STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
(BORRELLO, P.J. (CONCURRING IN PART AND DISSENTING IN PART) AND
METER, J. (CONCURRING IN PART AND DISSENTING IN PART) AND SHAPIRO, JJ.)

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

Plaintiffs-Appellants/Appellees,

Supreme Court Case No. 160658
Supreme Court Case No. 160660

v.

Court of Appeals Case No. 334663

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-Appellees/Appellants.

BRIEF OF PLAINTIFFS-APPELLANTS/APPELLEES TAXPAYERS FOR MICHIGAN CONSTITUTIONAL GOVERNMENT, STEVE DUCHANE, RANDALL BLUM, AND SARA KANDEL

ORAL ARGUMENT REQUESTED

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STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Const 1963, art 6, §4; MCL 600.215; and MCR 7.303(B)(1). Leave to appeal was granted on July 1, 2020.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE DEFENDANTS VIOLATE CONST 1963, ART 9, § 25 AND § 30 BY CLASSIFYING MONIES PAID TO SCHOOL DISTRICTS PURSUANT TO PROPOSAL A, CONST 1963, ART 9, § 11, AS STATE SPENDING IN THE FORM OF AID PAID TO UNITS OF LOCAL GOVERNMENT, WHEN:

    a. RESTRUCTURING OF PUBLIC SCHOOL FINANCING IN 1993-94 WAS A TAX SHIFT THAT REPLACED CERTAIN LOCAL TAXES WITH NEW STATE TAXES;

    b. THE REVENUE FROM THE NEW STATE TAXES THAT IS PAID TO SCHOOL DISTRICTS REPLACED REVENUE THAT SCHOOL DISTRICTS LOST WHEN CERTAIN LOCAL TAXES WERE ELIMINATED;

    c. THE DEFENDANTS SEPARATELY CLASSIFY SPENDING OF THE NEW STATE TAXES AS SPENDING IN THE FORM OF AID TO UNITS OF LOCAL GOVERNMENT;

    d. BY CLASSIFYING SPENDING OF THE NEW STATE TAXES AS SPENDING IN THE FORM OF AID TO UNITS OF LOCAL GOVERNMENT, THE STATE **REDUCES OTHER STATE SPENDING PREVIOUSLY PAID TO UNITS OF LOCAL GOVERNMENT, AS A GROUP;**

    e. THE RESULTING REDUCTION OF OTHER STATE SPENDING PREVIOUSLY PAID TO UNITS OF LOCAL GOVERNMENT DIRECTLY INCREASES THE TAX BURDEN ON LOCAL GOVERNMENTS AND THEIR TAXPAYERS.

    Plaintiffs-Appellants/Appellees Answer: Yes.
    Defendants-Appellees/Appellants Answer: No.

2. WHETHER THE DEFENDANTS VIOLATED CONST 1963, ART 9, §§ 25 AND 30, BY CLASSIFYING MONIES PAID TO PUBLIC SCHOOL ACADEMIES (A.K.A. CHARTER SCHOOLS) AS STATE SPENDING IN THE FORM OF AID PAID TO UNITS OF LOCAL GOVERNMENT, WHEN:

    a. LOCAL GOVERNMENTS ARE CONSTITUTIONALLY DEFINED AS POLITICAL SUBDIVISIONS OF THE STATE;

    b. CHARTER SCHOOLS ARE REQUIRED TO BE ORGANIZED AS NONPROFIT CORPORATIONS THAT ARE NOT POLITICIAL SUBDIVISIONS OF THE STATE; AND

    c. UNDER THE RULE OF COMMON UNDERSTANDING, CHARTER SCHOOLS ARE NOT POLITICAL SUBDIVISIONS OF THE STATE AND ARE NOT SCHOOL DISTRICTS AS UNDERSTOOD BY MICHIGAN CITIZENS AT THE

TIME ARTICLES 9, §§ 25-34 WERE VOTED UPON AND RATIFIED BY VOTERS.

Plaintiffs-Appellants/Appellees Answer: Yes.
Defendants-Appellees/Appellants Answer: No.

3. WHETHER THE COURT OF APPEALS ERRED WHEN IT HELD THAT STATE FUNDS DIRECTED TO LOCAL GOVERNMENTS TO SATISFY STATE OBLIGATIONS UNDER CONST 1963, ART 9, § 29 MAY NOT BE COUNTED TOWARD THE PROPORTION OF STATE FUNDS REQUIRED BY CONST 1963, ART 9, § 30, WHEN:

    a. BY CLASSIFYING FUNDING OF NEW STATE MANDATES AS SPENDING IN THE FORM OF AID TO UNITS OF LOCAL GOVERNMENT, THE STATE REDUCES OTHER STATE SPENDING PREVIOUSLY PAID TO UNITS OF LOCAL GOVERNMENT, AS A GROUP;

    b. THE REDUCTION IMPERMISSIBLY REDUCES THE STATE FINANCED PROPORTION OF THE NECESSARY COSTS OF ACTIVITIES OR SERVICES THAT EXISTED AT THE TIME THE HEADLEE AMENDMENT WAS ENACTED;

    c. THE REDUCTION EFFECTIVELY RESULTS IN LOCAL GOVERNMENTS PAYING FOR THE COSTS OF NEW STATE MANDATES; AND

    d. THE RESULTING REDUCTION DIRECTLY INCREASES THE TAX BURDEN ON LOCAL GOVERNMENTS AND THEIR TAXPAYERS.

    Plaintiffs-Appellants/Appellees Answer: No.
    Defendants-Appellees/Appellants Answer: Yes.

4. WHETHER THE COURT OF APPEALS ERRED TO THE EXTENT THAT IT HELD THAT THE AUDITOR GENERAL OR THE OFFICE OF THE AUDITOR GENERAL IS SUBJECT TO MANDAMUS RELIEF, WHEN:

    a. THE COURT OF APPEALS ISSUED MANDAMUS REQUIRING ALL STATE DEPARTMENTS AND OFFICERS TO COMPLY WITH THE DISCLOSURE AND REPORTING REQUIREMENTS OF MCL 21.235(3) and MCL 21.241; AND

    b. THE AUDITOR GENERAL IS A STATE OFFICER SUBJECT TO MANDAMUS.

    Plaintiffs-Appellants/Appellees Answer: No.
    Defendants-Appellees/Appellants Answer: Yes.

I. INTRODUCTION

The State of Michigan has shorted local governments billions of dollars by failing to make the proper amount of constitutionally required payments under the Headlee Amendment, Constitution of 1963, Article 9, §§ 25 to 34. Relying upon faulty interpretations of §§ 25, 29, 30 and 33, the state miscalculates the amount of spending in the form of aid that the state is required to pay to local governments.

The resulting shortfall exerts extreme pressures on local governments to reduce essential services — police, fire, EMS, waste removal, teachers, and other activities of local governments — or to increase taxes, assessments, and fees on local taxpayers.

Article 9, § 25 and § 30 of the Michigan Constitution prohibit the state from reducing the proportion of state spending in the form of aid that is paid to local governments below the proportion existing in 1978, when the Headlee Amendment was adopted. Defendants-Appellees/Appellants ("Defendants") have repeatedly violated § 25 and § 30 by improperly including various expenditures within their calculations of the amount of state spending in the form of aid that is paid to local governments. The Defendants thereby materially inflate the reported proportion of state spending that is paid to local governments, when in fact the actual proportion has declined below pre-Headlee Amendment levels.

Plaintiffs-Appellants/Appellees ("Plaintiffs") maintain that the state violates the Headlee Amendment by including within its calculations: (1) spending resulting from a shift of local taxes to state taxes that places a clear tax burden on local governments; (2) spending paid to public school academies, which are nonprofit corporations and not local governments; and (3) spending to fund new state mandates, which are then effectively financed through reductions in other payments that the state is obligated to make to local governments under § 30. The state's practices

improperly reduce required state spending on local governments and allow the state to capture those revenues for its own purposes.

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.

This tax shift from a local tax to a state tax alone, however, does not violate the Headlee Amendment. The violation occurs when payments to school districts from revenue generated by the tax shift are included as state spending under § 30 to sharply reduce other payments that the state had been making to local governments under § 30. The reductions increase the tax burden on local governments by forcing them to either cut services or increase taxes, assessments, and fees on local residents.

Before Proposal A, an individual taxpayer would have paid local taxes to support local schools in her/his community. After Proposal A, the same taxpayer would pay new state taxes to support the same schools in her/his community. But then, as a result of the state also counting this spending as constitutional aid and reducing other payments to the taxpayer's local government, the same taxpayer would also face either a cut in local services or an increase in local taxes, assessments and fees to maintain existing levels of service.

In effect, Michigan taxpayers were supporting local schools directly with their local tax payments and, then, were required to support local schools indirectly through new state taxes and, thereafter, their new tax payments were used to reduce required state spending upon local governments as a group. This is precisely the type of shifting of the tax burden that the Headlee

Amendment was intended to prohibit.

The Court of Appeals erred by ignoring the antishifting prohibitions of § 25 and the increased tax burden on local taxpayers to recast the state's actions as a simple redistribution of spending among local governments.

Second, the state further inflates its calculation of § 30 spending in the form of aid that is paid to local governments by improperly including payments to public school academies ("charter schools"). Payments to charter schools are improper because charter schools do not meet the definition of local government. The definition is found in § 33 of the Headlee Amendment.

For charter schools to qualify as local governments, they must be "political subdivisions of the state", as this term was commonly understood at the time the Headlee Amendment was adopted. All parties seemingly agree that charter schools do not possess the characteristics of a political subdivision of the state or even of a school district as those terms were understood by voters in 1978.

In 1978 through the present, political subdivisions of the state are understood to be entities possessing the power to act on behalf of and provide local services for citizens within geographically limited areas of the state. In 1978 and today, school districts that are political subdivisions of the state possess these characteristics. Charter schools do not.

Equally important, charter schools are statutorily required to be nonprofit corporations, which clearly are not political subdivisions of the state. As a result, state spending paid to charter schools is not properly considered to be spending paid to local governments for purposes of § 30.

The Court of Appeals erred by failing to apply fundamental rules of constitutional construction, including the rule of common understanding, and improperly holding that the Legislature is free to periodically change the meaning of constitutional terms.

Third, the state improperly inflates its calculation of the § 30 proportion by including spending to fund state mandates as payments in the form of aid to local governments. Under the Headlee Amendment, existing mandates were funded by the requirements of § 30, while new state mandates were required to be separately funded by the state pursuant to § 29.

When improperly including spending to fund the costs of new state mandates within the numerator of the state's § 30 calculations, the state reduces other spending in the form of aid that was previously paid to local governments under § 30 and, contrary to the requirements § 29, effectively results in local governments, and not the state, providing the funding for new state mandates.

If upheld, the state's practice would permit all payments in the form of aid to local government under § 30 to be entirely composed of the state's funding of state mandates under § 29. This result clearly frustrates the purpose of the Headlee Amendment and is prohibited by any rational reading of § 25, § 29 and § 30.

The Court of Appeals correctly found that including payments to fund state mandates in the § 30 proportion conflicts with the purpose of the Headlee Amendment and violates the prohibitions found in § 25 and § 29.

II. STATEMENT OF FACTS

Plaintiff taxpayers bring this lawsuit to enforce the Headlee Amendment to the Michigan Constitution of 1963. The Headlee Amendment arose out of a nationwide taxpayer revolt. The initiative was led by Taxpayers United Michigan Foundation, whose principals were Richard Headlee and William McMaster.[1]

[1] Taxpayers United Michigan Foundation filed an amicus brief in support of Plaintiffs-Appellants/Appellees' application for appeal to this Court. (App Vol 11, at 01950 *et. seq.*).

In 1978, the Headlee Amendment was placed on the ballot as Proposal E and was approved by voters. The Amendment added ten sections to the Constitution, art 9, §§ 25 to 34. These sections establish a balanced fiscal framework for local governments, limiting them in their ability to raise local taxes, but preserving existing state aid and protecting local governments against state action that would impose the costs of new mandates on local governments; or that would shift taxes to increase the tax burden on local taxpayers.

Protecting the interest of local taxpayers is at the core of the Headlee Amendment, as evidenced by art 9, § 32, which expressly provides Michigan taxpayers with the power to enforce the Amendment. The Amendment's citizen-enforcement provision is the only of its kind found within the Michigan Constitution.

The sections of the Amendment relevant on this appeal are Const 1963, art 9, §§ 25, 29, 30 and 33 (hereafter referred to as "§ 25", "§ 29", "§ 30" and "§ 33" respectively). Section 25 states three prohibitions. The provision prohibits the state from: 1) reducing the proportion of state spending in the form of aid that is paid to local governments; 2) requiring any new or expanded activities by local governments without full state financing; and 3) undertaking any action that shifts the tax burden to local government.

Section 29 also prohibits the state from reducing the state financed proportion of the necessary costs of any activity required by the state at the time of the Amendment's enactment; and prohibits the state from requiring any new or expanded activities by local governments without full state funding.

Section 30 requires the state to annually maintain a minimum level of spending in the form of aid that is paid to all units of local government ("constitutional aid"). Under the Headlee Amendment, the minimum level that the state is required to pay is the *proportion* of state spending

that was paid to local governments in 1978, the base year. The base year proportion is 48.97%.[2] As a result, the Michigan Constitution requires that 48.97% of all state revenues from state sources must be spent in the form of aid to local governments in Michigan.

Section 33 defines a local government as a "political subdivision of the state," as this term was commonly understood by voters at the time the Amendment was enacted.

The State of Michigan misconstrues §§ 25, 29, 30 and 33, resulting in annual miscalculations of the amount of spending in the form of aid that is paid to units of local governments, as a group. The state's miscalculations result in local governments being shorted billions of dollars in constitutional aid, which exerts extreme pressures on local governments to cut essential services or make up the lost revenue with new taxes, assessments, and fees.

A. Statement Of Proceedings.

On September 7, 2016, Plaintiffs filed their Complaint as an original action before the Michigan Court of Appeals. Plaintiffs' Complaint alleges that the Defendants have repeatedly violated § 25 and § 30 by improperly including various expenditures within their calculations of the amount of state spending in the form of aid that is paid to local governments.

The Complaint alleges that the state improperly counts the following items as spending in the form of aid that is paid to local governments, as a group:

a. Spending of Proposal A ("Prop. A") revenue (at Count I);

b. Spending on public school academies (i.e. charter schools) (at Count II); and

c. Spending on state mandates paid to local governments pursuant to § 29 (at Count IV).[3]

[2] After the Headlee Amendment was enacted, the base year proportion was set at 41.6%. The base year proportion was revised during the 1990s to the present rate of 48.97% following a legal challenge. See, *Oakland Cnty v Dep't of Mental Health*, 178 Mich App 48; 443 NW2d 805 (1989)

[3] After discovery, Plaintiffs voluntarily dismissed Count III of their Complaint.

On December 6, 2017, the Plaintiffs and Defendants filed cross-motions for summary disposition on the claims of the Complaint. (App Vol 5, at 00546a *et. seq*. and at 00828a *et. seq*.).The parties extensively briefed the issues and the Governmental Law Section of the State Bar of Michigan, the Michigan Municipal League, the Michigan Association of Counties, and the Michigan Townships Association appeared as amici in support of the Plaintiffs. (App Vol 7, 8 & 9, at 00957 to 01414a).

The Court of Appeals issued its published opinion on July 30, 2019 and on reconsideration, entered a new published opinion on October 29, 2019. (App Vol 8, at 01415a). The new opinion granted Plaintiffs mandamus and granted Plaintiffs summary disposition on Count IV of the Complaint. The opinion granted summary disposition to the Defendants on Counts I and II. The partial concurrence and dissent of Judge PETER M. METER would have also granted summary disposition to Plaintiffs on Count II, (App Vol 8, at 01433a) and a partial concurrence and dissent of Judge STEPHEN L. BORRELLO would have granted summary disposition to the Defendants on all counts. (App Vol 8, at 01429a).

As a result, the Court of Appeals entered declaratory judgment in favor of the Plaintiffs on Count IV and granted mandamus requiring the Defendants to comply with the annual disclosure and reporting duties of MCL 21.235(3) and MCL 21.241.

B. Facts Related to The Counts of Plaintiffs' Complaint.

The facts are not in genuine dispute by the parties. The Defendants include spending from Prop. A revenue; spending paid to charter schools; and spending to fund new state mandates within the total amount of state spending in the form of aid that is paid to all units of local governments under § 30. (App Vol 3, at 00302a (Prop revenue); 00304a (charter schools); and Vol 6, at 00844a (funded mandates)). The Defendants also do not dispute that the state has failed to comply with

the disclosure and reporting requirements of the Headlee Amendment's implementing legislation. (App Vol 3, at 00308a and Vol 9, at 01599a). The Defendants have engaged in these practices for many years and, in the absence of a final ruling, will likely continue to do so in the future.

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

Calculation of the proportion of total state spending that is paid in the form of aid to all units of local government under § 30 is not difficult to understand. The proportion is arrived at by executing a fractional equation where total state spending in the form of aid that is paid to local governments is divided by total state spending from all state revenue sources. The numerator is thus the total of all properly included state expenditures that are paid in the form of aid to local governments. The denominator is the total of all state spending from all state revenue sources.

If the numerator includes prohibited types of expenditures, the proportion of total state spending that is paid in the form of aid to local governments is improperly inflated. Under these circumstances, local governments are short-changed by the state and significant financial burdens are imposed on local governments and their taxpayers.

The Defendants improperly inflate the proportion of state spending in the form of aid that is paid to local governments by including spending of Prop. A revenue; spending paid to charter schools; and spending to fund new state mandates within the numerator. The Defendants concede that they include spending in these three categories within the numerator for purposes of determining the § 30 proportion.

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

In 1993, the Michigan Legislature engaged in extensive public school financing reform. The Michigan Legislature enacted Public Act 145 of 1993 ("PA 145"), which restricted local governments from levying certain taxes for school operations. (App Vol 2, at 00117a to 00121a).

The new law eliminated an estimated $6.9 billion from school finances and led to a crisis in school funding. (*Id*. at 00117a). The Legislature then placed Proposal A of 1994 ("Prop. A") on the ballot to replace local governments' lost revenue with new state taxes. (*Id.* 00119a). The measure was approved by voters and Proposal A replaced lost local property taxes with an increase in the state's sales, cigarette and use taxes, and the addition of an education tax and a real estate transfer tax (together "Prop. A revenue"). See SJRS of 1994. The taxes collected and spent to maintain state schools thus shifted from taxes collected and spent by local governments to taxes collected and spent by state government.

Proposal A did not alter the Headlee Amendment and no reference to any of its provisions appeared on the ballot. When voters approved Prop. A, they did not sanction any state action that would reduce other state aid paid to units of local government and they had no knowledge that their approval of Prop. A would be used by the state in this manner.

After adoption of Prop. A however, the DTMB began including spending from Prop. A revenue within the total amount of state spending in the form of aid that is paid to units of local government to satisfy the requirements of § 25 and § 30. The DTMB's actions were taken subsequent to and independent from any requirements of Prop. A.

Including spending from Prop. A revenue in the numerator of the state's § 30 calculations resulted in that spending supplanting and reducing other spending in the form of aid that was paid to local governments to meet the requirements of § 25 and § 30. The reductions result in a prohibited increase in the tax burden on local governments, as a group, who are forced to cut services or increase revenue collected from local taxpayers.

In effect, school districts were held harmless when local tax revenue was replaced with state payments from the new state taxes, but local governments, as a group, were harmed anew

when the new state payments were then used to offset other payments made to meet § 30 obligations.

As discussed further below, the Court of Appeals erred by failing to apply the antishifting prohibition found in § 25 and by ignoring the very real increase in the tax burden that is imposed on local taxpayers as a result of the tax shift that occurred. The lower court undertook no substantive analysis of either the tax shift or the increased local tax burden and merely, and incorrectly, recast the state's actions as a rebalancing of the distribution of state revenue sharing. While free to "rebalance" distribution among the various units of local government, the state is not free to reduce the proportion of constitutional aid that is paid to the local governments, as a group, through a tax shift that increases the local tax burden. Yet, this is precisely what the state has done.

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

The Constitution requires that only spending paid to "local governments" be included in the numerator when calculating the § 30 proportion. Const 1963, § 30 and § 33. Local governments are defined as "political subdivisions of the state." *Id.* at § 33.

The plain language of § 33 and universal rules of grammatical construction require that each local government receiving constitutional aid payments under §30 must be a political subdivision of the state. (App Vol 7, at 01168a to 01169a, Affidavit of Plaintiffs' expert witness, Kristin Theut). While the definition of political subdivisions includes, as a listed example, school districts as they existed in 1978, the definition does not permit school districts that are not political subdivisions of the state to be found to be local governments. (See *Id.*).

All parties seemingly agree that public school academies ("charter schools") are not "political subdivisions of the state" or "school districts", as those terms were commonly understood by the voters at the time the Headlee Amendment was adopted. From 1978 to the

present, political subdivisions of the state have been understood as entities providing services to a "geographically limited area of the state and ha[ving] the power to act primarily on behalf of that area." See MCL 18.1115(5). Charter schools do not meet these requirements and as found by two Michigan attorneys general, charter schools are not commonly understood as school districts. OAG, 2003-2004, No 7154, at 122 (March 31, 2004) and OAG, 1995-1996, No 6915, p 204 (September 4, 1996).

Equally important, the Public School Academy Act, Act 362 of 1993 expressly requires that charter schools be organized as nonprofit corporations under Michigan's Nonprofit Corporation Act (1982 PA 162, MCL 450.2101 *et. seq.*). MCL 380.502(1). Nonprofit corporations are not political subdivisions of the state.

The Court of Appeals erred by, contrary to fundamental principles of constitutional law, rejecting the rule of common understanding and finding that the Legislature is free to periodically redefine the meaning of constitutional terms. The lower court in effect, held that when legislatively defined as a school district for a limited purpose, charter schools thereby become school districts *and* political subdivisions of the state for all other purposes under state law.

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

The Court of Appeals correctly held that § 29 payments to fund new state mandates must be excluded from the numerator when calculating the constitutional aid proportion required by § 30. In reaching its holding, the lower court correctly applied the fundamental constitutional canon that all constitutional provisions bearing on a single subject must be read together, as a part of a coherent whole, rather than as unrelated provisions acting independently from one another and in conflict with the Headlee Amendment's purpose.

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

As shown in the Court of Appeals, the data compiled by Plaintiffs' experts — former state Treasurer, Robert Kleine, and former Director of the state House of Representatives' House Fiscal Agency, Mitchell Bean — finds that excluding the prohibited categories of spending reduces payments to local governments below the amounts required by § 30. (App Vo 6, at 00802a, 00804a-00807a, and 00816a-00818a; Table and Affidavits of Plaintiffs' expert witnesses, Robert Kleine and Mitchell Bean). Plaintiffs' experts' data was not contested by the Defendants in the lower court.

III. DISCUSSION & ARGUMENT

This case presents only questions of law. The standard of review for questions of law and constitutional issues is de novo. *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). Constitutional issues are also reviewed de novo. *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). Accordingly, de novo review applies to all issues presented by this appeal.

A. The Headlee Amendment Establishes A Balanced Framework That Michigan's Citizens Intended To Be Enforced.

The Headlee Amendment balances limitations on the taxing power of local governments with preservation of local governments' existing revenue streams. The Amendment limits the power of local governments to increase property taxes. See Const 1963, art 9, § 25. The Headlee Amendment's drafters recognized that this limitation could have unintended harmful effects if not coupled with specific prohibitions. The drafters therefore prohibited the state from: (1) reducing the proportion of spending in the form of aid that is paid to local governments; (2) imposing unfunded mandates upon local governments; and (3) directly or indirectly shifting the tax burden

onto local governments. See Const 1963, art 9, § 25. See also *Schmidt v Dep't of Educ*, 441 Mich 236, 254-255; 490 NW2d 584 (1992).

As a result, the Headlee Amendment creates a balanced framework. The framework gives control of tax increases to local voters while ensuring that existing activities and services of local governments will be maintained and that any future state mandated activities or services will be fully funded by additional state payments. The framework however can only function correctly if all three prohibitions are observed. See *Schmidt*, 490 NW2d at 591. If one is ignored or falters, then the intent of the voters who adopted the Amendment is defeated and without these prohibitions, the revenue limitations imposed by the Amendment are no longer economically viable for local communities.

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

Thus, the Headlee Amendment's framework balances its limitations on local governments' power to raise taxes with a corresponding check on state governments' power to directly, or indirectly, reduce funding and impose new costs on local governments. In so doing, the Amendment controls revenue growth, while maintaining funding for existing services and

requiring identifiable funding for new activities and services mandated by the state. In this way, the Headlee Amendment provides a viable economic framework that seeks to prevent local governments from experiencing the severe economic distress that many have, resulting from the unbridled costs of improper cuts in state aid, the imposition of unfunded state mandates, and unseen shifts in the tax burden to local governments.

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

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

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

The inclusion of prohibited tax-shift funding in § 30 calculations arises from the state's adoption of Prop. A. The people of the State of Michigan adopted Prop. A to replace billions of dollars of lost local taxes with billions of dollars in new state taxes. Proposal A was adopted to replace lost local taxes that had become prohibited by the enactment of PA 145 of 1993.[4] Under Prop. A, the state was permitted to levy a variety of new state taxes and the state was required to send that revenue back to local governments, mostly in the form of education funding from the School Aid Fund. Through Prop. A, local governments were held harmless for the loss of revenue from eliminated local taxes that had previously paid for school operations. Local governments as

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

a whole however were then shorted by the state when the new state payments were also independently counted as spending in the form of aid under § 30.

Between 1994 and 1995, the first year following the implementation of Prop. A, reported state payments to units of local government increased by 52%. This reported increase was caused by DTMB including payments from revenue generated by Prop. A in its calculations of the proportion of spending paid to local governments to meet the requirements of § 25 and § 30. **However, this "new revenue" to school districts was an illusion as local governments, as a group, did not see any increase in revenue.**

The only change that had occurred was that revenue that had previously been collected and spent locally, and therefore was not counted as state spending, was recategorized and shifted on the accounts' ledger to now be counted as state spending in the form of aid paid to local governments. This had the effect in future years of greatly reducing the amount of state spending in the form of aid that is paid to meet the requirements of § 25 and § 30. In effect, Michigan taxpayers, as a group, now pay the same amount of tax to support local schools as they were paying before Prop. A, but have now also had other state payments to support other local services cut.

By including Prop. A payments in their calculations, the state supplanted other state spending previously paid to local governments, placing a tax burden on local governments to further raise local taxes, assessments, or fees to offset lost state revenue. This shifting of the tax burden creates a cushion so that the state could reallocate resources away from local governments and appropriate those revenues for its own uses. Using the Prop. A funds as a buffer to keep the state above the proportion of spending required to be paid to local governments by § 25 and § 30, the state balanced its own budget while forcing local governments to make a difficult choice: cut services or raise taxes, assessments, or fees. This is the very practice that Michigan taxpayers

intended to prohibit by adopting the Headlee Amendment's antishifting provisions.

Notably, the Headlee Amendment at § 26 and § 27 imposes a substantive taxing and revenue limitation upon the state. The state's practice allows it to circumvent these limitations by allowing it to improperly capture funds previously spent on local governments. Retaining funds required to be paid to local governments has helped the state to avoid financial stress of its own during lean times and has transferred that financial stress to local governments across the state.

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

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

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

> Section 25 specifically prohibits the state from circumventing the intent of the amendment by shifting tax burdens from the state to local government levels. Any action by the state which would result, **directly or indirectly**, in increased local taxation through a shift in funding responsibility is **clearly prohibited**. [App Vol 6, at 00777a and Vol 9, at 01563a Drafter's Notes (emphasis added)]

In *Schmidt*, the Michigan Supreme Court clearly stated what constitutes a tax shift that

places a tax burden on local governments under § 25.[5] As emphasized in *Schmidt*, the clear intent of the voters when adopting Headlee was to preclude the Legislature from shifting any funding obligation onto local governments. *Schmidt*, 490 NW2d at 590. The Court reasoned that because the voters intended that the state provide full funding for any new mandated service or activity, the voters also intended that the state be precluded from circumventing that prohibition by shifting the tax burden to local governments. *Id.* at 592. The Court states further that when § 25 and §30 are read together they create an "absolute prohibition of any shifting to local government." *Schmidt*, 490 NW2d at 592.

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

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

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

After the adoption of Prop. A, the DTMB began including the Prop. A revenue within the state's calculation of spending in the form of aid paid to local governments to meet the requirements of § 30. The net effect is that local taxpayers throughout Michigan pay a state tax to replace their local property tax in order to support public schools, while having their corresponding

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

state tax payments used by DTMB to reduce state revenue from other sources previously paid to their local governments.

As a result, Richard Headlee, the namesake and a drafter of the Headlee Amendment, concluded that "the proposal had turned into a major tax shift." (App Vol 6, at 00826a-00827a, Charlie Cain, *Headlee Criticizes Proposal A As Tax Shift And Tax Increase*, The Detroit News, May 14, 1993, at 2B) . Commenting further, Richard Headlee states:

> 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*. (emphasis added)].

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

Michigan voters prohibited tax shifts for the very reason that Richard Headlee posits - shifting of funding responsibility between the state and local governments in this manner allows the state to decrease the revenue it sends to local governments for local programs. It allows the state to impose its priorities on local governments and force local governments to cope by either cutting local programs, activities, and services or raising taxes, assessments, and fees.

This accounting scheme, which amounts to a shell game, allows the state to cut funding for all local governments by the amount the state provides to schools from Prop. A revenue without affecting its compliance with § 30. The DTMB's treatment of the Prop. A revenue allows the state to budget for additional state programming in the economic boom years or to balance the state budget by cutting funding to local governments in lean years. The losers in all of this are local governments which must absorb the cuts in state aid while having extremely limited options for

raising replacement revenues. This results in severe economic distress for local governments.

The violation of the Headlee Amendment by DTMB's miscalculations of constitutional aid is determined entirely by its effect on local governments and Michigan taxpayers and not by DTMB's intent. **There would be no question that the Legislature and DTMB violate the letter and spirit of the Headlee Amendment if they intentionally engaged in a scheme to eliminate a local property tax and replaced it with a state tax for the purpose of reducing the amount of state revenues paid in the form of aid to local governments and then used the savings for other state purposes**. Such a taxing scheme would allow local taxpayer payments to be used purposely against their interest.

Plaintiffs are not alleging that the state intentionally withheld state revenues required to be paid to local governments under § 30 to evade their responsibilities under the Michigan Constitution. However, whether the error is intentional or innocent is of no consequence in this case. In both cases, a violation of the Headlee Amendment has occurred with material damage to local governments and their taxpayers.

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

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

Although Prop. A was adopted after the Headlee Amendment of 1978, it did not alter its enforceability. There is no conflict between enforcing both the balanced fiscal structure of the

Headlee Amendment and, at the same time, enforcing public school funding reform instituted by Prop. A. The two amendments are consistent.

The drafters of Prop. A expressed no intent to include Prop. A funding in the state's calculation of the proportion of spending that is paid to local governments to meet § 25 and § 30 requirements. Likewise, the drafters of Prop. A did not express any intent to alter or amend the Headlee Amendment. On the contrary, the drafters expressed intent to amend art 9, §§ 3, 5, 8, 11 and 36, but made no express or implied reference to § 25 to § 34 of the Headlee Amendment.

When Prop. A was placed upon the ballot in 1994, Michigan taxpayers were totally unaware that the new state tax revenues that they paid to replace their former payments to local school districts would then be used by DTMB to reduce state payments to local governments that provide their other essential services. If taxpayers were made aware, it is inconceivable that voters would have supported Prop. A.

The DTMB's practice was not disclosed or transparent to voters and taxpayers when Prop. A was placed upon the ballot and adopted in 1994. The Prop. A State Proposal Notice contained the following statement: "A Proposal Offered By The State Legislature To Amend Sections 3, 5, 8, 10 and 11 of Article 9 And Add Section 36 To Article 9 Of The State Constitution." (App Vol 7, at 01165a, Notice of State Proposal – Proposal A, March 15, 1994). The ballot language read was equally devoid of any reference to the provisions of the Headlee Amendment. (*Id.*).

Nothing in Prop. A's informational notice or in the ballot language informed or made voters aware of the state's intended practice to use Prop. A revenue to reduce other spending being paid to local governments to fund existing services. In 1994, Prop. A asked taxpayers to restructure public school financing in Michigan. Taxpayers had no knowledge, let alone intent, that, in doing

so, their local property tax shifted to a state sales tax that would then be used to reduce previous state spending paid to their local governments.

A violation of § 25 arose when the state began counting spending from Prop. A revenue as constitutional aid payments under § 30, resulting in a diversion of state revenues from payments previously spent on local governments to monies available for the state's own use. The DTMB's accounting practices related to Prop. A school financing has turned into a bonanza for state finances and had a crippling effect on local governments. The state's practice however violates the letter and spirit of the Headlee Amendment and is prohibited by § 25 and § 30.

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

The Court of Appeals erred in its consideration of whether spending of Prop. A revenue that is paid to local governments may be included within the state's calculations of payments to meet the requirements of § 25 and § 30.

In reaching its holding on Count I of Plaintiffs' Complaint, the Court of Appeals found that "[t]he inclusion of Proposal A funding in § 30 spending reflects a constitutionally sanctioned rebalancing of the distribution of that revenue sharing." (App Vol 8, at 01421a). The court based its decision on a finding that:

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

There is no dispute that the state may reallocate funding among all units of local governments as a group, as long as the proportion of state spending that is paid to local governments as a group that existed in fiscal year 1978-79 is maintained. See *Durant v State Bd*

of Ed, 424 Mich 364, 393; 381 NW2d 662 (1985). However, there is no reallocation that occurred in this case and the decision entirely fails to identify any such reallocation. Moreover, while the proportion remains nominally the same, the state's practice materially diminishes the actual amount of aid that local governments, as a group, receive.

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

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

While the decision lightly acknowledges the antishifting purpose of § 25 and § 30, the court undertakes its analysis of § 30 isolated and removed from this purpose and suggests that only a strained reading of § 30 could bar Prop. A payments from the Defendants' calculations. *Id*. Plaintiffs submit that the prohibited tax shift that occurred is fairly straight forward — or at least

as straightforward as prohibited tax shifts are likely to be. Revenue collected from local taxes was shifted to the state through new state taxes. The new state taxes funded payments from the state to replace revenue that local governments lost when the local taxes were eliminated and the state's payments were then used to further reduce other payments to local governments causing a tax burden on them, as a group. Admittedly, this requires close reading of what occurred. The issues presented involve the Headlee Amendment, fiscal restraints, and antishifting prohibitions. None of these topics are readily gleaned. They require close analysis and that is what the voters required when they enacted the Headlee Amendment's balanced framework as part of the Michigan Constitution. Such an analysis however was passed upon by the lower court.

The Court of Appeals' decision erroneously cites S. Fino, *A Cure Worse Than the Disease - Taxation and Finance Provisions in State Constitutions*, 34 Rutgers LJ 959 (2003) in support of the court's reasoning. Professor Susan P. Fino, the author of that article, disagrees that her article or the opinions stated therein supports the court's conclusion. Rather, Prof. Fino holds the opinion that crediting spending from Prop. A revenue as spending in the form of aid under § 30 is the very type of scheme too often developed by state officials to evade the purpose, intent, and language of restrictions that voters sought to impose when they adopted the Headlee Amendment. (App Vol 9, at 01556a to01559a, Affidavit of Prof. Susan P. Fino).

Based on Prof. Fino's knowledge, experience, and research, Prop. A funding disbursed to local school districts that is then credited as § 30 revenue sharing to units of local government is a violation of the Headlee Amendment's provision prohibiting any shifting of the tax burden to local government. (*Id*. at 1558a). As her article explains, the Michigan's Constitution, and other state constitutions, have been amended to place restrictions on state taxation and spending. These restrictions often fail however because too often, state officials develop a range of schemes to

avoid the restrictions. (*Id.*). In her opinion, crediting disbursements from Prop. A revenue as § 30 revenue sharing to units of local government is an example of one such scheme that violates the language and intent of the Amendment's restrictions. (*Id*. at 1558a-1559a).

For the forgoing reasons, the Court of Appeals erred in denying Plaintiffs' request for summary judgment on Count I of Plaintiffs' Complaint.

C. Charter Schools Are Not Political Subdivisions of the State And As A Result, Payments To Them Cannot Be Included Within Calculations Of Spending In the Form Of Aid Paid To Local Governments Under Art 9, § 30.

Charter schools are simply not local governments, political subdivisions of the state, or school districts of any kind under the Headlee Amendment. As a result, state spending paid to charter schools must be excluded from calculations of constitutional aid for purposes of § 30.

The language of § 30 identifies the constitutional aid numerator as "total state spending paid to all units of **Local Government**." Const, 1963, art 9, § 30 (emphasis added). Local governments are specifically defined by the Headlee Amendment as: "any political subdivision of the state, including, but not restricted to, school districts." Const 1963, art 9, § 33.

Under universally recognized principles of grammatical construction, the definition of local governments in § 33 requires that an entity **must be** a "political subdivision of the state." (App Vol 7, at 01169a, Affidavit of Prof. Kristin Theut).

Whether charter schools are a political subdivision of the state can be answered by: 1) the plain language of the Public School Academies Act, Act 362 of 1993, MCL 380.501 *et. seq.*; and 2) by application of the rule of common understanding to the terms used in § 33. Neither supports a finding that charter schools are local governments under the Headlee Amendment.

1. Charter Schools Are Nonprofit Corporations, Not Local Governments and Not Political Subdivisions of the State.

The plain language of the Public School Academies Act requires charter schools to be

organized as nonprofit corporations. The Act reads as follows:

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

A nonprofit corporation is an entity separate and distinct from any conception of a local government. Under state law, nonprofit corporations are established by private incorporators. MCL 450.2201. They are formed for *any* lawful purpose, not involving pecuniary gain for profits for its directors and management. *Id.* at 2251. The incorporators write the articles of incorporation and select the initial board of directors. *Id.* at 2223. The incorporators are private individuals and/or private corporations – foreign or domestic. *Id*. at 2201 and 2108(3). The initial board of directors are also private individuals, who then adopt the corporation's bylaws. *Id*. at 2223.

Nonprofit corporations are formed on either a stock or nonstock basis. See *Id.* at 2302. A corporation formed on a stock basis is owned and governed by private shareholders. See *Id.* at 2303. The shareholders can be private individuals or other private corporations. See *Id.* at 2109(1) and 2108(3). Nonprofit corporations formed on a stock basis are managed by a board of directors, elected by the shareholders. *Id.* at 2402. Directors are private individuals, solely responsible to the corporation's shareholders. Nonprofit corporations formed on a nonstock basis are organized under either a membership or directorship basis. *Id.* at 2302. Membership organizations are owned and governed by the corporations' members, who, again, are private individuals or private corporations. *Id*. at 2304, 2108(1) and (3). Members elect the corporation's board of directors. *Id.* at 2402. Directorship organizations are owned, governed, and managed by the board of directors. *Id.* at 2305. Directors are elected as set forth in the organization's articles of incorporation and/or bylaws. *Id.* at 2505.

In summary, nonprofit corporations are formed, owned, governed, and managed by private individuals and/or corporations, which may be foreign or domestic. There is no public ownership, governance, or management and they are not beholden to local residents in a geographic region of the state — except to the extent that the private individuals or private corporations that draft the articles of incorporation and bylaws choose to do so. Charter schools are no different.

Each charter school is organized as a Michigan nonprofit corporation. MCL 380.502(1). Each charter school incorporated by private individuals and/or corporations; is owned and governed by private individuals and/or corporations who own the stock, are its members, or compose its directorship. And each is managed by a private board of directors and the board may delegate management further to private educational management organizations ("EMO"). MCL 380.503c.

Educational management organizations may be organized as partnerships, for-profit, nonprofit companies, or other entities, all of which are private corporations. See MCL 380.503c (2). In all cases, charter schools operate pursuant to a contractual agreement between the private corporations and the authorizing body, which require the private companies to administer, manage and operate the school themselves or through private subcontractors. See *Id*.

The requirement that charter schools be nonprofit corporations, private in character and substance, is entirely consistent with the purposes served by such schools. The Public School Academies Act **was purposefully adopted to provide an alternative to government run school districts.** The charter school movement is founded on this principle and upon a belief that providing alternatives to government run schools benefits students by bringing the competitive forces of private enterprises into the education. Finding charter schools to simply be another form of local government is antithetical to charter schools' very purpose.

While the Michigan nonprofit corporations act and the revised school code, variously refer to charter schools as a "public body", "agency" and/or "school district," the statutes do so not as a general proposition, but for discrete and limited purposes and such labeling does not transform the substantive character of a nonprofit corporation into a local government or political subdivision of the state, as those terms were understood by voters at the time the Headlee Amendment was ratified and as those terms continue to be understood today.

The requirement that charter schools be organized as nonprofit corporations is conclusive on this issue. A nonprofit corporation is simply not a local government and is not a political subdivision of the state. To reach such a finding, one has to ignore the long established rule of common understanding and find, against the existing rules of constitutional construction, that the meaning of constitutional terms can be altered and amended at-will by the Legislature.

2. This Court Must Apply The Rule Of Common Understanding To Determine Whether Charter Schools Are "Political Subdivisions Of The State" And "Schools Districts".

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

> A constitution is made for the people and by the people. **The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it** 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it**, the intent to be arrived at is that of the people**, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, **but rather that they have accepted them in the sense most obvious to the common understanding,** and ratified the instrument in the belief that that was the sense designed to be conveyed.' Citing (Cooley's Const Lim 81)." (Cooley's Const Lim 81). [*Traverse City Sch Dist v AG*, 384 Mich at 405 (emphasis

> added). See also *Council of Orgs And Others For Educ About Parochiaid*, 455 Mich 557, 569, 576, 583; 566 NW2d 208 (1997)].

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

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

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

"The goal of the judiciary when construing Michigan's Constitution is to identify the original meaning that its ratifiers attributed to the **words** used in a constitutional provision." *CVS Caremark v State Tax Comm*, 306 Mich App 58, 61; 856 NW2d 79 (2014).

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

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

The instant case requires this Court to apply the rule of common understanding to the meaning of constitutional terms "school district," "political subdivision of the state," and "local government." Then, this Court can determine whether charter schools fit within the peoples' commonly shared meanings for those terms in 1978.

i. Charter schools lack the commonly understood characteristics of a political subdivision of the state.

Charter schools may not be considered political subdivisions of the state as under § 33 of the Headlee Amendment because they do not comport with the voters' common understanding of that term at the Amendment's adoption.

In legislation implementing the Headlee Amendment, the Legislature defined "units of local government" as:

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

The Legislature's definition reflects its understanding of what constituted a "unit of local government" based upon its knowledge of the voters' at the time that the Headlee Amendment was enacted.[6] In 1978, and today, a political subdivision of the state is understood as an entity providing government services for citizens in a limited geographic area of the state and the entity has the power to act on behalf of that area.

These defining characteristics of a political subdivision of the state are further confirmed by court decisions and findings of the Michigan Attorney General. In *People v Egleston*, 114 Mich

[6] The Michigan Supreme Court "gives deference to a deliberate act of the Legislature." *Council of Orgs And Others For Educ About Parochiaid*, 455 Mich 557, 570; 566 NW2d 208 (1997) (citing *Twp of Dearborn v Dearborn Twp Clerk*, 334 Mich 673, 690; 55 NW2d 201 (1952)).

App 436; 319 NW2d 563 (1982), the Court of Appeals considered the following factors to reach a conclusion that a community college district constituted a political subdivision of the state:

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

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

The Michigan Attorney General has found similarly:

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

The Public School Academies Act, and all other statutes relating to charter schools, exclude the descriptor "political subdivision of the state" from their definitions, despite extensive use of the term throughout Michigan statutory law to describe school districts and other public entities.

Charter schools do not provide services in geographically limited area of the state and do not have the power to act on behalf citizens in a defined local area. The Legislature provides for all charter schools to operate and serve citizens outside of bounded geographically limited areas.

Schools authorized by the governing boards of state public universities, federal tribally controlled community college boards, and certain community colleges can be geographically located anywhere in the state. MCL 380.502(2)(c)-(e) and 552(17)(b). The private nonprofit corporations established by charter schools in furtherance of their public purposes similarly have no geographic restrictions. *Id*. at 504a(f). Likewise, school districts, intermediate school districts, community college boards and two or more agencies acting jointly can each authorize cyber schools to operate and serve up to 10,000 students outside geographic restrictions. *Id*. at 552(6)(a)-(c) and (e).

An authorizer's geographic boundaries are relevant only if charter school applicants submit proposed contracts to authorizing bodies having such limitations. In this way, the Legislature provides that private parties choose a charter school's location. *Id*. at 502(3)(g) and (i). This formation method contrasts sharply with that of political subdivisions of the state at the Amendment's adoption whose geographic parameters and corresponding service areas were fixed to serve a local population.

Charter schools also deliver their educational services to any citizens who choose to patronize them, rather than those within geographically limited areas of the state. In addition to charter schools authorized by governing boards of statewide authorizers, those authorized by school districts, intermediate school districts and community colleges also are "*may* be open to all individuals who reside in th[e] state who meet the admission policy." MCL 380.504(3) (emphasis added). This provision provides that charter schools are open to all students, without regard to the location of their residence, unless the charter school itself decides not to admit students from certain parts of the state. Furthermore, charter schools can also "prioritize enrollment for pupils meeting specific age or grade criteria regardless of an authorizer's geographical jurisdiction. *Id* at § 504(4)(a)-(c). Thus, it is not the character of the charter schools itself that determines whether

they serve a specific geographic area of the state, but rather, it is entirely at an individual school's discretion to do so.

ii. Charter schools lack the commonly understood characteristics of a school district as understood by voters in 1978.

Charter schools cannot be considered local governments under § 33 of the Headlee Amendment because they do not comport with the voters' common understanding of school districts in 1978.

In 1978, the commonly understood meaning of the term "school district" was a public school system operating within geographically limited areas of the state under an elected governing board empowered to act on behalf of these regions. See 1976 PA 451, enacting (section symbols) 626, 1147, 73, 111, 211, 317 and 85, *amended by* 1977 PA 43, enacting (section symbols) 411, 143, 250, 361 and 431 (describing school district residents and boundaries, elected boards, and school boards' power to act on behalf of the district for Primary, Fourth, Third, Second and First Class Districts). See also *Detroit Edison v East China Sch Dist*, 366 Mich 638; 115 NW2d 298 (1962); and *Foster v Bd of Educ*, 326 Mich 272; 40 NW2d 310 (1949).

As noted in preceding sections, charter schools do not operate within geographically limited areas of the state and do not operate under governing boards elected by residents of that area. The Legislature provides for all charter schools to operate and serve citizens outside of any bounded geographically limited areas. Equally important however, charter schools are not empowered to act on behalf of any geographic area of the state.

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

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

The 2004 opinion affirmed a prior determination of that office also finding that "the Legislature did not intend to equate [charter schools] with school districts as a general proposition" when it opined that "[charter schools are not school districts] for all purposes of the [Revised School] Code." *Id*. (affirming OAG, 1995-1996, No 6915, p 204 (September 4, 1996)).

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

In 1978, Michigan voters also would have understood that school districts possessed significant sovereign powers. *Fizer v Onekama Consol Schs*, 83 Mich App 584, 587; 269 NW2d 234, 236 (1978) (Taxing authority) and *Bd of Educ v Michigan Bell Tel Co*, 51 Mich App 488, 491, 495; 215 NW2d 704, 705-6 (1974) (Police and eminent domain powers).

Charter schools have no sovereign powers as school districts did in 1978. First, school districts in 1978 possessed full taxation power. 1976 SC 380.1211(1). Charter schools cannot levy taxes in any form. MCL 380.503(9). School districts possessed comprehensive police powers and their governing boards regulated personnel, health, and transportation matters for the districts. 1976 SC 380.1231-2, 1252 and 1321 (regulating employees, nursing services and transportation).

Conversely, charter schools possess no general police power or regulatory powers. MCL 380.504(2) and 380.506. Moreover, school districts possess the power of eminent domain while charter schools do not.

Additionally, there is no citizen oversight in the governance structure or in the operation of charter schools. The schools are accountable to their directors, not residents of a defined geographic area. That charter schools possess neither the sovereign powers nor citizen oversight differentiates them from local governments contemplated by the Amendment's drafters.

The Defendants seemingly 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, but in the lower court argued that charter schools serve similar purposes such that they should be found to be school districts under § 33. This Court recently rejected such reasoning in *Paquin v City of St Ignace*, 504 Mich 124; 934 NW2d 650 (2019). This Court recognized that such an approach "would be to write language into our Constitution that is not there and **that the people of this state did not choose to include**." *Id*. at 135 (emphasis added). The Court confirmed that simply because "two entities function similarly in some respects does not make them the same." *Id*. This Court emphasized that lower courts applying the rule of common understanding must furnish a complete plain meaning of the constitutional terms under review. *Id*. at 132-3.

Because they did not exist at the time that the Headlee Amendment was enacted, charter schools may be understood to defy easy categorization. However, this is a circumstance that argues *against, and not in favor*, of charter schools being found to be school districts under § 33. Under similar circumstances concerning whether a federal tribe was a local government for purposes of art 11, § 8, this Court writes:

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

For the state to include spending paid to charter schools within § 30 calculations, charter schools must be both political subdivisions of the state and school districts as those terms were understood by voters in 1978. As evidenced by the Headlee Amendment's implementing legislation, relevant case law, and Michigan Attorney Generals' opinions, voters common understanding of political subdivisions of the state and of school districts drastically departs from the way the Legislature defines charter schools and the substantive characteristics of those schools. As a result, state spending paid to charter schools must be excluded from § 30 calculations of constitutional aid that is paid to local governments.

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

In the present action, the Court of Appeals clearly erred in finding that "state funding of PSAs constitutes state funding of a local unit of government for the purpose of calculating state aid under the Headlee Amendment." (App Vol 8, at 01421a). The court's decision errs by incorrectly identifying the issue as a school funding question; failing to apply the correct rules of constitutional interpretation and as noted above, by failing to apply the holding of *Paquin* to the facts of this case.

Significantly, the court below did not hold that charter schools *were* school districts, political subdivisions of the state, or local governments as understood by voters at the time that the Headlee Amendment was enacted. Rather, the decision bypassed any analysis of § 30 and § 33's terms. Instead, the court mischaracterized Plaintiffs' claims as involving a question of charter

school *funding*. This case however does not involve charter school funding issues.

There is no dispute that the Public School Academies Act provides that charter schools are "schools districts" **for the limited purpose of receiving funding** under art 9, § 11 of the state Constitution.[7] No provision of § 11 requires that all payments from the school aid fund must also constitute spending in the form of aid paid to units of local government under § 30.

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

As noted above in a quote from Justice COOLEY, "[a] constitution is not to be made to mean one thing at one time, and another at some subsequent time when the circumstances may have changed." 1 Cooley's Constitutional Limitations (8th ed), at 123-4. The meaning of words used are determined by "applying the plain meaning of each term used at the time of ratification." *Paquin*, 504 Mich. at 129-30. And the plain meaning is that which "most obvious to the common understanding" at the time of ratification. *Traverse City Sch Dist*, 384 Mich at 405. The Court of Appeals decision ignored each of these principles.

The Court of Appeals, in fact, specifically found that "[i]t is unlikely that the Headlee voters specifically intended that aid to PSAs would count as state aid to local governments considering." (App Vol 8, at 01422a). Applying the rules of constitutional interpretation, **this**

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

finding alone requires a determination that charter schools are not local governments for purposes of the Headlee Amendment. **Yet, the court went further and recognized that charter schools are also not political subdivisions of the state under the Headlee Amendment** when it wrote that "PSAs are not geographically limited, are not governed by an elected board and cannot levy taxes." (*Id.*). The lower court however failed to apply the rule of common understanding.

Instead, the lower court created a new rule that the Legislature can change the meaning of constitutional terms at will unless a particular provision explicitly states otherwise. The lower court's decision held that "[b]ecause state funding for PSAs is considered aid to a school district … we see no basis to not count those monies" under the Headlee Amendment. (*Id.*). The court further reasoned that:

> [T]here is no language in the Headlee Amendment showing an intent to limit this ongoing authority of the state to define … school districts … and [we] find no evidence [on the record] that would demonstrate an intent … to limit the state's authority to define … school districts or to specifically bar the state from later defining the term "school district" to include PSAs. [*Id*. at 01422a to 01423a].

There was equally no evidence on the record to establish that the characteristics of school districts as political subdivisions of the state ***had ever been fundamentally changed*** by the Legislature during the history of the state, until the significant changes that occurred when the Public School Academies Act was adopted. In the absence of a history of such changes, it is entirely unreasonable to conclude that voters would have anticipated such changes when they adopted the Headlee Amendment in 1978.

More importantly, the Court of Appeals' reasoning defies each of the above stated fundamental rules of constitutional construction and turns them on their heads. The decision finds that constitutional terms can be changed by the Legislature and can mean one thing at one time

and yet another at a later time when circumstances have changed.

This is clearly contrary to the fundamental principles articulated by Justice COOLEY. See also *Pfeiffer v Bd of Educ*, 118 Mich 560, 564; 77 NW 250 (1898) (Constitutional terms "could not mean one thing at the time of its adoption, and another thing today, when public sentiments have undergone a change." citing *McPherson v Secretary of State*, 92 Mich 377; 52 NW 469 (1892)). The court's interpretation further contradicts the rule of common understanding by finding that the meaning of constitutional terms is understood by the changing will of the Legislature rather than by examining the plain meaning constitutional terms as they would have been understood by the voters at the time of ratification.

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

The Court of Appeals clearly erred when it failed to apply these principles and when it denied summary disposition to Plaintiffs on Count II of their Complaint.

D. The State Is Prohibited From Including Spending to Fund New State Mandates In Calculations Of Constitutional Aid Under Art 9, § 30.

The Court of Appeals properly held that § 29 payments to fund new state mandates must be excluded from the numerator when calculating the constitutional aid under § 30. The lower

court reached its holding based on an informed understanding of the purpose of the Amendment and the intent of the voters who adopted it.

The lower court recognized what this Court has long held — all constitutional provisions bearing on a single subject must be read together, as a part of a coherent whole, rather than, as artificially isolated and unrelated provisions acting independently from one another. See *In re Apportionment of Mich State Legislature*, 372 Mich 418, 454; 126 NW2d 731, 749 (1964) ("The guiding canon of constitutional construction is that no one provision is to be separated from the others, to be considered alone, **but that all provisions bearing upon a particular subject are to be brought into view and interpreted so as to effectuate the great purposes of the instrument**." *Id.* at 454 (emphasis added)). Applying this constitutional canon, the language of the Headlee Amendment clearly requires that § 29 payments be excluded from calculation of the constitutional aid proportion required by § 30.

In reaching its holding, the Court of Appeals properly examined the plain language of the Headlee Amendment in § 29 and § 30. See *Co Rd Ass'n v Governor of Mich*, 474 Mich 11, 15; 705 NW2d 680 (2005). The court recognized that the first sentence of § 29 speaks only to activities *existing at the time the Amendment was adopted* and prohibits the state from reducing the state proportion of the necessary costs of those continuing activities. (App Vol 8, at 01423a). The court further recognized that the second sentence of § 29 speaks only to a new activity beyond that required by existing law and requires that the state provide new funding for new activities mandated by the state. (*Id*. at 01424a (citing in support *Durant v State Bd of Ed*, 424 Mich 364, 379; 381 NW2d 662 (1985) and *Schmidt v Dep't of Ed*, 441 Mich 236, 257 n 24; 490 NW2d 584 (1992)). Referencing the Drafters notes, the court recognized that the Headlee Amendment

"*evinces an intent* that state-funding obligations arising from new § 29 obligations are to be paid in addition to § 30 revenue sharing." (*Id*. at 01424a).

The court reasoned that if state spending to fund new mandates under § 29 were included in withing constitutional aid calculations under § 30, funding for new mandates "would serve two conflicting purposes" — funding of new state mandates under § 29 and maintaining the 1978-1979 level of state funding to local governments under § 30. (*Id*. at 01424a). This would permit § 29 funding to new state mandates to supplant state spending intended for local use under § 30 and thereby "force units of local government to choose between cutting services or raising taxes to make up for the funds lost to pay for the necessary costs of new mandates." ((*Id*. at 01425a). The court correctly found that this result is at odds with the goals and intent of the of the Headlee Amendment and is further at odds with the principles of constitutional construction. (*Id*.).

As a result, this Court should uphold the Court of Appeals' grant of summary disposition on Count IV of the complaint.

1. The Intent Of The Amendment Is Only Upheld By Excluding Funding For New State Mandates From Calculations Of Constitutional Aid.

The Headlee Amendment's drafters and voters alike did not intend that state spending to support new and expanded state mandates would be included within constitutional aid calculations under § 30. Indeed, if state mandates were included, they could potentially eliminate all previous spending by the state on local governments.

The drafters of the Headlee Amendment explicitly confirm that state mandates should not be included in the numerator when calculating the constitutional aid proportion under § 30. The Drafters' Notes expressly contemplate that the proportion of state spending paid to local governments will, in fact, rise when the state mandates new or expanded activities. The Drafters Notes to § 30 state:

> **The primary intent of this section was to prevent a shift in the tax burden** directly or indirectly to local responsibility … **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**. [App Vol 6, at 00784a and Vol 9, at 01570a, Drafter's Notes (emphasis added)].

The reference to the tax shift prohibition seeks to ensure that the state cannot force local governments to use other money or raise new money to pay for the costs of a new state mandate. That is precisely what would happen if the state can count spending to fund new state mandates to satisfy the proportion of spending that must be paid to local governments under § 30.

The Drafters' Notes' author, William Shaker, confirms that state mandates were not intended to be included within calculations of constitutional aid spending required by § 30. As stated more fully in his affidavit, he testifies:

> 10. The Headlee Amendment, as expressed, in the Notes' language, is intended to require that funding for state mandated activity be paid to local governments *in addition* to the amounts required to be paid by the state pursuant to the proportion established by Article 9, §30. In other words, it was not the intent of the drafters that amounts paid to fund state mandated activity could be included within calculations of total state spending paid to all units of Local Government for purposes of determining the Article 9, §30 proportion that is paid by the state each fiscal year. [App Vol 8, at 01288a, Affidavit of William Shaker].

The Headlee Amendment's plain language, the text of the Drafters' Notes, and the testimony of a principal author of those notes clearly show that the drafters and voters alike did not intend that state spending to support new and expanded state mandates be included within the numerator to determine constitutional aid calculations under § 30.

This Court favors interpretations where constitutional provisions are granted equal dignity and are not construed to nullify or substantially impair another provision. *People v Blachura,* 390 Mich 326, 333; 212 NW2d 182 (1973), overruled in part on other grounds *People v Cooke*, 419

Mich 420, 433; 355 NW2d 88 (1984). The state's practice would permit all payments in the form of aid to local government under § 30 to be entirely composed of the state's funding of state mandates under § 29. This result frustrates the purpose of the Headlee Amendment and further results in § 29 negating any benefits that § 30 was intended to provide to local governments.

Under Defendants' understandings, the benefits of the constitutional aid under § 30 are effectively nullified, since local governments and their taxpayers would then have no discernible interest in a particular proportion of state spending being paid to local governments. Local governments simply have no identifiable interest in what percentage of state spending is paid to them when those payments solely fund the costs of state mandated activity and services. Such activity and services reflect state priorities and not necessarily the priorities of local governments and their taxpayers. Local governments and their taxpayers' only concern with respect to new state mandates is that they be fully funded and whether that is at 1%, 47%, or 80% of total state spending is of little consequence to them.

In 1978 and today, local governments and their taxpayers however had a very real interest in seeing that activity mandated by the state before the Headlee Amendment was adopted and state aid in general was maintained at consistent levels established by § 30. If the entire proportion of state spending paid in the form of aid is permitted to be composed entirely of funding for new state mandates as argued by the Defendants, § 25 and § 30's proportional aid requirements serve no discernible purpose in advancing the goals of the Headlee Amendment.

2. The State Is Prohibited From Reducing Required Payments To Local Government Through Funding To Finance New State Mandates.

The Headlee Amendment prohibits the state from using funding for new state mandates to reduce the necessary costs of existing activities and services of local government. Defendants' argument however, results in this very outcome.

Article 9, § 29 of the Michigan Constitution reads:

> **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.** [Const 1963, art 9, § 29 (emphasis added].

In the Drafters Notes to the Headlee Amendment, the drafters again confirm that:

> **The State is prohibited from reducing the State financed proportion of existing specific programs required of local governments** by state law or state directive. Future mandated programs shall be fully funded. **It seeks to obviate any temptation the state might have to fund a new mandated program (e.g., rapid transit) by shifting funds from a previously mandated program (e.g., K-12 education).** [App Vol 6, at 00783a and Vol 9, at 01569a, Drafter's Notes (emphasis added)].

The state also codified, in part, existing understandings of § 29 when it enacted the Disbursements to Local Units of Government, Public Act 101 of 1979 ("PA 101"), MCL 21.231 *et. seq*. In addition to requiring the funding of all new state mandates as required by § 29, the statute specifically prohibits the state from reducing the state financed proportion of the necessary costs of activities or services required of local units of government by existing law, **unless the existing law is repealed**. MCL 21.242 (emphasis added). Notably in the Court of Appeals and otherwise, **the state has never identified a single existing law that has been repealed**.

The statute thus encapsulates the dual requirements of § 29 and § 30 – that the state must fully fund new mandates imposed on local governments and must maintain the existing proportion of state spending paid to local governments to compensate them for existing activities and services. Otherwise, the state effectively reduces its share of the compensation paid to local governments for existing activities and services when it includes payments to fund new state mandates within its calculation of the required constitutional aid to meet § 30 obligations.

3. The Plain Language Of § 25 And § 29 Requires That Funding For New State Mandates Be Excluded From Constitutional Aid Calculations.

The plain language of the Headlee Amendment strongly suggests that funding for new state mandates was not intended to be included within the numerator when calculating the constitutional aid proportion under § 30. Section 25 uses specific language in its prohibitions. The prohibition specifically bars the state from reducing state spending that is paid "in the form of aid" to local governments. Const 1963, art 9, § 25. The plain meaning, common understandings, and dictionary definitions of the term are that "aid" is help or assistance which the giver is under no legal obligation to provide.[8]

The prohibition on unfunded state mandates uses notably different language. Section 25 bars the state from imposing new or increased activities without "full state financing." Const 1963, art 9, § 25. State payments to fund new state mandates are referred to as state financing, not as aid to local government. Likewise, § 29 refers to state payments to fund new state mandates as state "financing" both in the section's title and body, and requires the state to make a budget appropriation to pay local governments for the costs of the new state mandate. *Id*. at § 29. Section 29 does not refer to the payments as aid to local government and suggests that the state's payments to fund new mandates are reimbursements or another form of financing, but not "aid."

Thus, the language used by the Headlee Amendment's drafters express an intent that state financing to fund state mandates are not payments in the form of aid to local governments and state mandate payments must therefore be excluded from the numerator used to calculate state

[8] Courts "discern the common understanding of constitutional text by applying each term's plain meaning at the time of ratification" and may "discern the 'plain meaning' by reference to a dictionary." *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 295; 761 NW2d 210, 223 (2008) (citing *Nat'l Pride at Work, Inc v Governor of Mich*, 481 Mich 56, 67-69; 748 NW2d 524 (2008)).

spending in the form of aid that is paid to local governments as required by § 25 and § 30.

4. Michigan Law Does Not Support The Defendants' Arguments That The Headlee Amendment Improperly Limits Legislative Power.

Incredulously and incorrectly, Defendants have argued that the Court of Appeals' decision infringes upon the discretion of the Legislature. The Court of Appeals decision accomplishes no such result. Rather, the Court of Appeals decision upholds the requirements of the Headlee Amendment, which was adopted by taxpayers **with the intention of limiting the power of the Legislature**.

Michigan courts have long recognized that the state Constitution is a limitation on legislative power. The Supreme Court holds:

> The Michigan Constitution is not a grant of power to the Legislature … but rather, it is a limitation on general legislative power. In re Brewster Street Housing Site, 291 Mich 313; 289 NW 493 (1939). [*In re Request for Advisory Op. Enrolled S Bill*, 400 Mich 311, 317-18; 254 NW2d 544, 546 (1977)].

The Headlee Amendment is a part of the state Constitution and as such, is properly construed as limitation on the Legislature's power.

Defendants have argued that enforcement of the Headlee Amendment will cause significant changes to the state budget and therefore, state officials should be free to circumvent the constitutional provisions at issue. Constitutional provisions however are intended to and necessarily constrain the actions of state officials.

This Court writes:

> [I]t is a Constitution we are construing, **our basic charter of government**. **Here the people have erected their safeguards**, not only against tyranny and brutality, but **against the … demands of government itself**. … In it they have said to the government itself, in clause after clause: Thus far you may go, but you shall not cross the line we draw. In our country their prohibition is ironclad. … That this is "merely" a tax limitation and not one on freedom of speech,

> or worship, is immaterial. **There are no differences in degrees of protection afforded in the constitutional safeguards. With equal alacrity we halt in his tracks, once his foot crosses the line**, the inquisitor, the policeman, the tax collector, **the legislator, or the executive**. Our question is not how far he has passed over the forbidden line, how serious his encroachment, or how aggravated the arrogance. **Our duty arises with the trespass itself**. [*Lockwood v Comm'r of Revenue*, 357 Mich 517, 557-58; 98 NW2d 753, 759-60 (1959)].

Defendants' past arguments that the entire state budget would be affected is clearly a tactic to scare off judicial enforcement of the clear requirements of the Headlee Amendment. At its core, it is a political, not a legal, argument that asks this Court to refuse to enforce the state's Constitution due to changes to state budget processes that enforcement **might** require. These are however the very changes that the taxpayers of this state voted for and intended when they adopted the Headlee Amendment.

E. THE AUDITOR GENERAL AND THE OFFICE OF THE AUDITOR GENERAL ARE SUBJECT TO MANDAMUS.

The Court of Appeals properly granted mandamus to require "the state and its officers and departments to honor the annual disclosure and reporting duties set forth in both MCL 21.235(3) and MCL 21.241." (App Vol 8, at 01426a). The Defendants have not appealed the grant of mandamus relief or application of mandamus against any other state officials. Rather, appeal was sought and granted solely to the issue of whether the Court of Appeals erred "to the extent that it held that the Auditor General or the Office of the Auditor General is subject to mandamus relief." (App Vol 11, at 02006a).

The auditor general however is a state official subject to mandamus. Michigan law provides that the Court of Appeals has jurisdiction to issue mandamus against state officers. See MCL 600.4401. The auditor general is clearly an officer of the state. See Const 1963, art 4, § 53,

MCL 13.101. Furthermore, this Court has found that mandamus may issue to the auditor general. *Thompson v Auditor Gen*, 261 Mich 624; 247 NW 360 (1933).

The Department of Technology, Management and Budget and the State Budget Office and officials in those offices clearly have primary responsibility for the preparing the disclosures and reports required by MCL 21.235(3) and MCL 21.241. However, the auditor general is also properly subject to the mandamus issued to the extent that the auditor general is assigned a nonstatutory role with respect to the preparation and review of the disclosures and reports required by MCL 21.235(3) and MCL 21.241.

CONCLUSION & RELIEF

The Court of Appeals clearly erred in reaching its decision on Count I and on Count II of Plaintiffs' Complaint. On Count I, the court failed to properly consider the antishifting prohibitions of the Headlee Amendment found in the plain language of § 25 and embodied in §30. Spending from Prop. A revenue that is paid to local governments clearly results from a tax shift and materially burdens local government by supplanting and reducing other payments previously made to local governments when included within calculations of constitution aid under §30. As a result, Plaintiffs request that this Court overturn the decision of the Court of Appeals and direct that judgment be entered in favor of the Plaintiffs on Count I.

On Count II, the court failed to recognize that charter schools are nonprofit corporations and not local governments and failed to apply clear constitutional principles requiring application of the rule of common understanding to terms found in the definition of local governments in §33. The court further erred by rejecting long standing constitutional understandings to find that the Legislature can periodically change the meaning of constitutional terms. Charter schools are however clearly not political subdivisions of the state and cannot be found to be local governments

under §30. State spending that is paid to charter schools therefore cannot be included within calculations of constitutional aid under §30. As a result, Plaintiffs request that the decision of the Court of Appeals be overturned, and judgment entered in favor of the Plaintiffs on Count II.

The Court of Appeals reached the correct decision on Count IV of Plaintiffs' Complaint. State spending to cover the cost of new state mandates is not spending in the form of aid paid to local governments for purposes of § 30 and must be excluded from the numerator in the state's calculations of the constitutional aid proportion.

To the extent that the auditor general assists in preparation and review of the disclosures and reports required by MCL 21.235(3) and MCL 21.241, mandamus relief was properly granted.

Respectfully Submitted,

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Date: September 9, 2020

STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

APPEAL FROM THE COURT OF APPEALS
(BORRELLO, P.J. (CONCURRING IN PART AND DISSENTING IN PART) AND
METER, J. (CONCURRING IN PART AND DISSENTING IN PART) AND SHAPIRO, JJ.)

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

Plaintiffs-Appellants/Appellees,

Supreme Court Case No. 160658
Supreme Court Case No. 160660

v.

Court of Appeals Case No. 334663

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-Appellees/Appellants.

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2020, I electronically filed the attached *Brief of Plaintiffs-Appellants/Appellees Taxpayers For Michigan Constitutional Government, Steve Duchane, Randall Blum, And Sara Kandel* and Appendices Volumes 1-11 with the Clerk of the Michigan Supreme Court using the MiFILE system, which will send notification of such filing to all electronic case filing participants and attorneys of record for the parties.

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