STATE OF MICHIGAN

IN THE MICHIGAN SUPREME COURT

CASCO TOWNSHIP, COLUMBUS TOWNSHIP, PATRICIA ISELER and JAMES P. HOLK,

Plaintiffs/Counter Defendant-Appellants,

SUPREME COURT NO. 126120
Court of Appeals Docket # 244101

v

SECRETARY OF STATE, DIRECTOR OF THE BUREAU OF ELECTIONS, and CITY OF RICHMOND,

Defendants-Appellees

and

WALTER K. WINKLE and PATRICIA A. WINKLE,

Intervening Defendants/ Counter-Plaintiffs-Appellees,

AND

FILLMORE TOWNSHIP, SHIRLEY GREVING, ANDREA STAM, LARRY SYBESMA, JODY TENBRINK, and JAMES RIETVELD,

SUPREME COURT NO. 126369
Court of Appeals No. 245640

Plaintiffs/Appellants,

v

MICHIGAN SECRETARY OF STATE, and DIRECTOR OF BUREAU OF ELECTIONS,

Defendants-Appellees.

and

CITY OF HOLLAND,

Intervener-Appellee.

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CONSOLIDATED AMICUS BRIEF OF MICHIGAN TOWNSHIPS ASSOCIATION

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INTRODUCTION

NOW COMES John H. Bauckham of the firm of Bauckham, Sparks, Rolfe, Lohrstorfer & Thall, P.C. as attorneys for the Michigan Townships Association and hereby submits its consolidated amicus curiae brief in support of the Plaintiffs/Appellants Casco Township, Columbus Township, Patricia Iseler and James P. Holk, and Plaintiffs/Appellants Fillmore Township, a general law township, and Greving, Stam, Sybesma, Tenbrink and Rietveld, individuals, on the validity of the detachment petitions submitted to the Defendant, Candice S. Miller as Secretary of State.

Amicus Curiae Michigan Townships Association was organized by this office in 1953 to provide educational and other services for the 1242 existing townships within the State of Michigan. The Executive Committee of the Michigan Townships Association has authorized this office to file the within brief in this Honorable Court in support of the validity of the respective detachment petitions filed with the Secretary of State, Candice S. Miller, and rejected by said Secretary of State.

It is the consensus of all parties in the cause that the issues presented are of statewide importance to cities and townships, as well as their constituents and property owners.

Although these matters would normally involve the calling of a detachment election by a county clerk, where the parties involved are all located in one county. Where more than one county is involved, as in the current proceedings, state law requires such a petition for detachment to be submitted to the Secretary of State for certifying the validity of the petition and directing the holding of the requested election (MCL 117.11).

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STATEMENT OF FACTS

Amicus Curiae Michigan Townships Association accepts the statement of facts contained in the Plaintiffs/Appellants' Briefs in the within causes dated December 3, 2004.

LEGAL ARGUMENT

I. DETACHMENT PROCEEDINGS SHOULD RECEIVE NO LESS FAVORABLE STATUTORY INTERPRETATION BY THE COURTS THAN ANNEXATION

The undersigned and his firm have been engaged by Michigan Townships in annexation and detachment matters throughout the state and are aware of the many methods utilized by home rule cities to circumvent the basic intent of the legislation in order to accomplish annexation and avoid any effective defense. As the saying goes, what is good for the goose, is good for the gander. What is good for annexation is good for detachment; especially when it is contained within the same statute. Home Rule Cities constantly interpret the provisions of the annexation laws for their benefit on the basis of a strict construction of the statutes. Similarly, the statute on detachment should be strictly construed.

Although the Home Rule City Act at MCL 117.9(5) provides for a referendum election on an annexation issue, "in the portion of the territory approved for annexation, in the annexing city, or in the balance of the township" that petitions for such election, where the area approved for annexation contains more than 100 persons, cities uniformly make certain their annexation petition procedures involve an area of less than 100 persons wherein the decision is exclusively made by the State Boundary Commission. This has frequently been accomplished by multiple petitions for annexation filed at the same time

with the State Boundary Commission with each involving less than 100 persons even though the total number of persons involved in all of the Township areas to be annexed contain more than 100 persons thereby circumventing any possible election veto. The State Boundary Commission has upheld the legality of such proceedings. (See Boundary Commission Dockets 89-AR-7; 89-AR-8; 89-AR-9 and 89-AR 11 where all annexations were initiated by city resolution on the same date, were considered at one public hearing by the Boundary Commission but were decided as separate petitions with no possible referendum.)

Under the Charter Township Act, at MCL 42.34(5), cities have further pursued annexation from an otherwise annexation exempt charter township by a strained construction and use of MCL 42.34(5). The City of East Lansing, for example, recently encouraged four student-tenants who were registered electors living in an apartment on approximately 50 acres owned by others who opposed annexation to petition the Clinton County Clerk for an election also annexing 1056 unoccupied acres owned by others who also opposed annexation. Results, by statute, would be determined by the four sole registered electors who constituted a majority of the electors in the area and by a vote of electors within the City of East Lansing voting independently. The territory was located in Bath Township. The election was approved and scheduled and the annexation obviously approved even though the land owners were apposed since they had no vote under the statute.

Home Rules Cities have also annexed combined territory under MCL 117.9 located in more than one township through a single petition or resolution to the State Boundary Commission and under a single decision of said Boundary Commission notwithstanding

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the City's objection to townships combining for detachment purposes. Casco Township and Columbus Township in St. Clair County had territory thus annexed by the City of Richmond in a single proceeding which annexation was the forerunner of the detachment of the same territory now pending before this Court. If the territory of the two townships to be annexed had contained more than 100 persons, a referendum vote under MCL 117.9(5), would have been available upon petition in the area to be annexed counted separately, in the balance of the two townships voting collectively, and in the City voting separately. It would have to pass in all three areas to become effective. Two separate township areas annexed by a City in one petition proceeding should not be treated differently than a city area being detached from a city and attached to different townships from where they were annexed in one petition proceeding.

As initially stated, what is valid for annexation should also be valid for detachment.

Our opponents argue for a different and looser interpretation of the subject township detachments from the City of Richmond and City of Holland based upon the case of Cook v Kent County Board of Canvassers, 190 Mich 149 (1916).

The Cook case involved a proposed annexation to the City of Grand Rapids of property in Paris and Wyoming Townships under a petition to the County Board of Canvassers for an election pursuant to then Section 9 of The Home Rule City Act. At the election the city electors in combination with the electors in the balance of each township not subject to annexation, as provided by statute, voted in favor of the election, electors in the area of Paris Township subject to annexation voted in favor, and the electors in the area of Wyoming Township subject to annexation voted against the annexation by a lesser margin than in Paris Township. Although the circuit court declared the annexation carried,

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the Michigan Supreme Court held to the contrary based on the negative vote in Wyoming Township and the then constitutional violation of a change in legislative and senatorial districts in Paris Township by the proposed annexation. But for the constitutional issue, the Supreme Court would have approved the annexation in Paris Township counting the collective favorable votes in the city and both township areas not subject to annexation, and the favorable vote in the area of Paris Township subject to annexation. The separate combined election in the city and in the unannexed balance of the areas of both townships was at no time contested or ruled improper. Neither was contested the single proceeding annexation elections in the two different areas to be annexed from the two townships.

Applying the decision in Cook to the case at bar, the majority of the combined City of Richmond and two township votes counted collectively would control if they approved the detachment, except only if a majority in any one of the townships voted against the detachment which would eliminate detachment to that township and to the other township if the combined vote was against the detachment. This same analysis would apply to the Fillmore-Holland detachment petition and election. If the combined city-township votes rejected detachment, the detachment would totally fail regardless of an affirmative vote in any one of the townships. There would therefore be no impairment of self-government as advanced by opposing counsel. Furthermore, the election in each case would be required to be conducted with the tally of the votes determining the results.

The later case of Walsh v Secretary of State, 355 Mich 570 (1959) involved a petition to the Secretary of State for an election on a proposition to annex to the City of Lansing five parcels in Lansing Township and one parcel in Delta Township; a "package" proposition. The court again upheld the single election on the "package" but held the

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annexation totally failed where the voters in the area of Delta Township to be annexed voted against the annexation. Applying this case to the case at bar, the single "package" proposition of detachment should be submitted to an election with the results based upon the tally of the total vote and a tally of the majority vote in each township.

Furthermore, under MCL 117.6, detachment today can only be initiated by a petition of qualified electors who are freeholders equal to 1% of the population of the "territory affected thereby" being the total population of the city and townships, and with "not less than 25 . . . from each city, village or township to be affected by the proposed change" where, as here, more than one county is involved. The statute clearly permits the petition to encompass more than one township or city in either annexation or detachment proceedings.

Under MCL 117.8, the question of detachment must be submitted to the qualified electors of the "district to be affected" in one election which is defined in MCL 117.9(1) as "the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed."

Under MCL 117.13, a majority of the electors voting on the detachment issue determines the "change of boundaries prayed for in such petition." It further provides:

> "Territory detached from any city shall thereupon become a part of the township or village from which it was originally taken."

This again supports and clarifies what jurisdiction detached territory in a combined package election is to come under.

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The Cook case is clearly no precedent for the rejection by the Secretary of State of the detachment "package" election petition and requested election under the language of the pertinent statutes in existence today and the Walsh case cited supra.

Support for the "package election" position is also found in the Michigan Constitution as interpreted in Renne v Oxford Township, 380 Mich 39 (1968). Article II, Elections, Section 1(6) of the Michigan Constitution as cited in Renne provides:

> "Sec. 6. Whenever any question is required to be submitted by a political subdivision to the electors for the increase of the ad valorem tax rate limitation imposed by Section 6 of Article IX for a period of more than five years, or for the issue of bonds, only electors in, and who have property assessed for any ad valorem taxes in, any part of the district or territory to be affected by the result of such election or electors who are the lawful husbands or wives of such persons shall be entitled to vote thereon. All electors in the district or territory affected may vote on all other questions. (Emphasis added.)

The Supreme Court in Renne, Supra, defined the last sentence in the foregoing constitutional provision to include more than a specific political subdivision for election purposes on issues other than taxation or issuance of bonds.

As stated by the court at pages 42 & 43,

> "The phrase, 'district or territory affected,' coupled as it is in the last sentence with 'all electors' and 'all other questions,' may in conceivable circumstances render electors eligible to vote upon a question shown as affecting the district or territory in which they reside, even though they do not reside in the specific political subdivision which, as here, has initiated the election in question." (Emphasis added.)

The dissent by Justices T. M. Kavanagh, Souris and Adams went even further and held the Township Zoning Act unconstitutional because it limited the referendum elections on a rezoning to the electors in the unincorporated portions of the township and didn't extend it to the "district or territory affected" such as the village located within the Township.

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In the subject detachment petitions for an election, the election is on issues other than taxation or issuance of bonds, and certainly equally affects the territory in all contiguous townships triggering the foregoing constitutional provision providing for and requiring the votes of the qualified electors in both townships on the detachment issue. This equal affect on townships involved in a detachment election would include the affect on such governmental activities as zoning, interlocal municipal agreements, fire protection, police protection, public utilities, road maintenance, etc., etc.

II. THE STATE LEGISLATURE HAS PLENARY CONTROL OVER BOUNDARY ADJUSTMENTS

As stated by the Supreme Court in Midland Township v State Boundary Commission, 401 Mich 641 (1977) at page 664,

> "No city, village, township or person has any vested right or legally protected interest in the boundaries of such governmental units. The legislature is free to change city, village and township boundaries at will. This was settled for federal constitutional purposes in Hunter v Pittsburgh, 207 U.S. 161, 178-179; 28 S. Ct. 40; 42 L ed. 151 (1907) . . . " and several other cases and treaties on the subject listed in the opinion.

The court went on to quote from the Hunter decision in its support of legislation claimed to have violated the due process clause through an unfair election as follows:

> "Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All

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> this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may by such changes suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right by contract or otherwise in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it." (Emphasis added.)

Pertinent to the case at bar, neither Candice S. Miller nor the City of Richmond or City of Holland can complain of the election process for detachment provided by the state legislature. The state has plenary power over determining how municipal boundaries can be altered and, allowing in a single petition and proceeding, territory to be detached from a city and attached to adjoining townships from which the territory was annexed or taken cannot be contested or ignored.

Furthermore, as stated by the court in Midland Township, supra, at 679,

> "The motive or purpose of the city or township in drawing the proposed boundaries or in requesting a revision of boundaries is not material . . . .
>
> It will often be possible to draw the boundaries to preclude a referendum and likewise, to alter them to require one."

Contrary to the language of the Court of Appeals in the subject Casco case that the detachment statute, as stated by the Court of Appeals, must have "a reasonable construction that is logical and best accomplishes the HRCA's purpose", the Midland case, supra, clearly indicates the state legislature has plenary authority over municipal boundary changes and can do so with or without elections or with such elections as it determines appropriate. It is not a question of reasonableness or logic but what the statute provides.

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III. COURTS MUST STRICTLY CONSTRUE THE LAW AS WRITTEN

As stated by the court in Charter Township of Shelby v Michigan State Boundary Commission, 425 Mich 50 (1986),

> "A court is obligated to read a statute as written if the language employed in a statute is plain, certain and unambiguous, Grand Rapids v Crocker, 219 Mich 178; 182; 188 NW 221 (1922). See also Dussia v Monroe Co Employees Retirement System, 386 Mich 244, 248-249; 191 NW2d 307 (1971); Selk v Detroit Plastic Products, 419 Mich 1, 8; 345 NW2d 184 (1984)."

Even more pertinent is the case of City of Williamston v Wheatfield Township, 142 Mich App 714 (1985) involving the detachment of territory from the City to the Township which was accomplished through a detachment election in which the votes in the city and township were tallied collectively resulting in 468 votes in favor and 282 votes opposed to the detachment. Notwithstanding a majority of the votes from the City were opposed, the detachment was declared passed. In so holding, the court stated at 717, 718 and 719 as follows:

> Page 717: "In resolving disputed interpretations of statutory language, it is the function of the reviewing court to effectuate the legislative intent. In ascertaining such intent, the legislature must be presumed to have intended the meaning expressed by the language it has chosen. If the language used is clear and the meaning of the words chosen is unambiguous, a common sense reading of the provision will suffice and no interpretation is necessary. There is, however, an exception to this fundamental rule of statutory construction that arises when a literal reading of the statutory language would produce an absurd and obviously unjust result and would be clearly inconsistent with the purposes and policies of the act in question."
>
> Page 718: "MCL 117.6; MSA 5.2085 and MCL 117.7; MSA 5.2086 provides procedures for filing detachment petitions. MCL 117.8; MSA 5.2087 provides that the question 'shall be submitted to the qualified electors of the district to be affected.' MCL 117.9(1); MSA 5.2088(1) provides that '[the] district to be affected by every such proposed incorporation, consolidation, or change of boundaries shall be deemed to include the whole of each city, village, or township from which territory is to be taken or to which territory is to be annexed.' MCL 117.9b; MSA 5.208(2), added by 1982 PA 465, sets forth circumstances (in addition to those provided by the act) in which territory may be detached from a city. MCL 117.13; MSA 5.2092

provides that the territory shall be detached if the county board of canvassers certifies that a majority of the electors voting on the petition approved it."

Page 719: "We do not feel that construction of this statute is appropriate. Its meaning is clear and enforcement of the statute as written does not create an absurd result or thwart the intent of the Legislature. We decline plaintiffs' invitation to interpret a statute plain on its face in a manner to give it a meaning not indicated by its words. Therefore, we affirm the trial court's grant of summary judgment."

The Supreme Court brief of the Plaintiff in the Casco Township case (equally applicable in the consolidated Fillmore case) in "Argument" Section 1 found at pages 9 through 18 analyzes the language of the legislature on the subject of detachment and how it clearly provides for a detachment of territory from an adjoining city to adjoining townships. To impose a different construction to the clear language of the statutory sections emphasized in Plaintiffs' brief, and as attempted by the court of appeals in the within causes, would constitute a construction clearly not evidenced by the language. Amicus curiae, Michigan Townships Association, to avoid unnecessary repetition and burden on this Honorable Court, incorporates herein the foregoing pages 9 through 18 of Plaintiffs' said Casco Supreme Court Brief which accurately and succinctly interprets the detachment procedure language of the statute and the obvious intent of the language of the detachment provisions.

IV. THE SECRETARY OF STATE'S REFUSAL TO CERTIFY THE DETACHMENT PETITIONS FOR AN ELECTION VIOLATES HER MINISTERIAL DUTY REQUIRED BY MCL 117.11

The form of the detachment petitions and the signatures contained thereon fully comply with MCL 117.6 and have not been questioned in these proceedings. Where the form of the petitions conform to the statutory requirements, the Secretary of State has a ministerial obligation to "certify and transmit a certified copy of said petition and the accompanying affidavit or affidavits to the clerk of each city, village or township to be

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affected by the carrying out of the purposes (plural) of such petition. . ." so that the detachment issue can be "submitted to the electors of the district to be affected" in a single collectively counted election under said MCL 117.11. Under MCL 117.9, "the district to be effected by every such . . . change of boundaries shall be deemed to include the whole of each city, village or township from which territory is to be taken or to which territory is to be annexed."

The Secretary of State has a clear legal statutory duty to perform and the petitioners have a clear legal statutory right to the performance of that duty. A Writ of Mandamus should issue requiring such performance. (See Baraga County v State Tax Commission, 466 Mich 264 (2002) and McKeighan v Grass Lake Township Supervisor, 234 Mich App 194 (1999).)

Under the Administrative Procedures Act (MCL 24.201 et seq.) an agency is defined to include an "officer, created by the constitution, statute or agency action". (MCL 24.203.) At MCL 24.306, the Administrative Procedures Act provides, as follows:

> **"Sec. 106**
> (1) Except when a statute or the constitution provides for a different scope of review, the court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:
>
> (a) In violation of the constitution or a statute.
> (b) In excess of the statutory authority or jurisdiction of the agency.
> (c) Made upon unlawful procedure resulting in material prejudice to a party.
> (d) Not supported by competent, material and substantial evidence on the whole record.
> (e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.
> (f) Affected by other substantial and material error of law.
>
> (2) The court, as appropriate, may affirm, reverse or modify the decision or order or remand the case for further proceedings." (Emphasis added.)

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Considering this statute, Amicus Curiae Michigan Townships Association submits that substantial rights of the electors have been prejudiced by the "agency", Secretary of State's, refusal in each case to certify the detachment petitions, as required, in violation of the detachment statute and in excess of her statutory authority which is performa ministerial.

Certainly in our democratic society, elections are favored wherever possible over any strained or arbitrary statutory construction to the contrary. Results of the election and the requested detachment can only be determined after a tally of the votes cast and not arbitrarily before.

As stated by the Michigan Supreme Court in Presque Isle Prosecuting Attorney v Township of Rogers, 313 Mich 1 (1945), which was a contested city incorporation case, at pages 7, 8 and 10, as follows:

Pages 7&8: "If the petition is found to conform to the provisions of the act, the board of supervisors orders the election and sets the date, section 8 of the act. The board of supervisors has no power to change the territory fixed by the petition. (Bray v Stewart)", 239 Mich 340.

Page 10: "In the absence of constitutional inhibition the legislature may submit the determination of boundaries to courts, or to municipal authorities, or to the qualified electors. Generally, statutes so providing are sustained. 1 McQuillin, Municipal Corporations (2d Ed. Rev.), Chap. 7, §290 (271)."

The following three Michigan cases involving the calling of annexation and incorporation elections refer to the duty to schedule and hold these elections when petitions are received complying with the statutory requirements for such petitions.

In French v County of Ingham, 342 Mich 690 (1955), the Supreme Court was confronted with the interpretation of the forerunner of the statutes involved in the current proceedings which did not materially differ from the current provisions except for referring

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to the County Board of Supervisors as the agency to call the election as distinguished from the Secretary of State. The court refused to permit the County Board of Supervisors to consider the wisdom, policy or equity of the requested annexation. The Court stated at,

Page 696,

> "It appears from the foregoing statutory provisions that the legislature has specifically set forth the formalities that must be observed in the preparation, circulation, and filing of annexation petitions. It is made the duty of the Board of Supervisors to determine if the petitions meet the prescribed requirements. The further action of the Board is contingent on the finding in this respect. . . ."

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> "In the event of an affirmative conclusion on such question, the board had no discretion, the duty to call the election being mandatory. In discussing the issue and the duties of the Board, it was said in part (p15):
>
> > 'The legislature carefully pointed out the procedure, and to our minds has plainly indicated an intent that it should not be subjected to the delays and obstacles that might be devised by persons interested in preventing a vote upon the question. Where the very worst that could happen is the taking a vote of the people upon the question of general interest, there is no serious objection to legislative action providing for a somewhat summary means of ascertaining the desire for such vote. It may be that fraudulent and careless practices may interfere with the satisfactory working of this law, but we do not anticipate such result. In that case, further legislation will take care of it.'"

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> "It is the duty of this court to construe the provisions of the statutes above quoted, in accordance with their obvious intent. It is well settled that a court is without authority to pass on the wisdom, policy, or equity of a statute. It must be construed as enacted. Under the situation presented in the case at bar, the trial judge properly determined that equity may not interfere to prevent the defendant board of supervisors from performing the duty resting on it under the statute." (Citations omitted.)

In Attwood v Wayne County Supervisors, 349 Mich 415 (1957), the court was confronted with a petition for the incorporation of a village into a city. Although the county prosecuting attorney rendered an opinion that the petition complied with the statutory requirements and the County Bureau of Taxation stated the boundary description was

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accurate and sufficient, the Board of Supervisors refused to call the election because the petition did not appear to conform to the statute.

At the circuit court trial of the petition for writ of mandamus, it was indicated the election was refused because the boundary lines divided over 200 parcels making the assessment of taxes difficult, the area contained 76.06% of the assessed valuation of the Township, the Township would have only "vestigial remnants" of the public water and sewer systems, and the remaining portions of the two townships affected would be isolated and non self-supporting.

In granting the writ of mandamus for the election, the court held at page 421,

> "It is our opinion that the question of incorporation and annexation is a legislative one and that the Board of Supervisors has no power to pass upon the merits or reasonableness of the petition."

In Goethal v Kent County Supervisors, 361 Mich 104 (1960), the Supreme Court was confronted with a request for a writ of mandamus requiring the Board of Supervisors to submit an annexation proposal to the voters prompted by the filing of four petitions for such annexation involving two areas in Walker Township and other areas in the Townships of Grand Rapids and Wyoming. They contained a sufficient number of valid signatures but were nevertheless rejected by the Board of Supervisors as containing incorrect statements and as the signing was insufficient under its construction of the statute concerning the "alternate" type petition requiring land owners signatures from each area to be annexed.

The trial court, along with the Supreme Court disagreed with this statutory interpretation and furthermore held the board had no authority to consider the unreasonableness of the proposed annexation. As stated by the court in quoting from 69 ALR 226, 267 at page 114,

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> "It may be stated as a general rule, supported by practically all of the cases in which the proposition is considered, that the creation, enlargement, or diminution of political districts or municipal corporations is a legislative function, and that a statute which delegates the performance of this function to the judiciary, and leaves to the discretion of that body the determination of the circumstances which will justify the creation of a district or corporation, of the circumstances which will justify an enlargement or diminution of such a political subdivision, violates the constitutional provision separating the powers of the government into legislative, executive, and judicial departments."

Similarly, exercise of such discretion by the "executive" secretary of state would violate such constitutional separation of powers.

In quoting from Attwood v Wayne County Supervisors, supra, the court further stated,

> "The statement that matters relating to incorporation and annexation are legislative in character necessarily excludes authority on the part of the courts to interfere in such a proceeding on the ground that the purpose to be achieved by following the legislative procedure is unreasonable because inconsistent with the rights of property owners, or of political subdivisions or municipalities. Moreover, in the instant case, we are reviewing on certiorari a mandamus proceeding. The question before the trial court was whether the board of supervisors owed a clear legal duty to submit the propositions to the voters of the different districts affected thereby as shown by the petitions filed. The circuit judge was right in holding that the board could not reject the petitions because a majority of its members disapproved of the results that might follow."

The court affirmed the issue of the writ of mandamus requiring the holding of the elections.

In the subject case before this Honorable Court, the ministerial executive decision of the Secretary of State should not be permitted to thwart the legislature's limited delegation of ministerial duties of the Secretary of State in submitting the detachment issue to a vote of the electors which admittedly was properly petitioned for by the requisite number of qualified people on statutorily conforming petitions.

"Let my people go" and vote.

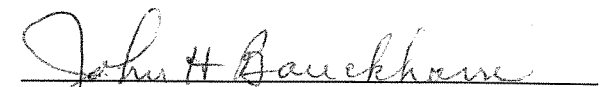
CONCLUSION

On the basis of the foregoing, it is Amicus Curiae Michigan Townships Association's position that the Defendant, Secretary of State, in each case before this Honorable Court, erred in refusing to certify the validity of the petitions for a detachment election from the respective cities to the respective Townships voting collectively in each case as required by statute and should be ordered by this Honorable Court to perform this ministerial duty specified in MCL 117.11 and supported by cited cases.

If a majority of the collective total votes favor detachment under the "package" election and no individual township's electors vote by a majority to reject the detachment, the detachment must be declared approved. If an individual township votes by a majority to reject the detachment, even though a majority of the total vote taken is in favor of detachment, detachment of territory from the city to that township could be declared defeated under Cook, supra, or the entire detachment declared defeated under "package" election in Walsh, supra. If, on the other hand, the combined votes counted collectively are favorable and no township rejects the detachment, the detachment must be declared carried. In either case, the petitioned for package election must be held as required by statute with the results, based on the canvas of the votes, determined at a later date.

Dated: December 17, 2004

BAUCKHAM, SPARKS, ROLFE,
LOHRSTORFER & THALL, P.C.



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