local millages were reduced, local governments' burden to fund their school districts was also reduced, but in this case, Plaintiffs complain of a lack of funds for general operations, something neither Headlee nor Proposal A guarantees.

Headlee does not require the State to act as a guarantor of local governments' ability to fund voluntary operations or provide discretionary services. Thus, as the Court of Appeals recognized, "[t]he Supreme Court expressly rejected, as a 'strained interpretation of an unambiguous statement of intent by the voters,' the proposition that § 30 mandated that each individual unit of government receive in perpetuity the same proportion of the allotment for local government as it received in 1978." *Taxpayers for Mich Constitutional Gov't v State of Michigan*, 330 Mich App 295, 310–311 (2019), citing *1985 Durant*, 424 Mich at 393.

Plaintiffs continue to rely on *Schmidt v Department of Education*, 441 Mich 236 (1992), as support for their theory that the inclusion of Proposal A Revenue is a prohibited tax shift. *Schmidt*, however, directly contradicts Plaintiffs' argument, which is not about prohibited tax shifts, but asking this Court to create a § 30 guarantee for local governments a certain level of discretionary state funding.

Schmidt is a case about § 29, which is Headlee's anti-shifting provision that does not guarantee full local government funding—it merely guarantees local governments minimum funding for state mandates, or, "securing a minimum funding guarantee while simplifying calculations and avoiding inequitable anomalies." *Id.* at 243. The Court also recognized that Headlee voters did not intend to burden statewide taxpayers with every local government's financial wants or desires—only statewide funding for state mandates is required:

> We emphasized in *Durant* that the two sentences of § 29 must be read together . . . . We further explained that "while the voters were concerned about the general level of state taxation, they were also concerned with ensuring control of local funding and taxation by the people most affected, the local taxpayers." [*Id.* at 257, citing *1985 Durant*, 424 Mich at 379.]
>
> The question is not whether the local districts will be forced to raise local taxes to support their programs of choice, it is whether the state may mandate programs for which it does not pay a proportionate share. [*Id.* at 260.]

Headlee's intent is for state taxpayers to have the greatest control over statewide taxes, and for local constituents to control taxes within their local unit of government. In that light, a Headlee "tax shift" has always meant divorcing an activity from funding responsibility; if the state creates a new local mandate then statewide taxpayers must foot the bill (and if the state creates a law that requires,

for example, the Michigan State Police or the Michigan Department of Treasury to provide a service, statewide taxpayers must fund that as well). But if the State places a mandate on locals without funding it with statewide taxpayer dollars, then the local government would be forced to raise taxes on their local taxpayers to pay for a program the local government did not choose to implement and cannot repeal. Section 29 prohibits this result.

Plaintiffs, however, ask this Court to define "tax shift" in a way that allows local governments to side-step their constituents (who also pay state taxes) and burden statewide taxpayers for a local government's discretionary activities or general operations. *Livingston Co v Dep't of Mgt & Budget*, 430 Mich 635, 645–646 (1988). That does the opposite of tying funding responsibility to governmental decision making. The definition of a Headlee "tax shift" cannot allow local governments to shift taxing responsibility (raising revenue) to the state-wide taxpayers for purely local programs, either. That is the exact opposite of what Headlee voters intended. *Id*.

Plaintiffs also continue to rely on the Headlee Drafter's Notes, which this Court held non-authoritative because they were created post-ratification and might have been different than the meaning given by the "great mass of the people." See *1985 Durant*, 424 Mich at 382 n 12. See also *1997 Durant*, 456 Mich at 197, ("the

notes are one indication of a contemporaneous reading of the amendment.").[2] While this Court should continue to give little to no weight to the Drafters' Notes vis-à-vis the plain language, they actually support the State's inclusion of Proposal A revenue in calculation the § 30 proportion and that § 30 does not guarantee local discretionary funding. The Notes state the following:

> [T]he drafter's intent was to place the total dollar size of Michigan's public sector under direct popular democracy while retaining the best features of representative democracy, vis-à-vis the allocation of resources within the voter approved overall spending limitations. [State Defendants' App p 559a.]
>
> [Section 29] does not necessarily prevent the state from shifting funds from general and unrestricted revenue sharing to the funding of a state mandated activity but it does prohibit shifting funds from state mandated programs unless the mandate for such programs is eliminated. [*Id.* at 565a.]
>
> Additional or expanded activities mandated by the state, as described in Section 29 would tend to increase the proportion of total state spending paid to local government above that level in effect when this section becomes effective. [*Id.* at 566a.]

The Drafter's Notes recognize two things. First, for whatever weight they should be given, the Drafters understood that state aid paid to local governments to fund mandates would, in fact, count when calculating the § 30 proportion. Otherwise their discussion makes little sense. Second, it indicates, along with the discussion above regarding § 29, that although new mandates would "tend" to

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[2] The Michigan Supreme Court has held that because the Drafters' Notes' "intent might have been different than the meaning given by the great mass of the people and the notes were published after passage of the amendment and were not available when the people voted, the notes are not authoritative. They are one tool available to the courts. In particular, the notes are one indication of a contemporaneous reading of the amendment." *1997 Durant*, 456 Mich at 197, citing *1985 Durant,* 424 Mich at 382 n 12, and *Schmidt,* 441 Mich at 257 n 24.

increase the "proportion" of the state's annual budget that is spent as aid to local governments (rather than "will" or "must increase"), the Notes make no mention of *changing* the § 30 baseline from 1978–79.

Again, nothing in Headlee guarantees a certain level of state discretionary funding to local governments. The Notes also recognize the political appropriations process is always available to address future revenue sharing issues.

Lastly, the drafters recognized that Headlee did not prohibit the State from using what was once non-restricted funding to pay for a new state mandate. Under Plaintiffs' "tax shift" theory, the Legislature could no longer utilize non-restricted dollars to fund new state mandates—non-restricted funding would, itself, become a mandated state payment. As that theory relates to Proposal A, the voters converted school aid dollars from locally sourced revenue, to state sourced revenue. The voters did not create any new local requirement (the mandate component of a Headlee "shift").

The distinction is thus three-fold: (1) there was no new State mandated activity; (2) even if there were, it was done by the voters and not the State; and (3) it resulted in local governments being *relieved* of the burden of funding public schools as opposed to being required to raise new local taxes for education. To the extent that this was a shifting of the tax burden, it was not a shift by the State onto local governments, but an affirmative decision by the Proposal A voters to amend the Constitution to provide more state sourced funding for public schools in order to increase equity in public school funding statewide. This voter-approved public

education funding change does not offend Headlee nor could it. Plaintiffs do not assert that the provisions run afoul of the U.S. Constitution, and this Court is charged with finding each provision constitutional if such a reading is possible.

This Court's responsibility, instead, is to harmonize the constitutional provisions, and if the Court finds this impossible, then the later provision controls. *Advisory Opinion on Constitutionality of 1978 PA 426*, 403 Mich 631, 643 (1978). In this instance, the State's implementation of Proposal A harmonizes perfectly with the Headlee Amendment and the proportion of state spending to local governments required by § 30. Accordingly, Proposal A revenue must continue to be counted in the § 30 proportion absent further constitutional amendment by the people.

II. State payments to charter schools must be included in the Headlee § 30 calculation.

The Michigan Legislature has defined charter schools as school districts for purposes of school aid funding, which is properly included in the § 30 calculation. Plaintiffs' attempts to distinguish charter schools from school districts are misguided. But even if charter schools are not "school districts," they perform a local service that was previously performed by local units.

Plaintiffs' arguments as to charter schools are a curious mixture of rehashed facts about charter schools versus public schools in 1978 as well as some new arguments. But these assertions ignore the passage of Proposal A and its implications for Michigan schools generally and charter schools in particular. Specifically, after Proposal A, there are no schools in Michigan that share the

characteristics of public schools as they existed in 1978, for which reason these comparisons are irrelevant.

A. Charter schools are school districts for purposes of receiving School Aid funding required by Michigan's Constitution.

The Court of Appeals examined the question of whether state funding for public school academies (PSAs) counts for purposes of § 30 by looking to the Revised School Code (RSC) vis-à-vis the Michigan Constitution. The Court determined that PSA funding is properly counted because, according to the RSC, "[a] public school academy . . . is a school district for purposes of section 11 of article IX of the state constitution of 1963 . . . ." *Taxpayers*, 330 Mich App at 312, citing MCL 380.501(1).

The Court of Appeals correctly decided this issue because the RSC speaks directly to this question, and points to constitutional authority of equal weight to the Headlee Amendment. Specifically, MCL 380.501 provides, in pertinent part:

> (1) A public school academy is a *public school* under section 2 of article VIII of the state constitution of 1963, is a *school district* for the purposes of section 11 of article IX of the state constitution of 1963 and for the purposes of section 1225 and section 1351a, and is subject to the leadership and general supervision of the state board over all public education under section 3 of article VIII of the state constitution of 1963. A public school academy is a *body corporate and is a governmental agency*. The powers granted to a public school academy under this part constitute the performance of essential public purposes and *governmental functions of this state*. [Emphasis added.]

Plaintiffs argue that "[t]his case however does not involve charter school funding issues." (Pls' Br, p 38.) The State Defendants disagree—the case involves whether charter school funding is properly counted under § 30. Neither did the Court of Appeals "inject [] the issue of school funding into the analysis," (*Id.*)

because this is the precise question at issue. To deny that school funding is part of the analysis as to whether school funding counts under § 30 is nonsensical. That is *the question* posed by Plaintiffs' Count II.

This question is answered by the RSC, which makes clear that charter school funding is constitutional school aid funding, and that charter schools are public schools and school districts for that purpose. MCL 380.501(1). The State Defendants agree with Plaintiffs that the Legislature had a "discrete and limited purpose[ ]" (Pls' Br, p 29) in passing the RSC, which was to make clear that for purposes of constitutional school aid funding, charter schools are public schools and school districts. This alone resolves the question of whether funds paid to charter schools (i.e., to public schools and school districts) are properly counted as § 30 spending.

And while "no provision of section 11 requires that all payments from the school aid fund must also constitute" § 30 spending (Pls' Br, p 38), if that spending is used for local purposes (for example, the delivery of local education services), then as a matter of law that spending must be counted for § 30 purposes. Indeed—if the standard for whether state funding counts as § 30 spending depends on the imprimatur offered or denied by art 9, § 11—then no state school spending could ever count under § 30 because § 11 does not speak directly to this question as to any funding. Nor can every constitutional provision or state law be required to directly refer to § 30; that is neither practical nor necessary. As previously argued, § 30 is broad and makes no distinction between the local's purpose or use of state aid

payments—discretionary or pursuant to a mandate—so no § 30 treatment language is necessary.

Neither still did the Court of Appeals "create[ ] a new rule that the Legislature can change the meaning of constitutional terms at will unless a particular provision explicitly states otherwise." (Pls' Br, p 39.) Legislating that charter school funding is constitutional aid funding under art 9, § 11 does not change the meaning of art 9, § 11 or otherwise redefine "political subdivision of the state." It merely states that, of the pot established by the Constitution (i.e., the School Aid Fund), charter school funding fits within a particular constitutional money bucket—an unremarkable and otherwise common sense legislative enactment, and a correspondingly unremarkable and common sense holding by the Court of Appeals.

B. Voters in 1978 could not have had any understanding of charter schools because they did not exist at the time. But charter schools operate in the same manner, and are subject to the same oversight, as traditional public schools post-Proposal A.

The Court of Appeals accurately noted that 1978 voters would not have considered charter schools because they did not exist at the time. Plaintiffs misunderstand the Court of Appeals' decision by omitting language: "[t]he Court of Appeals, in fact, specifically found that '[i]t is unlikely that the Headlee voters specifically intended that aid to PSAs would count as state aid to local governments considering.' " (Pls' Br, p 38.) Plaintiffs fail to finish the rest of the sentence, which read "considering that PSAs did not yet exist." *Taxpayers*, 330 Mich App at 313.

The State Defendants agree, but charter schools do operate in the same manner as public schools today. And in any case, there are no public schools in existence that have all of the characteristics of schools in 1978 in light of Proposal A.

Plaintiffs also assert that charter schools "may be understood to defy easy categorization." (Pls' Br, p 36.) But this is not relevant to any analysis in terms of understanding charter schools from the perspective of 1978 voters, who could never have understood the characteristics of entities that did not exist.

Further, looking to school districts' powers in 1978 is unavailing. For example, "school districts in 1978 possessed full taxation power," (Pls' Br, p 35), but this has not been true since the passage of Proposal A, when the voters stripped away many of the taxation powers previously held by local schools and vested that authority in the State. Accordingly, the comparison of school districts in 1978 and charter schools (or any Michigan schools today, for that matter) is inapposite. They are fundamentally different creatures, and no comparison between pre-Proposal A schools and post-Proposal A schools will assist in the analysis.

Neither do the State Defendants concede that "charter schools do not comport with citizens' understandings of political subdivisions of the state or school districts at the time that the Headlee Amendment was adopted." (Pls' Br, p 36.) The State Defendants have made no such concession, but instead agree with the Court of Appeals that these entities did not exist, and otherwise share the pertinent characteristics of school districts and public schools both in 1978 and contemporarily post-Proposal A.

Plaintiffs claim that charter schools serve citizens statewide (again, implicitly referring to MCL 21.233) and operate independently. But even considering MCL 21.233, the geographic service region is dictated by the charter school's authorizing body. For example, MCL 380.504(3) provides that for charter schools authorized by school districts, intermediate school districts (ISD), or community colleges, enrollment *may* be extended to all Michigan residents, but *"shall"* be open to all residents within the authorizing body's geographic boundaries who meet the admission policy.[3] And while charter schools authorized by a state public university shall be open to all Michigan pupils, as a practical reality, students will still choose geographically local schools. A student from Coldwater will not choose to attend a charter school in Traverse City.[4]

Consequently, the geographic service range for charter schools is limited either in law (school district, ISD, and community college authorizations) or in fact (state public university authorizations), for which reason charter schools' "primary purpose" is to provide local education services in a geographically limited region. MCL 21.233(5). And in any case, Plaintiffs do not identify any particular charter schools or subset of charter schools based on their authorizers (and thus, service

[3] This is not unlike the "schools of choice" options that allow a student to attend a public school district other than the one where that student lives geographically. See MCL 388.1705; MCL 388.1705c.

[4] Indeed, the concepts of "attending" a public school and the existence of the internet itself could not have been contemplated by voters in 1978–79. But as we have seen in 2020, amidst a global pandemic, "traditional" and "attending" in relation to public education can and do mean different things than they did in 1979. See, e.g., MCL 388.1621f, addressing "virtual courses" for "pandemic learning."

region), but instead merely claim that no charter schools deliver services in a geographically limited area.

Plaintiffs' citation to *People v Egleston*, 114 Mich App 436 (1982) is unavailing. (Pls' Br, pp 31–32.) First, as noted above, the characteristics of a community college district prior to Proposal A has no bearing on the characteristics of a school district after Proposal A. Second, the RSC answers this question decisively. Finally, *Egleston* considered whether a community college district was a political subdivision of the state for purposes of the counterfeiting tools statute, MCL 750.255, *id*. at 439—not the Headlee Amendment or implementing legislation. Neither did *Egleston* "accurately reflect voters' commonly held understandings of a political subdivision of the state shortly after Headlee's enactment." (Pls' Br, p 32.) *Egleston* did not involve a constitutional analysis or any question of what voters' common understanding of a community college district was. *Egleston* dealt strictly with statutory matters, i.e., the counterfeiting tools statute.

Plaintiffs' citations to Attorney General opinions are similarly unavailing. As to the very matter at hand (charter school funding), the Attorney General has determined what the RSC makes plain: "[s]ection 501(1) of the Revised School Code, MCL 380.501(1), defines a public school academy as a 'public school' and a 'school district' for purposes of state school aid." (State of Michigan Attorney General, *Opinion No. 7234* (July 20, 2009), available at <https://www.ag.state.mi.us/opinion/datafiles/2000s/op10311.htm> (accessed November 4, 2020).)

C. Headlee voters could not have had any understanding of any Michigan school districts after Proposal A and passage of the RSC. Accordingly, any comparison between charter schools and schools as they existed in 1978 is inapposite.

By the standard that Plaintiffs articulate, *no schools or school districts today* would be "public schools" or "school districts" as they were understood in 1978. For example, under Proposal A, school districts are no longer allowed to levy taxes without restriction. Specifically, Public Act 145 of 1993 eliminated the authority of school districts to levy local millages on property for school district operating expenses. *1999 Durant*, 238 Mich App at 196. Also, prior to the RSC, school districts were broken into various classes, which were consolidated by statute in 1996. Specifically, the RSC provides that "[b]eginning on July 1, 1996, each school district formerly organized as a primary school district or as a school district of the fourth class, third class, or second class shall be a general powers school district under this act." MCL 380.11a(1). Thus, the RSC eliminated primary school districts, MCL 380.71–380.87; districts of the fourth class, MCL 380.101–380.155; joint high school districts, MCL 380.171–380.187; districts of the third class, MCL 380.201–380.260; districts of the second class, MCL 380.301–380.362; and consolidation of school districts, MCL 380.862a. These district classes were replaced by general powers school districts, which exist today.

The RSC[5] also eliminated several powers previously held by public schools. For example, the RSC repealed provisions requiring school boards to ensure that decisions at a school building level are made via site-based decision-making, MCL 380.1202a; requiring a school board and ISD board to publish financial reports, MCL 380.1203; and requiring a school board to issue an annual report to the State Board, MCL 380.1204, among many other changes. (See generally, Senate Legislative Analysis, SB 679 (January 29, 1996), available at <https://www.legislature.mi.gov/documents/1995-1996/billanalysis/Senate/pdf/1995-SFA-0679-E.pdf> (accessed November 4, 2020).)

In short, after passage of Proposal A and the RSC, *all* Michigan public schools are fundamentally different in how they are structured, organized, and accountable to the State Board and Michigan citizens generally. Accordingly, 1978 voters could not have conceived of a single school currently in existence. *A fortiori*, they could not have any understanding of charter schools, and any comparison between these entities and public schools in 1978 is meaningless. For these reasons, Plaintiffs' argument concerning the common understanding of Headlee voters is inapposite.

[5] While the RSC eliminated some of these public school characteristics, some requirements were revised or moved to other statutes. See, e.g., MCL 388.1619, a provision of the State School Aid Act addressing financial reporting.

III. Section 29 spending is part of "total" state spending paid to local governments under § 30.

While § 30 deals with aggregate spending, § 29 deals with details: the funding of specific state mandates. It ensures the sufficiency of state funding for state created mandates—if the state makes a local provide a service, then the state must provide the funding. But nothing in § 29 makes the state fund local programs of choice. The plain language of §§ 29 and 30 supports State Defendants' position.

So, too, do the remaining threads of Michigan law; braided around the plain language are the purpose of the Headlee Amendment (voter intent), the caselaw applying the Headlee Amendment, and the Drafters Notes.

A. The plain language is unambiguous and supports inclusion of all state spending—including mandates payments—in § 30.

1. The plain language of § 29 only requires mandate funding.

This is not a § 29 case. (State Defendants' App p 017a.) But to illustrate when state funding for locals is required, Headlee § 29 must be discussed. It is the only Headlee provision that requires specific state spending for specific local use. Section 29 only deals with state mandates; it does not speak to, support, or require state payments to local governments for *nonmandated* local activities.

2. The plain language of § 30 only requires funding.

Section 30 only deals with "total" funding—total paid to locals over total state spending. Roughly half of total state spending each year must be in the form of state aid to locals. The proportion set in 1978–79 simply looked at the State's

budget and spending that year as a snapshot; it considers how much the State spent directly on its own services and activities and how much *in aggregate* did the State spend as aid to local governments. That "aid" was everything paid to local governments and § 30 does not differentiate by type or category. So, while State support for local programs of choice has always existed, it does not have a permanent place or amount anywhere within Headlee.

Once all mandates have been satisfied statewide, if the total state aid falls short of § 30's minimum set in 1978–79, then the rest—any additional amount needed to reach the minimum—would by default be discretionary funding. *But Headlee does not guarantee a fixed annual amount of discretionary state aid.* The Legislature may continue to use what was once discretionary state aid to fund new or increased state mandates. See *Judicial Attorneys Ass'n v Michigan*, 460 Mich 590, 603–604 (1999) ("§ 29 primarily addresses shifts from the state to local units. With respect to shifts of responsibility among local units, § 29 only guarantees that each local unit will receive the state-financed proportion of funding provided on a statewide basis in [the base year]" and "The Headlee Amendment simply does not speak to all potential shortcomings of funding statutes.").

B. This Court's most analogous and applicable Headlee decisions support State Defendants' argument.

1. This Court's decisions addressing mandated versus voluntary local services support State Defendants' argument.

When reviewing Headlee Amendment disputes, admittedly most coming under § 29,[6] this Court has consistently distinguished between activities that the state requires of local governments (which statewide tax revenue must pay for) and activities and services which are purely voluntary—programs that local governments can choose to provide their local citizens but no state law requires. These decisions run the gamut in terms of subject-matter: from education funding to whether the state must pay for local landfills. Every known decision of this Court, and every other Michigan court before the instant case, has held that statewide taxpayer funding for local programs of choice can be on the chopping block at the state level as long as the overall level of state funding to the locals remains at or above the § 30 minimum:

- In *Livingston County,* 430 Mich at 644, quoting § 29, this Court held that the "anti-shifting" provision "keep[s] the state from creating loopholes either by shifting more programs to units of local government without the funds to carry them out," the unfunded mandated prohibition, "or by reducing the state's proportion of spending for "required" programs in effect at the time the Headlee Amendment was ratified." Yet, *"[t]he plan clearly does not prohibit the reduction of the " 'state financed proportion ... of any existing activity or service [not] required . . . by state law.' "* (Emphasis added.)

[6] This is because there is no language in § 30 to support specific category-based funding requirements, and, thus, there is virtually no caselaw.

- The *Livingston County* Court further held that "[i]mplicit in [a Court of Appeals' decision] was the Court's assumption that art. 9, § 29 only applied to required, not optional, activities or services," and then holding that " 'an increase in the level of any activity or service' in art. 9, § 29," the trigger for state required funding, "refers only to required, not optional, services or activities." *Id*. at 648.

- In *Oakland County v Michigan*, 456 Mich 144, 157 (1997), this Court held that "[t]he Headlee Amendment is implicated where an "activity or service" is involuntary. As we earlier concluded, the activity or service is the provision and funding of foster care. The provision of foster care services by counties is neither voluntary nor optional," thus requiring state funding. On the other hand, voluntary or optional services did not require state support.

- In *Schmidt*, 441 Mich at 260, this Court observed that "[t]he question is not whether the local districts will be forced to raise local taxes to support their programs of choice"—plaintiffs' entire argument revolves around the notion that local governments must be allowed to select programs of choice without the need to raise taxes. Instead, the court observed that the core Headlee question "is whether the state may mandate programs for which it does not pay . . . ."

- *Schmidt* further rejected "[v]arying shares of state funding [for each public school] not related to programing" in perpetuity based on varying funding levels at the time Headlee was enacted; i.e., maintaining each school's pre-Headlee funding status quo. *Id*. at 261–262. The Court rejected "varying" funding not tied to additional programming implied more money for some schools even though they provide no additional *state required* educational services in comparison to other public schools—that additional funding would thus have been, thus, discretionary and was rejected. *Id*.

- Finally, in *1985 Durant*, 424 Mich at 368, 378, this Court held that "unrestricted state aid is not funding for an 'existing activity or service required of units of Local Government by state law.' "

In short, there is no guarantee of state funding for local choices. Only a rewrite of the Michigan Constitution could create such a guarantee.

2. This Court's decisions addressing ongoing Legislative discretion supports State Defendants' argument.

This Court has also recognized that, while Headlee placed significant limits on every level of government (e.g., § 30 requiring that the Legislature spend nearly half its available dollars on local, § 31 requiring local voters approve new local taxes), Headlee voters did not intend to completely remove Legislative discretion in using statewide taxpayer dollars.

"The voters intended neither to freeze legislative discretion nor to permit state government full discretion in its allocation of support for mandated activities or services." *Schmidt*, 441 Mich at 242. The Legislature's unfettered prerogative to pass laws that mandate new local activities or services—so long as the State pays for those services with statewide taxpayer dollars—is clear. Headlee only prohibits the Legislature from funding a new mandate by using dollars already tied to an existing state mandate; that would create an "unfunded mandate" under § 29. The Legislature may, though, decide to use state aid that was previously discretionary—not tied to any specific state mandate—to pay for a new state mandate. Either way, the payment remains part of "total" state aid to local governments and must be counted under § 30.

In *Judicial Attorneys*, 460 Mich at 602, this Court spoke to "balancing state discretion in allocating funds and minimum funding guarantees for local units." The well-recognized voter "goal of not freezing legislative discretion" and disgruntled parties' ability to "seek relief through the political process" reminded the litigants: "[t]he Headlee Amendment simply does not speak to all potential

shortcomings of funding statutes." *Id.* at 603–604. In short, discretionary state revenue sharing statutes exist, but they are, by definition, discretionary and subject to the political process. Headlee deals only with state funding for state mandates, not local choices.

Indeed, "the intended limitations of § 29 on the state's discretion do not include requiring the state to fully fund an activity that was locally funded in 1978." *Id.* at 604. To hold otherwise would "limit the Legislature's discretion beyond that intended by the Headlee Amendment" and would "hamper the Legislature's discretion in ways not envisioned by the Headlee Amendment." *Id.* at 604–605.

3. Section 25 is not a standalone provision that creates a cause of action, but instead is a preamble.

Plaintiffs argue as though their claims address § 30 calculations, but they do so by arguing "sections 25 and 30" as if they are one provision. Specifically, they argue:

> First, § 25 and § 30 prohibit the state from including amounts generated by a tax shift that places a tax burden on local governments. Proposal A arose from an initiative to restructure public school financing that sharply reduced local school districts' ability to collect local property taxes, while imposing new state taxes to replace school districts' lost local property tax revenue. As a result, there is no genuine dispute that Prop. A payments arise from a tax shift. [Pls' Br, p 4.]

While both are constitutional provisions, that does not mean the language of § 25 is literally written into every other provision. The sections must be read harmoniously but as having independent purposes–not overlaid atop each other as redundant or to frustrate the voters' intent. Nothing in § 30 limits what payments

from the state, to local governments, count or do not count. Michigan courts have consistently read Headlee § 25 as a summary or preamble,[7] which is substantively implemented through Headlee §§ 26–34.

Article 9, § 25 provides an outline of the Headlee amendment. Specific to this case, it provides that: (1) "the state is prohibited from requiring any new or expanded activities by local governments without full state financing"—a requirement implemented directly through the second sentence of Headlee § 29; (2) "[the state is prohibited] from reducing the proportion of state spending in the form of aid to local governments"—a requirement implemented directly through Headlee § 30; and (3) "[the state is prohibited] from shifting the tax burden to local government"—a requirement implemented directly through the first sentence of Headlee § 29. Plaintiffs' argument is not, as they suggest, an interpretation of § 25, but is instead an attempt to animate a new obligation, i.e., a guarantee of state funding of local discretionary programs. This Court should not allow Plaintiffs' manufactured notion of "balance" (Pls' Br, p 16) to supplant the plain language of the Constitution, and, thereby, subvert the design, which enhanced voter control over taxation and spending.

The State Defendants disagree that the people's "new tax payments were used to reduce required state spending upon local governments as a group." (Pls' Br, p 4.) First, the required state aid payments under § 30 were met before and

[7] *1997 Durant*, 456 Mich at 183; *Schmidt*, 441 Mich at 286; *Jackson Co v City of Jackson*, 302 Mich App 90, 93 n 1 (2013); *Commuter Tax Ass'n v Metro Detroit*, 109 Mich App 667, 679 (1981).

after Proposal A; nothing fell short of the aggregate requirements found in § 30. Second, the only *other* "required" state aid payments are for mandates under § 29. But this is not a § 29 case. Again, Plaintiffs' theory is that non-mandate (discretionary) funding is now itself a mandate—the alleged "reduce[d] state spending" was in the form of discretionary funds. While other laws or constitutional provisions may provide for certain subsets of state "aid" to locals, Headlee does not require discretionary state payment in any set amount nor in perpetuity.

Plaintiffs essentially superimpose § 25 within each standalone Headlee provision, in an attempt to change the phrase "tax shift" from a Headlee term of art to a common dictionary term void of support in the plain language or purpose of the Amendment. Their insistence that state funding for local programs of choice is required (and thus, subject to being "displaced" by other state aid paid to locals for mandates rather than reduced or enlarged annually as part of the Legislative process) is contrary to the plain language, inconsistent with case law, and contrary to clear intent of the voters.

Section 25 has always been interpreted as Headlee's roadmap and is not a substantive enforcement mechanism. In noting that the state is "prohibited" from "reducing the proportion of state spending in the form of aid to local governments," § 25 does not anticipate a substantive provision guaranteeing a floor for local discretionary spending. There is no such substantive protection. Rather, § 25 envisages a floor of state spending to the locals as a percentage of total state spending, which is expressed under § 30 as a "total." The Courts have consistently

recognized § 25 as a preamble (see n 7, above) and the lower court agreed. *Taxpayers*, 330 Mich App at 300 n 1. A "tax shift" is when the state moves a responsibility to a local without supporting state payments, not the voters moving funding responsibility from locals to the state and without any new state mandate. State funding for local programs of choice has existed as a function of the political process through the Legislature but is not required by Headlee. Section 30 counts *all* state spending to local governments as state "aid" so long as the service—state mandated or locally chosen—is provided locally. If such guarantee for discretionary funding exists, it is not found within Headlee.

4. The Drafters' Notes support State Defendants' argument.

This Court has recognized the Headlee Drafters' Notes for what they are worth: in short, not a lot.[8] Yet, they are one "tool" this Court may use. *1997 Durant*, 456 Mich at 196. And the Notes support State Defendants' position.

The Drafters' Notes addressing § 29 provide that "[t]his section does not necessarily prevent the state from shifting funds from general and unrestricted

[8] "Because the Drafters' intent might have been different than the meaning given by the great mass of the people and the notes were published after passage of the amendment and were not available when the people voted, the notes are not authoritative." *1997 Durant*, 456 Mich at 195–196, citing *1985 Durant*, 424 Mich at 382 n 12 ("The law is well-settled in both the state and federal courts that comments made after the adoption or passage of a statute or constitutional provision are given little weight when the intent of those who ratified or voted for adoption is manifested otherwise . . . . In light of all of the contrary evidence previously discussed and of the fact that our attention is drawn to inconsistencies within the notes themselves, we find the Drafters' Notes of no value in this case."). Yet, the Notes are "one tool available to the courts." *Id.* at 196, citing *Schmidt*, 441 Mich at 257.

revenue sharing to the funding of a state mandated activity but it does prohibit shifting funds from state mandated programs unless the mandate for such programs is eliminated." *Schmidt*, 441 Mich at 257 n 24, quoting Drafters' Notes on § 29. In short, the Amendment provides that one *type* of state funding is required (mandate funding) and one type is not (discretionary funding). Both types of funding exist, practically and as a matter of Legislative discretion, but only the former is required in perpetuity (or until a state mandate is repealed).

The "notes support the notion that § 29 sought to connect the state's programing requirements with its funding requirements;" if the state requires the service of a local government then the state must pay. *Id.* But if the state does not require the service, nothing in §§ 29 or 30 requires the state to pay for the specific local service.

Logically, the idea of "shifting funds" from "general and unrestricted revenue sharing to the funding of a state mandated activity" and the idea of the Legislature being able to "eliminate" an existing mandate—even one that existed in 1978–79 and was part of the baseline § 30 percentage—and then use the funding from the eliminated mandate to pay for a new state mandate—means that discretionary funding is not required. Yet, under Plaintiffs' theory and the lower court's holding, that Legislative prerogative recognized in the Drafters' Notes would *no longer count* under § 30. That is absurd on its face, but also contrary to the Notes.

And in addressing § 30's calculation, the Notes indicate that "[a]dditional or expanded activities mandated by the state," i.e., § 29 requirements and their

required state funding "would tend to increase the proportion of total state spending paid to local government above that level in effect when this section becomes effective." (State Defendants' App p 566a.)

State Defendants maintain that is true; over time and as new state mandates are created those mandates may, in aggregate with all other state mandates and related payments, eventually exceed the minimum total state aid required under § 30. This is true unless other state mandates are simultaneously repealed—as the notes state. Hence the word "tend" to increase rather than "will," or "must," or "shall." But the takeaway is even more basic; in order to have any impact on § 30's annual calculation, § 29 payments *must count in the first instance.* If they do not count, as the lower court held, they could have no impact under § 30. Indeed, the § 30 percentage is based on the 1978–79 base year, and *both* state spending for mandates a*nd* state discretionary funding were "aid" to local governments in that base year calculation. Going forward from 1978–79, only one *type* of spending was required in perpetuity: funding for state mandates as provided in § 29.

The lower court held that "revenue sharing," which appears to be synonymous with discretionary funding, has a sacred or guaranteed place in Headlee; the lower court held that the "tend to increase" comment "evinces an intent that state-funding obligations arising from new § 29 obligations are to be paid in addition to § 30 revenue sharing." 330 Mich App at 316. Respectfully, that is close but not quite accurate; rather the § 30 Note "evinces an intent that state funding obligations arising from new § 29 obligations are to be paid in addition to

[existing aggregate mandate payments]" which is all that Headlee's plain language requires as it relates to funding *types*. Once all of the required mandates funding has been provided, then, if the total still does not satisfy § 30's separate minimum funding requirement, additional state spending to locals must be provided—that is the only context in which discretionary funding is "required," as a filler. Otherwise, it is as the name describes: purely discretionary and left to the political process.

Yet, eventually, it is possible that all state mandates and related state aid—those mandates in place in 1979 and those created since 1979—could exceed 48.97% of the State's annual spending. Thus, the Notes recognized that over time the legislative process would "tend" to increase the *proportion* of the State's annual budget that take the form of local aid payments. But to be clear that result—a specific budget year's mathematical proportion exceeding the 1978–79 proportion—would not forever change the § 30 ratio. The annual proportion in practice should not be confused with the § 30 minimum proportion; one may increase or decrease year over year while one is a concrete baseline.

This makes sense when read in conjunction with the plain language of § 30. Simply because a local government cannot use § 29 revenue for any purpose it deems fit, does not render it excludable from the § 30 "total" aid payment calculation. Section 30 measures and sets a baseline *total* ratio; it is a high level calculation unconcerned with details or spending subcategories—all state aid paid to locals is state aid. Section 29 deals with the details and *only* requires funding for

mandates. Nothing in Headlee guarantees state funding "for local purposes," i.e., "local programs of choice" from statewide taxpayer dollars.

5. This Court's decisions discussing Headlee voters' intent support State Defendants' argument regarding treatment of state aid payments in § 30.

That the Headlee Amendment was the result of taxpayer frustration is well noted. But what exactly did the voters' want? This Court has addressed Headlee voters' intent, holding that they wanted:

> **First**, "to lower their taxes both at the local and the state level." *1985 Durant*, 424 Mich at 378.
>
> **Second**, "to limit legislative expansion of requirements placed on local government," *Id.*
>
> **Third**, "to put a freeze on what they perceived was excessive government spending," *Id.*
>
> **Fourth**, "to gain more control over their own level of taxing and over the expenditures of the state" and to "control of local funding and taxation by the people most affected, the local taxpayers." *Id.* See also *Schmidt*, 441 Mich at 260 ("This separation of the taxing question from the programing question is contrary to one of the primary purposes of the Headlee Amendment.").

This Court has echoed these main tenets for decades. *Schmidt*, 441 Mich 236 (1992). *Airlines Parking Inc v Wayne Co,* 452 Mich 527 (1996); *Bolt v City of Lansing,* 459 Mich 152 (1998); *Adair v Michigan*, 470 Mich 105 (2004).

Only the State Defendants' position is consistent with each of these goals.

IV. The Michigan Auditor General is not subject to mandamus here.

For the reasons already briefed and not meaningfully rebutted, mandamus does not apply as to the Auditor General in its statutory role under these provisions.

The Auditor General completed its tasks and duties—the only ministerial part of its duties was to undertake the review. Beyond that, it did so in good faith and based on existing law; it did not ignore caselaw nor *could* it apply the holding of this case which presents a completely "novel" argument. Nor is it in a position to, in effect, mandate another state department take action; it did not have superintending control over any other defendant here.

There is no decision, lack of required action, or other event implicating mandamus. State Defendants asks that this Court hold that mandamus as to the Auditor General is improper here and dismiss the Auditor General from this dispute.

CONCLUSION AND RELIEF REQUESTED

The plain language of § 30 is unambiguous and finds no support for Plaintiffs' massive funding shift request and seismic shift in application after forty years. Even beyond the plain language the remaining threads of law "suggest that the strongest 'cable' is woven" under State Defendants' position. Together, the Headlee Amendment and Proposal A have strained budgets at the State and local level. The relief valve at each level is the Legislature's decision to raise additional funds or reallocate existing funds (having already met its minimal requirements under Headlee) or local voters approving local taxes for local programs of choice.

State Defendants ask that this Court reverse as to § 29 spending's treatment under Headlee § 30, and affirm that state spending to public schools—all of it and all of them—also counts under the "total" in § 30, and confirm that the Auditor General is not subject to mandamus in this matter.

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