

State of Michigan
Michigan Supreme Court

Taxpayers For Michigan Constitutional
Government, Steve Duchane, Randall Blum,
and Sara Kandel,

Plaintiffs-Appellees,

SC: 160658

COA: 334663

v.

State Of Michigan, Department Of Technology,
Management And Budget and Office Of Auditor
General,

Defendants-Appellants.

Taxpayers United Michigan Foundation's Brief *Amicus Curiae*

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....iii

INTEREST OF AMICUS CURIAE..... 1

BASIS OF JURISDICTION..... 3

STATEMENT OF QUESTIONS INVOLVED.....3

STATEMENT OF FACTS.....3

ARGUMENT4

RELIEF REQUESTED.....8

INDEX OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

Const 1963, art 9, § 25 to 34.....passim

OTHER AUTHORITIES

Taxpayers United Michigan Foundation, Drafters' Notes Tax Limitation Amendmentpassim

Charlie Cain, *Headlee Criticizes Proposal A As Tax Shift And Tax Increase*, The Detroit News,
May 14, 1993

INTEREST OF AMICUS CURIAE¹

Amicus Taxpayers United Michigan Foundation (“**Amicus Taxpayers United**”), is a Michigan non-profit corporation located in Oakland County and it is qualified as a §501(c)(3) organization under the Internal Revenue Code of 1986, as amended. It acts as a nonpartisan statewide educational foundation helping educate grassroots taxpayers how to defend and control their constitutional rights, particularly with respect to their taxpayers’ rights as established by the 1978 initiative amendments to the Michigan Constitution of 1963 with the addition to Article IX, of Section 6 and Sections 25 through 34, commonly known as the ‘Headlee Tax Limitation Amendments’.

Its current State Chairman, William McMaster, and Richard H. Headlee (deceased 2004), together, formed Amicus Taxpayers United in 1976 to help successfully obtain sufficient statewide petition signatures and win statewide voter approval of the 1978 Headlee Tax Limitation Amendments to the Michigan Constitution. McMaster participated in the initiative as the campaign director. Headlee was the 1978 campaign chairman. McMaster also was an author and final editor of the language of the initiative as presented to the Secretary of State (the chief elections officer) for placement on the ballot. He served on the Drafting Committee and was the editor for the compilation of the Drafters’ Notes to the initiative and he has maintained all these historical records for Amicus Taxpayers United. He has continued as Amicus Taxpayers United’s volunteer State Chairman. He frequently speaks to civic groups on behalf of Amicus Taxpayers United and he handles Amicus Taxpayers United’s media relations for topical matters affected by the Headlee Amendments.

¹ In accordance with MCR 7.312(H)(4) Amicus represents that no counsel for a party authored this brief in whole or in part and no such counsel or a party made any monetary contribution intended to fund the preparation or submission of this brief

Amicus Taxpayers United, under Mr. McMaster's direction, has also continued to monitor legislative workings and it has provided testimony on bills and legislation as affected by the Headlee Amendments. Mr. McMaster participates in educational seminars promoting the rights granted citizens through the Headlee Amendments, and, he also defends those rights through commencing and participating in, litigation when these rights, under the Headlee Amendments and the Michigan Constitution generally, are threatened.

BASIS OF JURISDICTION

This lawsuit arises from the violations of the Headlee Amendments, Art. IX, § 25, § 29 and § 30, to the Constitution of the State of Michigan of 1963, as so amended, and after the enactment of Proposition A in 1994. Jurisdiction in this Court arises directly from Mich. Const. Art IX, § 32 and Art. MCL § 600.308a (1).

STATEMENT OF QUESTIONS INVOLVED

Amicus Taxpayers United accepts the Statement of Questions Presented for Review as set forth in the Plaintiffs-Appellants' Application for Leave to Appeal.

STATEMENT OF FACTS

Amicus Taxpayers United accepts the Concise Statement of the Case and the Statements of Proceedings and of the Facts contained in the Plaintiffs-Appellants' Application for Leave to Appeal.

ARGUMENT

The Constitution of the State of Michigan of 1963, as amended in 1978 by Article IX, § 25, § 29 and § 30 prohibits the State of Michigan from reducing the proportion of state spending, in the form of aid to local units of government, from that percentage amount of state revenue that had then been established when the Headlee Amendments were enacted in 1978. (This percentage amount is presently determined as 48.97%.) The state has violated such prohibition and it has obscured such violation through its actions in accounting for Proposal A revenue and spending. The state's accounting for revenue it has received as a result of Proposal A has materially reduced the amounts of revenues it now distributes to local units of government. It has thereby shifted/increased the tax burden for local services to local units of government – in violation of the Headlee Amendments. The state's violation in particular is of Section 25 & 30 of Art. IX. It has *shifted* the tax burden onto the local units of government.

Section 25 prohibits the state “from reducing the proportion of state spending in the form of aid to local governments, **or from shifting the tax burden to local government**”. The language prohibiting a “shift” was added by Amicus Taxpayers United at the drafting stage of what became the Headlee Amendments. It was added at the suggestion of the eminent economist, Milton Freidman, the 1976 Nobel Prize winner in Economic Sciences, who spoke repeatedly on behalf of Amicus Taxpayers United and its campaign in Michigan to enact the Headlee Amendments. Although Dr. Freidman died in 2006, it was clear that he unquestionably understood politicians' proclivity for revenue to fund their favored legislation and the need to publicly avoid the appearance of raising taxes to do so. The prohibition on the state shifting the tax burden to local

units of government was well understood by the drafters of the Headlee Amendment. In the Drafters' Notes to Section 25 it was stated:

“The primary intent of this section was to prevent a shift in tax burden, either directly or indirectly from state to local responsibility. Any action by the state which would result, directly or indirectly. In increased local taxation through a shift in funding responsibility is clearly prohibited by this Section.” (Exhibit 1, p2-3 Drafters' Notes-Tax Limitation Amendment Michigan Constitution of 1963.)

Sec. 25 was viewed by the Drafters as critical to the effectiveness of the Headlee Amendments as a whole. One does not need to be a Nobel economist to understand that the prohibition on direct or indirect shifting of the tax burden is essential to make effective the limitations imposed on the state. Section 25, to be given its full critical meaning, must not be disregarded. The Headlee Amendments were not intended as a static document, but rather they were intended to provide a discipline to all state and local governments, to seek approval of the people first, for any tax increase. The opportunity to avoid the voters' decision by merely shifting the tax burden among units of government, was foreclosed by Section 25's prohibition on such shifting. The Headlee Amendments generally, and Section 25, in particular, were precisely designed to protect local units of governments from the very reduction crafted by the state's accounting for revenue from Proposal A.: “action by the state which would **result, directly or indirectly, in increased local taxation through a shift in funding responsibility**”. The Drafters' Notes again emphasized, through repetition, this prohibition in their discussion of Section 30. They said: "The primary intent of this section was to prevent a shift in the burden, either directly or indirectly from state to local responsibility"(Exhibit 1, p10 Drafters' Notes-Tax Limitation Amendment Michigan Constitution of 1963.)

The State of Michigan and its Department of Technology, Management and Budget (“DTMB”) have caused the prohibited shift through the accounting for Proposal A revenue. Proposal A substituted new state received revenue, for the local taxation that had been supporting local schools, the latter local tax was then restricted by Proposal A. This was the “bargain” that the voters approved in Proposal A. The prohibited shift has happened because DTMB then attributed the new state revenue, which was utilized to fund the local schools, as a part of state revenues distributed to all local units of government. In effect the DTMB has allowed the state to now capture revenue that had been a local tax and to redistribute it and claim that it counts toward its obligation to fund local units of government at the fixed percentage of the Headlee Amendments. This accounting maneuver severely reduces the amounts that would be distributed to local units of government. This is a classic shift prohibited by the Headlee Amendments.

The shift lets the state receive tax revenue previously local and use it to reduce its Headlee Amendment obligation to local units of government. The shift has reduced revenues from the state to local units of government and does not meet the state’s obligation under the Headlee Amendments. While schools are unaffected by this DTMB accounting, other local governments are severely affected. The shift by DTMB is precisely the violation of the Headlee Amendments that the Drafters of the amendments sought to prohibit.

The Drafters' Notes at page 10 allow the legislature to redistribute state aid differently to local units of government. But the action of DTMB, in effectively ‘taking’ local schools revenue and redistributing it back to the schools, and then claiming it as a part of its Headlee Amendments obligations for distribution to local units of government, **as a whole**, clearly shifts what had been local taxation for all units of local government and uses it to the detriment of all local units of government. The concern that Proposal A could be so utilized by DTMB was expressed by

Richard Headlee in his interview with Charlie Cain. Exhibit 2 Charlie Cain *Headlee Criticizes Proposal A As Tax Shift And Tax Increase*, The Detroit News, May 14, 1993, at 2B He recognized immediately the prohibited shift that the state would seek to utilize: the increased state sales tax revenues for supposedly reduced local property taxes became a claimed reduction in the states' required Headlee Amendment aid to all local units of government. Mr. Headlee's anticipation was precisely what DTMB did after the enactment of Proposal A. The support to the schools through the increased sales tax and its redistribution would be claimed and accounted for to the benefit of the state by its inclusion in the calculation of the proportion of total state spending required to be paid to local units of government. And Mr. Headlee also recognized the plain effect of such shift on local units of government and the effective shift of taxation revenue to the state. He stated:

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

Mr. Headlee's observation is, of course, consistent with the Drafters' Notes and their intention that the prohibitions against shifting had to apply directly to Section 30 or else the language of prohibition on a shift loses meaning. This intention is so stated in the Drafters' Notes on Section 30 at p. 10. This Honorable Court has recognized its' obligation to so give effect to the prohibited shift language contained in the Headlee Amendments and to give Section 30 its well understood effect recognizing such prohibition of the shift that has been made by the state's DTMB. See, *Schmidt v Dep't of Educ*, 441 Mich 236, 254-255; 490 NW2d 584 at 591 (1992).

CONCLUSION

Defendants have repeatedly violated Art. IX, § 25 and § 30 by improperly including Proposal A revenue and spending within the calculations of the amount of state spending in aid paid to local units of government. The Defendants have thereby improperly inflated the reported amounts of state spending being paid to local units of government. The Defendants improperly count as spending in the form of aid that is paid to local units of government all Proposal A spending. By improperly including such expenditures in their calculations under their Headlee Amendments obligation, the Defendants have reduced this constitutionally required proportion of state spending in the form of aid that is actually paid to local units of government. By so improperly including Proposal A expenditures in the calculations, the Defendants have incorrectly shifted the tax burden to local units of government.

RELIEF REQUESTED

These actions of the Defendants violate Art. IX, § 25 and § 30 of the Michigan Constitution, MCL § 21.235 of the State Disbursements to Local Units of Government Act, P.A. 101 of 1979 and MCL § 18.1349 of the Management and Budget Act, P.A. 431 of 1984. And this Honorable Court's Declaration should be GRANTED to the Plaintiffs/Appellants.

February 11, 2020

Respectfully Submitted,

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