STATE OF MICHIGAN
IN THE SUPREME COURT
ON APPEAL FROM COURT OF APPEALS
Zahra, P.J., and Cavanaugh and Cooper, JJ.

CASCO TOWNSHIP, COLUMBUS TOWNSHIP
PATRICIA ISELER and JAMES P. HOLK,
Plaintiffs-Appellants,
v
CANDACE S. MILLER, MICHIGAN SECRETARY OF STATE; CHRISTOPHER M. THOMAS, DIRECTOR, BUREAU OF ELECTIONS, and CITY OF RICHMOND,
Defendants-Appellees,
and
WALTER K. WINKLE and PATRICIA A. WINKLE,
Intervening Defendants-Counter Plaintiffs-Appellees.

Supreme Court No. 126120

Court of Appeals No. 244101

Ingham County Circuit Court
No. 02-991-CZ

/

IN THE SUPREME COURT
ON APPEAL FROM COURT OF APPEALS
Griffin, P.J., and Meter and Schuette, JJ.

FILLMORE TOWNSHIP, a general township, SHIRLEY GREVING, ANDREA STAM, LARRY SYBESMA, JODY TENBRINK, and JAMES RIETVELD, individuals
Plaintiffs-Appellants,
v
CANDACE S. MILLER, MICHIGAN SECRETARY OF STATE; and CHRISTOPHER M. THOMAS, DIRECTOR, BUREAU OF ELECTIONS,
Defendants-Appellees.

Supreme Court No. 126369

Court of Appeals No. 245640

/

BRIEF ON APPEAL – APPELLEES TERRI LYNN LAND AND CHRISTOPHER M. THOMAS

ORAL ARGUMENT REQUESTED

Michael A. Cox
Attorney General

Thomas L. Casey (P24215)
Solicitor General
Counsel of Record

Patrick J. O'Brien (P27306)
Heather S. Meingast (P55439)
Assistant Attorneys General
Attorneys for Defendants - Appellees
P.O. Box 30736
Lansing, Michigan 48909
(517) 373-6434

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QUESTIONS PRESENTED FOR REVIEW

I. **The Home Rule City Act, MCL 117.1 *et seq*, provides procedures for changing the boundaries of cities and townships by the detachment of property from a city to a township. Plaintiffs' petitions propose the detachment of multiple parcels of property to multiple townships, with a single election held in each case to determine the proposal. Should the Act be interpreted as permitting a single detachment petition and single vote thereon to effect multiple detachments to multiple townships?**

II. **A writ of mandamus may only issue if a plaintiff shows a clear legal right to performance of the duty sought, and that the defendant has a clear legal duty to perform the act requested. Because the Home Rule City Act does not permit a single petition and election to effect multiple detachments, Plaintiffs do not have a clear legal right to certification of their petitions, and the Secretary of State has no clear legal duty to grant certification. Did the Trial Court and Court of Appeals correctly rule that the plaintiffs are not entitled to mandamus relief?**

COUNTERSTATEMENT OF PROCEEDINGS AND FACTS

These appeals involve two petitions filed with the Secretary of State pursuant to the Home Rule City Act, MCL 117.1 *et seq* (HRCA or the Act), which propose to detach multiple parcels of property to multiple townships.[1] In *Casco Township v Secretary of State*,[2] Plaintiffs seek to detach two separate parcels of property from the City of Richmond to two separate townships – Casco Township and Columbus Township. In *Fillmore Township v Secretary of State*,[3] Plaintiffs seek to detach four separate parcels of property to four separate townships – Fillmore Township, Holland Charter Township, Laketown Township and Park Township. If the votes were to proceed as Plaintiffs would like, portions of the Cities of Richmond and Holland (which were previously annexed) would be detached, with the respective parcels reverting to the respective townships. In both cases, Plaintiffs want one ballot question, i.e., ask the cities and the townships combined if the parcels should be detached from the cities and revert back to the separate townships. The question on appeal is whether the HRCA permits such an approach to detachment.

A. *Casco Township v Secretary of State*

On December 27, 2001, Plaintiffs, Casco Township, Columbus Township and two petition signers, filed their petition and supporting affidavits with the Secretary of State pursuant to § 11[4] of the Act.[5] On June 13, 2002, the Director of the Bureau of Elections refused to certify the petition because Plaintiffs' petition presented two separate questions that, under Michigan

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[1] Because the Secretary of State and the Director of Elections are the defendants in both docket numbers, and since both cases present similar facts and virtually identical legal arguments, Defendants submit a consolidated brief and appendix for this Court's review.
[2] Docket No. 126120.
[3] Docket No. 126369.
[4] MCL 117.11.
[5] *Casco* Appellants' Appendix, p 15a.

law, should be put to two separate sets of voters.[6] As proposed, the petition would result in a single election that would grant electors the right to vote on the joint question whether certain land areas should be detached from the City of Richmond and returned to two separate townships (Casco Township and Columbus Township), even though electors are affected by only one portion of that question. As the petition explains, electors would vote on the proposed "detachment of certain territory . . . from the City of Richmond to Casco Township and Columbus Township *(whichever Township each portion of the detached territory was originally taken from).*"[7] Consequently, electors who are not residents of the land subject to detachment, the City of Richmond, or the individual township to which the land would be returned would be allowed to vote on the question of whether that specific territory should be detached. So configured, this petition poses two detachment questions and allows residents of both townships to vote on both questions despite the fact that they are only affected by one of those detachment questions, i.e., that concerning the land that would be detached from the City of Richmond and returned to the township in which they reside.

Notably, the dispute over whether the land should be a part of the City of Richmond did not begin with this litigation. On the contrary, residents in Casco and Columbus Townships have spent considerable effort trying to keep this land area in their respective townships, and not allow it to become part of the City of Richmond. Initially, the townships entered into agreements with neighboring townships in order to prevent the area from being annexed.[8] In *Township of Casco, et al v State Boundary Commission, et al*,[9] the Court of Appeals affirmed the State Boundary

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[6] *Casco* Appellants' Appendix, p 37a.
[7] *Id.* p 15a (emphasis added).
[8] *Township of Casco, et al v State Boundary Commission, et al*, 243 Mich App 392, 395-96; 622 NW2d 332 (2000).
[9] *Id.*

Commission's authority to consider the validity of those agreements and upheld the finding that the agreements were "shark repellant" deals, the purpose of which "was to bind nonparties in derogation of their rights, to limit the authority of the Commission, and to 'ward off any attempts by municipalities to annex a portion of the Townships."[10] Specifically, the Court held that "[t]he statute . . . does not preclude a finding that the agreement was a sham."[11] After the Commission affirmed the annexation and the Court of Appeals upheld that ruling, Plaintiffs switched to a different tactic – submitting a joint detachment petition. Indeed, Plaintiffs' counsel has explained that this strategy of a single petition for multiple detachment questions is a tactic used by townships to garner voting power disproportionate to their population in comparison to the cities from which they wish to detach land.[12]

Challenging the decision of the Secretary of State to refuse certification of the joint petition, Plaintiffs filed suit in the Ingham County Circuit Court seeking mandamus and declaratory relief. The trial court issued its decision on September 10, 2002, denying mandamus and dismissing this action.[13] The trial court noted that the questions presented in this case were ones of "first impression" but that they were "narrow when viewed in the context of a petition for mandamus. They deal with basic rights of enfranchisement. They present questions of who may call for an election, and how the votes will be counted. The answer to those questions is not patently clear from the statute."[14] The trial court was persuaded by a prior, analogous decision by this Court, *Cook v Board of Canvassers*,[15] in which the Court rejected a similar proposed vote. [16] The trial court concluded, "[f]aced with this authority one cannot readily conclude that the

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[10] *Id.* at 401-402.
[11] *Id.* at 402.
[12] Appellees' Appendix, pp 2b-5b.
[13] *Casco* Appellants' Appendix, p 39a.
[14] *Id.*, p 41a.
[15] 190 Mich 149; 155 NW 1033 (1916).
[16] *Casco* Appellants' Appendix, pp 41a-42a.

Defendant Secretary of State has a clear duty to act. This is particularly so where Plaintiffs have a clear alternative, the circulation of separate petitions in the affected areas."[17] Thus, the trial court denied the request for mandamus and dismissed the case. Plaintiffs thereafter filed an appeal with the Court of Appeals.

On March 25, 2004, the Court of Appeals issued a split decision. Judges Cooper and Cavanagh agreed with Defendants that the HRCA should be interpreted as prohibiting a single petition and election. Judge Zahra dissented, agreeing with Plaintiffs that the plain language of the HRCA permitted the single petition and election. Plaintiffs timely filed an Application for Leave to Appeal with this Court, which was granted on October 8, 2004. This Court asked the parties to brief two issues; (1) whether a single detachment petition and vote thereon, pursuant to the HRCA, may encompass territory to be detached to more than one township, and (2) whether a writ of mandamus should issue to compel the Secretary of State to issue a notice directing an election on the change of boundaries sought by plaintiffs.[18]

B. ***Fillmore Township v Secretary of State***

Plaintiffs, Fillmore Township and various petition signers, circulated a petition proposing to detach four separate parcels of property from the City of Holland to four separate townships.[19] On October 30, 2002, Plaintiffs filed their petition and supporting affidavits with the Secretary of State's office pursuant to § 11 of the HRCA. On November 26, 2002, the Director of the Bureau of Elections informed Plaintiffs that their petition would not be certified pursuant to § 11 of the HRCA.[20] The basis for that denial was two-fold: 1) the Director relied on the ruling of the

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[17] *Id.*, p 42a.
[18] *Casco Township v Secretary of State*, 471 Mich 890; 687 NW2d 597 (2004).
[19] Intervening Defendant-Appellee City of Holland's Brief on Appeal contains a comprehensive review of the history of the proposed detachments in this case. (Holland's Brief on Appeal, pp 1-16.)
[20] *Fillmore* Appellants' Appendix, p 19a.

Ingham County Circuit Court in *Casco Township*, which denied mandamus to compel the certification of that multiple-detachment petition; and 2) the substantive correctness of that ruling.[21]

With respect to the latter, the Secretary refused to certify the subject petition because, as in *Casco Township*, it would result in a single election that would grant electors the right to vote on whether certain land areas should be detached from the City of Holland and returned to individual townships when those electors are not residents of the land subject to detachment, the City of Holland, or the individual township to which the land would be returned. Specifically, the subject petition consists of differing versions of the petition, one for each locality from which signatures were gathered, that seeks the detachment of land from the City of Holland and return to four separate townships. For example, the first page of Plaintiffs' petition packet is a petition sheet on which Fillmore Township residents signed to support holding an election on the question of whether certain land should be detached from the City of Holland and returned "to Fillmore Township, Laketown Township, Park Township and Holland Charter Township (whichever Township each portion of the detached territory was originally taken from) . . . ."[22] So configured, this petition poses four detachment questions and allows residents of all townships to vote on all four questions despite the fact that they are only affected by one of those detachment questions, i.e., that concerning the land that would be detached from the City of Holland and returned to the township in which they reside.

After the Director of Elections refused to certify Plaintiffs' petition, Plaintiffs filed an original action in the Court of Appeals seeking mandamus. Plaintiffs' Complaint for Mandamus raised arguments virtually identical to those raised in *Casco Township*, to wit; that the petition

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[21] *Id.*
[22] *Id.*, p 6a (Emphasis added.)

complies with the HRCA, which plainly permits the use of a single petition and election to effect multiple detachments to multiple townships.[23] Defendants Secretary of State and the Director of Elections answered the Complaint, denying Plaintiffs' allegations. Subsequently, the City of Holland moved to intervene as a defendant, and the Michigan Township Association and the Michigan Municipal League moved to file amicus curiae briefs. These motions were granted by the Court of Appeals on May 19, 2003.[24] The Court of Appeals further ordered that "[h]aving considered the complaint for a writ of mandamus, the Court orders this case to be HELD IN ABEYANCE pending this Court's decision in *Casco Township v Secretary of State*, No. 244101, or until further order of this Court."[25] On March 25, 2004, the Court of Appeals issued its decision in *Casco Township*. On May 6, 2004, the Court of Appeals, by order, denied the *Fillmore* Plaintiffs' complaint for mandamus in light of the decision in *Casco Township*.[26]

Plaintiffs timely filed an application for leave to appeal with this Court, which was granted on October 8, 2004. This Court ordered that the *Fillmore Township* case be submitted and argued with *Casco Township*.[27]

C. **The Court of Appeals' decisions must be affirmed on appeal to this Court.**

The Secretary of State and the Director of the Bureau of Elections assert that the trial court and the Court of Appeals in *Casco Township* correctly determined that the HRCA should not be interpreted as permitting a single petition and election to effect the detachment of multiple parcels of property to multiple townships, and that Plaintiffs were therefore not entitled to mandamus relief. The relevant statutory provisions and case law support this conclusion. Thus,

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[23] Appellees' Appendix, pp 11b-16b.
[24] *Fillmore* Appellants' Appendix, p 20a.
[25] *Id.*
[26] *Id.*, p 30a. The panel consisted of Judges Richard Allen Griffin, Patrick M. Meter, and Bill Schuette.
[27] *Casco Township, supra*, 471 Mich 890.

the Court of Appeals in *Fillmore Township* properly denied Plaintiffs' request for mandamus in that case as well. Because the lower courts reached the correct result, their decisions should be affirmed.

ARGUMENT

I. The Home Rule City Act, MCL 117.1 *et seq*, provides procedures for changing the boundaries of cities and townships by the detachment of property from a city to a township. Plaintiffs' petitions propose the detachment of multiple parcels of property to multiple townships, with a single election held in each case to determine the proposal. The Act should not be interpreted as permitting a single detachment petition and single vote thereon to effect multiple detachments to multiple townships.

A. Summary of the Argument

Plaintiffs argue that the plain language of the HRCA permits them to file a single petition that proposes multiple detachments of property to multiple townships (two in the *Casco* case, and four in the *Fillmore* case), and further claim that the Act permits a single election and aggregated vote on the proposals. Defendants assert that the Act is ambiguous with respect to these issues, but that construction of the Act and relevant case law compels only one conclusion; that separate petitions must be submitted, and that separate elections must be held in the affected districts.

B. Standard of Review

This Court reviews questions of statutory interpretation de novo.[28] "The primary goal of statutory interpretation is to give effect to the intent of the Legislature,"[29] and "[t]he first step in that determination is to review the language of the statute itself."[30] A court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent.[31] "[A] provision of the

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[28] *Mayor of Lansing v Public Service Comm*, 470 Mich 154, 157; 680 NW2d 840 (2004).
[29] *In re MCI,* 460 Mich 396, 411; 596 NW2d 164 (1999); *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993).
[30] *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993).
[31] *People v Phillips*, 469 Mich 390; 666 NW2d 657 (2003); *Gilbert v Second Injury Fund*, 463 Mich 866; 616 NW2d 161 (2000); *People v Davis*, 468 Mich 77; 658 NW2d 800 (2003); *Dan De*

law is ambiguous only if it 'irreconcilably conflicts' with another provision, or when it is equally susceptible to more than a single meaning."[32] If the statutory language is ambiguous, the Court's first duty is to attempt to discern the legislative intent underlying the ambiguous words. [33] "Only if that inquiry is fruitless, or produces no clear demonstration of intent, does a court resort to [ ] preferential rule[s] of [statutory interpretation]."[34] It is a maxim of statutory construction that every word of a statute should be read in such a way as to be given meaning, and a court should avoid a construction that would render any part of the statute surplusage or nugatory.[35]

C. **Overview of the relevant HRCA provisions relating to detachment.**

The HRCA provides a process whereby cities, villages or townships may annex or detach land from one entity to another. [36] Before the Act's adoption, the Michigan Legislature routinely incorporated, consolidated, and changed the boundaries of cities, as well as other units of local government. These changes were generally effected through the use of special legislation, which became unpopular and the subject of much criticism.[37] Thus, in 1909 the HRCA was adopted to provide general law procedures for incorporating, consolidating, and changing the boundaries of cities.[38] As adopted, the procedures for annexation and detachment were identical, and gave

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Farms, Inc v Sterling Farm Supply, Inc, 465 Mich 872; 633 NW2d 824 (2001); *Dibenedetto v West Shore Hosp*, 461 Mich 394; 605 NW2d 300 (2001); *Pohutski v City of Allen Park*, 465 Mich 675; 641 NW2d 219 (2001); *State Farm Fire & Casualty Co v Old Republic Ins Co*, 466 Mich 142; 644 NW2d 715 (2003).

[32] *Mayor of Lansing, supra* at 166 (citation omitted).

[33] *Crowe v Detroit*, 465 Mich 1, 13-14; 631 NW2d 293 (2001).

[34] *Id.*; *Koontz v Ameritech Servs*, 466 Mich 304, 319; 645 NW2d 34 (2002).

[35] *Altman v Meridian Twp*, 439 Mich 623, 635; 487 NW2d 155 (1992).

[36] The term "annexation" generally means the process of removing land from the jurisdiction of a township and adding it to the jurisdiction of an adjacent city. See http://www.michigan.gov/documents/cis_opla_annex_35822_7.pdf, last visited January 4, 2004. The term "detachment" is generally described as the reverse process of removing land from the jurisdiction of a city and returning it to the jurisdiction of the township from which it was originally incorporated.

[37] See City of Richmond's Brief on Appeal, pp 23-25.

[38] 1909 PA 279.

voters virtually complete decision-making power. In time, however, fault was found with these procedures as well as disputes and litigation regarding annexation blossomed.[39] As this Court previously observed, "[t]he boundaries of a unit of local government affect the tax base of the unit, the tax rate of its residents, the level of services provided to residents, and the potential for further development of the unit. Issues regarding annexations of part of a local unit to another therefore tend to be politically volatile."[40] In 1968, the Legislature passed the State Boundary Commission Act,[41] and the HRCA was amended to give this new body, the Commission, jurisdiction over city and village incorporations and consolidations. In 1971, the State Boundary Commission Act was amended to give the Commission jurisdiction over most annexation actions.[42] Notably, the procedures for detachment remained unchanged by these amendments. Why the provisions for detachment were not addressed in these amendments is unclear. Although these acts effected substantial changes to the boundary change process, the Legislature's haphazard approach created almost as many questions as it resolved. In addressing a "title-object" clause violation directed against these amendments, this Court noted that there is "no constitutional requirement that the legislature do a tidy job in legislating,"[43] and observed:

> The townships further assert that there are a number of ambiguities and constructional issues posed by the failure of the Legislature to repeal all the laws concerning incorporation, consolidation and annexation and to start afresh with a comprehensive enactment covering the entire subject matter. Experience teaches that ambiguities and constructional difficulties are inevitable however carefully the Legislature proceeds. Those difficulties do not rise to constitutional dimensions affecting the validity of legislation because they are posed in terms of asserted conflict between the provisions of different acts or section of the same act as a result of an amending act. If legislation could so easily be overturned, the claims of confusion, lazy legislation and conflict between sections and acts would

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[39] *Shelby Charter Twp v State Boundary Comm*, 425 Mich 50, 56; 387 NW2d 792 (1986).
[40] *Id.* at 58-59.
[41] 1968 PA 191.
[42] See 1970 PA 219. *Midland Twp v State Boundary Comm,* 401 Mich 641; 259 NW2d 326 (1977), and *Shelby Township, supra,* contain informative overviews of these amendments.
[43] *Midland Twp, supra* at 655 (internal citation omitted).

> be an increasing source of litigation, burden and embarrassment to the courts, the Legislature and the public.[44]

Accordingly, this is not the first time the clarity of the HRCA has been questioned by parties and addressed by this Court.[45]

Generally, annexation or detachment is accomplished by circulation of a petition and a subsequent election on the petition proposing detachment. This case revolves around the interplay of several sections of the HRCA. The petition in this case was initiated pursuant to MCL 117.11, which provides in part:

> When the territory to be affected by any proposed . . . change is situated in more than 1 county *the petition hereinbefore provided* shall be addressed and presented to the secretary of state, with 1 or more affidavits . . . showing that the statements contained in *said petition* are true, *that each signature affixed thereto is the genuine signature of a qualified elector residing in a city, village or township to be affected by the carrying out of the purposes of the petition* and that not less than 25 of such signers reside in each city, village or township *to be affected thereby*. The secretary of state shall examine such petition and the affidavit . . . and if he shall find that the same conforms to the provisions of this act he shall so certify, and transmit a certified copy of said petition . . . *to the clerk of each city, village or township to be affected by the carrying out of the purposes of such petition,* together with his certificate as above provided, and a notice directing that at the next general election occurring not less than 40 days thereafter *the question of making the . . . change of boundaries petitioned for shall be submitted to the electors of the district to be affected, ...* If he shall find that said petition and the affidavit . . . do not conform to the provisions of this act he shall certify to that fact, and return said petition and affidavits to the person from whom they were received, together with such certificate. The several city, village and township clerks who shall receive from the secretary of state the copies and certificates . . . *shall give notice of the election to be held on the question of making the proposed . . . change of boundaries as provided for in section 10 of this act.* [Emphasis added.][46]

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[44] *Id.* at 663.

[45] See also *Ford Motor Co v Village of Wayne*, 358 Mich 653; 101 NW2d 320 (1960) for an earlier interpretation of the HRCA.

[46] The recent amendment of this section, 2004 PA 303, effective January 1, 2005, does not affect the analysis in this case.

This section's reference to the "petition hereinbefore provided" refers to § 6 of the HRCA,[47] which provides in part:

> [Territory] . . . [may be] detached . . . from [a city] . . ., by proceedings originating by petition therefor signed by *qualified electors who are freeholders residing within the cities or townships. . . to be affected thereby* . . . . [Emphasis added.]

Thus, § 11 requires that each signature on a petition be that of an elector who owns property and resides in a city, village or township to be affected by the carrying out of the purposes of the petition. Section 11 further states that the question of making the change of boundaries petitioned for shall be submitted to the electors of the "district to be affected." This phrase is defined in subsection 9(1) of the HRCA, which states, in part:

> ...The *district to be affected* by every such proposed...change in boundaries shall be deemed to include the whole of each city... or township from which territory is to be taken or to which territory is to be annexed....[Emphasis added.][48]

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[47] MCL 117.6.

[48] Although § 9 was amended several times since 1909, the "district to be affected" language remains unchanged. As originally adopted in 1909 PA 279, § 9 provided:

> 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: Provided, That proposed consolidations or changes of boundaries shall be submitted to the qualified electors of the city, and to the qualified electors of the city, village or township from which the territory to be taken is located, and at the election when said question is voted upon, the city, village or township shall conduct the election in such manner as to keep the votes of the qualified electors in the territory proposed to be annexed or detached in a separate box from the one containing the votes from the remaining portions of such city, village or township, and if the returns of said election shall show a majority of the votes cast in the district proposed to be annexed, voting separately, to be in favor of the proposed change of boundary, and if a majority of the electors voting in the remainder of the district to be affected as herein defined, voting collectively, are in favor of the proposed change of boundary, then such territory shall become a part of the corporate territory of the city or shall be detached therefrom, as the case may be.

After 1970 PA 219, subsection 9(1) read as it does today:

> In the event of a conflict between the provisions of this act and Act No. 191 of the Public Acts of 1968, being sections 123.1001 to 123.1020 of the Compiled Laws

The crux of this case is whether § 11 and subsection 9(1) contemplate one single petition and one election district, as Plaintiffs propose, consisting of the cities and townships combined, or whether there are several "district[s] to be affected," as Defendants propose, consisting of the cities and each township involved, i.e. the City of Richmond and Casco Township, the City of Richmond and Columbus Township, the City of Holland and Fillmore Township, *etc.*

Other relevant provisions of the HRCA use consistent language, but do not further define the "district to be affected." Section 8, which addresses the petition process when territory is not within two counties, states in part:

> Said petition shall be addressed to the board of supervisors . . . said board of supervisors shall, by resolution, provide that the question of making the proposed . . . change of boundaries shall be submitted *to the qualified electors of the district to be affected* at the next general election . . . . [Emphasis added.]

Section 10, which is incorporated into § 11 and concerns notice of the election, provides in part:

> The county clerk shall, within three [3] days after the passage of the resolution provided for in section eight [8] of this act, transmit a certified copy of said petition and of such resolution to the clerk of *each city, village or township in the district to be affected by the proposed . . . change*, and it shall be the duty of *each* of said city, village and township clerks to give notice of the date and purpose of the election provided for by said resolution by publication in one [1] or more newspapers published within said district at least once in each week for four [4]

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of 1948, regarding an incorporation or consolidation, the provisions of Act No. 191 of the Public Acts of 1968 shall govern. 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. However, when a territory is proposed to be incorporated as a city only the residents of the territory to be incorporated shall vote on the question of incorporation. When a petition signed by the state by the appropriate agency designated by the state administrative board which holds the record legal title to the entire area of the land in the territory adjacent to the city to be annexed, if filed with the governing body of the city and with the township board of the township in which such territory is situated, such annexation may be accomplished by the affirmative majority vote of the governing body of such city and the approval of the township board of such township.

> weeks preceding said election, and by posting a like notice in at least ten [10] public places in said district not less than ten [10] days prior to such election. [Emphasis added.]

Section 12 addresses canvassing the election results, and states in part:

> The returns by the *several boards of election inspectors* shall be made to the clerk of the county in which the city or proposed city, or the greater part thereof, if in more than one [1] county, is located, and shall be canvassed on the first [1st] Thursday following said election in the manner provided by law for a county canvass . . . . [Emphasis added.]

Finally, § 13 describes the effect of passage of a proposal, and provides in part:

> On the filing in the office of the secretary of state and the clerk of the county or counties within which the city . . . is located, of a copy of the petition . . . with the certificate of the board of county canvassers attached, showing that the purposes of such petition have been approved by a majority of the electors voting thereon, as provided in this act, which shall also give the number of votes cast on such proposition and the number cast for and against the same, *the territory described in said petition shall be duly and legally . . . detached from the city named in such petition*, as the case may be, and such petition and the subsequent proceedings thereunder shall be duly recorded in each of said offices in a book to be kept for that purpose, and either of such records or certified copies thereof shall be prima facie evidence of the . . . change of boundaries prayed for in such petition. *Territory detached from any city shall thereupon become a part of the township or village from which it was originally taken* . . . . [Emphasis added.]

Review of these several provisions reveals that the HRCA is ambiguous with respect to whether one petition may be used to effect multiple detachments, and what is "the district to be affected" by the proposed detachments for purposes of § 11. Defendants assert that the HRCA can and should be interpreted as requiring separate petitions and multiple election districts in this case, where Plaintiffs seek to effect multiple detachments affecting multiple entities.

D. **The Court of Appeals decision in *Casco Township*: The majority correctly interpreted the HRCA.**

The majority decision of the Court of Appeals correctly interpreted the HRCA. Judges Cooper and Cavanagh agreed with Defendants that the HRCA should be interpreted as prohibiting a single petition and election. Judge Zahra agreed with Plaintiffs that the plain language of the HRCA permitted the single petition and election.

1. The majority correctly interpreted the HRCA to prohibit a single petition and election to effect multiple townships.

The Court of Appeals recognized that this case raises a "novel question" of statutory interpretation, and determined that, "[t]he [ ] [HRCA] [ ] does not specify whether a single election for a detachment of land from one city into two townships is permissible."[49] The Court observed that "logic" would dictate that "a township or city should not have voting privileges over matters that involve a different township or city."[50] Thus, the Court of Appeals concluded that the "HRCA does not unambiguously endorse a single election for multiple detachments of land involving more than two governmental entities."[51]

In its analysis, the Court of Appeals observed the typical rules of statutory construction and cited this Court for the proposition that "[s]tatutory language is considered ambiguous when reasonable minds can differ with respect to its meaning."[52] The Court of Appeals continued that

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[49] *Casco Twp v Secretary of State*, 261 Mich App 386, 388; 682 NW2d 546 (2004).
[50] *Id.*
[51] *Id.* at 388.
[52] *Id.* at 391, citing *In re MCI*, *supra* at 411. The first half-hearted argument Plaintiffs assert is that the Court of Appeals applied an improper standard of review in determining whether the HCRA is ambiguous. (*Casco* Appellants' Brief, p 9.) Plaintiffs cite *Mayor of Lansing*, *supra*, in which this Court ***clarified*** that a statute is ambiguous "only if it 'irreconcilably conflicts' with another provision, or when it is equally susceptible to more than a single meaning," *id.* at 165-166, and rejected the "reasonable minds can differ" standard. This Court decided *Mayor of Lansing*, *supra*, after the Court of Appeals issued its decision in this case, and the Court of

"[w]hen construing an ambiguous statute, 'the court must consider the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the statute's purpose, but should also always use common sense.'"[53]

After quoting § 11 at length, the Court of Appeals determined that:

> [c]ontrary to plaintiffs' argument, we do not find that this language explicitly states that a single election is sufficient to detach territory from a city into more than one township. Nor, however, do we find that that the statute definitively states the opposite. The Legislature's mere use of the phrase "the district" fails to clarify where a vote can be taken, especially when the very controversy is what the Legislature intended "the district" to entail. Similarly, the use of language like "each city, village or township" does not clearly imply that more than one township could be involved in such a vote. It seems equally as likely that the word "each" is used because at least two governmental entities are involved in every detachment vote.[54]

Thus, the Court of Appeals concluded that both interpretations offered by Plaintiffs and Defendants were feasible under the language of § 11, and that "[b]ecause reasonable minds [could] differ with respect to whether a single election is permissible under the instant circumstances, [it] must consider the object of the statute and apply a reasonable construction that is logical and best accomplishes the HRCA's purpose."[55] The Court rejected the argument that it was bound by its prior decision in *Williamston v Wheatfield Twp*,[56] which held that certain provisions of the HRCA are unambiguous because § 11 was not construed in that case, nor were the instant issues raised before that court.[57] Subsequently, the Court held:

Appeals here correctly applied the standard in effect at the time. See *In re MCI*, *supra*, at 411. Even under this Court's newly expressed standard, the Court of Appeals decision is correct because, as is set forth fully, § 11 is "equally susceptible to more than a single meaning." *Mayor of Lansing*, *supra*.

[53] *Id.*, quoting *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 44; 672 NW2d 884 (2003).

[54] *Id.* at 391.

[55] *Id.* at 393.

[56] *Williamston v Wheatfield Twp*, 142 Mich App 714; 370 NW2d 325 (1985).

[57] *Casco Township*, *supra*, 261 Mich App at 393. The Court further opined that *Williamston*, *supra*, was not binding under MCR 7.215(J)(I). *Id.*

> After reviewing the well-briefed arguments and cases provided by both parties, we find no case law that directly addresses the current situation. Rather, the cases cited by the parties, while helpful in terms of analysis, concern different factual scenarios and are largely irrelevant given the HRCA's subsequent amendments. These cases, however, do represent a continuing concern that local government units determine their own fate. For instance, in *Cook*, our Supreme Court specifically agreed with the plaintiff's position that "'the district to be annexed' means that portion of each township to be annexed, and that the statute requirement of a majority vote in the 'district to be annexed' means that that portion of each township to be annexed must vote affirmatively before annexation can follow." According to the Court in *Cook*, this position was more "consonant with justice and with the principles of local self-government which have been so frequently enunciated by this court."
>
> There are two separate questions presented on plaintiffs' petition in this case; i.e. whether to detach land from Richmond into Casco Township and whether to detach land from Richmond into Columbus Township. In simple terms, it is clearly unfair that citizens of one township be allowed to vote on issues that affect another township. Indeed, the townships' combined voting strength could be used to overwhelm the city's voting strength. Such an outcome conflicts with the Michigan constitutional mandate that "all political power is inherent in the people. Government is instituted for their equal benefit, security and protection." We therefore find that the HRCA does not permit the type of election requested in plaintiffs' petition.[58]

Thus, the majority rejected Plaintiffs' argument that Defendants improperly refused to certify the petition, and further rejected Plaintiffs' argument that the trial court abused its discretion in denying their request for a writ of mandamus.

Defendants submit that the majority correctly determined that § 11 of the HRCA is ambiguous with respect to whether a single petition and election may effect multiple detachments, and thereafter properly concluded that it may not be interpreted as permitting such a procedure.

2. <u>The dissent's overly simplistic analysis of the questions before the Court is unpersuasive and erroneous.</u>

The dissent concluded that the HRCA plainly permits a single petition and election to effect the multiple detachments in this case. The dissent observed that § 6 provides for an

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[58] *Id.* at 393-394.

election "originating by a single petition to detach territory from, or add territory to, multiple cities, or for the consolidation of multiple cities, villages, or townships into one city," but then further noted that "the present case involves a detachment from one city, rather than multiple cities."[59] The dissent also noted that "the present petition was not initiated under MCL 117.6, but was initiated under MCL 117.11," but determined that "[n]onetheless, MCL 117.6 shows that the Legislature intended to allow more than two cities, villages, or townships to be involved in a single detachment election."[60] The dissent found that § 6 and § 11 were consistent.

> Under MCL 117.11, once the Secretary of State certifies a petition, the Secretary of State is required to send a copy of the petition to the clerk of "each city, village or township to be affected," and "notice directing that at the next general election occurring not less than 40 days thereafter the question of making the incorporation, consolidation or change of boundaries petitioned for shall be submitted to the electors of *the district to be affected* . . . ." (Emphasis added.) MCL 117.9 explains the meaning of the phrase "the district to be affected" under the HRCA: "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*." (Emphasis added.) This broad definition indicates that a single election district is established to determine a change of boundary lines affecting multiple cities, villages, or townships. The Legislature uses general language in describing "the district to be affected," allowing for the phrase to encompass more than just two cities, villages, or townships. Accordingly, because the Legislature refers to a single petition as it relates to "the district to be affected" in MCL 117.11, and the district to be affected is broadly defined to include multiple cities, villages, and townships, I conclude that the unambiguous language of the HRCA allows for a single election to be held to detach territory from a city to multiple townships. I would reverse.[61]

Defendants respectfully disagree with Judge Zahra's conclusion. The HRCA does not "plainly" permit a single petition and election in this matter. The relevant language is equally susceptible to both meanings subscribed to it by Plaintiffs and Defendants. That

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[59] *Id.* at 397.
[60] *Id.*
[61] *Id.* at 398.

said, only Defendants proposition is sustainable after a proper interpretation of the HRCA and relevant case law.

E. The HRCA is ambiguous with respect to whether a single petition and election may effect multiple detachments.

Plaintiffs insist that the plain language of the statute entitles them to their multiple-question petitions and single election in each case, and that the Court of Appeals erred in concluding that § 11 was ambiguous with respect to these issues. Plaintiffs rely on the statement in subsection 9(1) of the Act that "[t]he district to be affected by [a proposed boundary change] shall be deemed to include the whole of each city . . . or township from which territory is to be taken or to which territory is to be annexed."[62] Similarly, Plaintiffs rely on the fact that the Act, in allowing for petitions to be filed seeking boundary changes, utilizes the singular tense for "petition" and "election" when discussing the procedures to be followed in such circumstances.[63] These arguments by Plaintiffs, however, attempt to read into the Act something that, quite simply, is not there: i.e., an unambiguous mandate that Defendant Secretary of State certify single petitions seeking multiple boundary changes that affect more than two political units and that one election must be allowed on such multiple detachment petitions.

In the absence of that explicit mandate, Plaintiffs offer a construction of the Act that serves their acknowledged purpose of achieving a political advantage through amassing disproportionate vote influence. As Plaintiffs' counsel has explained, this strategy of a single petition for multiple detachment questions is a tactic used by townships to garner voting power disproportionate to their population in comparison to the cities from which they wish to detach land:

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[62] *Casco* Appellants' Brief on Appeal, pp 12-15.
[63] *Id.*

> The advantage of a single detachment petition involving two (or more) townships is that the combined electors of the townships (as well as the city) can vote together on a single detachment question in one election, thereby increasing the possibility that there will be a majority of 'yes' votes on the detachment question. Although townships have in the past succeeded in detaching property from cities with three to four times the township's population, the prospect of combining their electors gave Sturgis and Burr Oak Townships a decided political advantage.[64]

In other words, this political advantage that Plaintiffs seek is the dilution of voting rights of those *actually affected* by the question of whether to detach a specific area of land.

Plaintiff's construction of the Act, however, is not the *only* interpretation of the Act. Rather, the Act is "equally susceptible to more than a single meaning."[65] Defendants recognize that this Court generally will find an ambiguity only as a last resort,[66] but this truly is the rare case that warrants such a finding. Moreover, Plaintiffs' construction of the Act is flawed in that it contradicts the clear language of the Act and violates fundamental voting rights and principles of representative democracy. Plaintiffs offer a simplistic, but deeply flawed, reading of the Act. This Court has recognized that a simplistic reading of a statute does not lead to the right result in every case:

> Few words have a "content so intrinsic" that their meaning does not become doubtful in the context of a particular question. G. A. Endlich, in his treatise on statutory construction, said:
>
> > Language is rarely so free from ambiguity as to be incapable of being used in more than one sense; and to adhere rigidly to its literal and primary meaning in all cases would be to miss its real meaning in many. If a literal meaning had been given to the laws which forbade a layman to lay hands on a priest, and punished all who drew blood in the street, the layman who wounded a priest with a weapon would not have fallen within the prohibition, and the surgeon who bled a person in the street to save his life, would have been liable to punishment. On a literal construction of his promise, Mahomed II's sawing the Venetian governor's body in

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[64] Appellees' Appendix, p 4b.
[65] *Mayor of Lansing*, *supra* at 166.
[66] *Id.* at 164-165.

> two, was no breach of his engagement to spare his head; nor Tamerlane's burying alive a garrison, a violation of his pledge to shed no blood. On a literal construction, Paches, after inducing the defender of Notium to a parley under a promise to replace him safely in the citadel, claimed to be within his engagement when he detained his foe until the place was captured, and put him to death after having conducted him back to it; and the Earl of Argyll fulfilled in the same spirit his promise to the laird of Glenstane, that if he would surrender he would see him safe to England; for he hanged him only after having taken him across the Tweed to the English bank. Endlich, Interpretation of Statutes (Linn & Company Ed 1888), § 25, pp 33-34.[67]

In this case, Plaintiffs doggedly repeat the statutory language and demand that the language expressly mandates that their petition be certified. The Act's language, however, does not expressly allow Plaintiffs' multiple detachment petitions; on the contrary, the Act's language, along with the Act's purpose and the protection of fundamental voting rights, dictate that these petitions not be allowed.

1. <u>The HRCA does not unambiguously permit a single petition to propose multiple detachments.</u>

With respect to whether the HRCA permits a single petition to propose multiple detachments to multiple townships, Defendants assert that the Act cannot be interpreted as providing for such a procedure. For example, the *Casco Township* petition involves two separate and distinct proposals; (1) the detachment of territory from the City of Richmond to Casco Township, and (2) the detachment of territory from the City of Richmond to Columbus Township. The petition states:

> We, the undersigned qualified and registered electors, residents and freeholders in Casco Township, in the County of St. Clair, State of Michigan, respectfully petition for the detachment of certain territory described hereafter from the City of Richmond to Casco Township and Columbus Township (whichever Township each portion of the described territory was originally taken from), to be submitted at an election to the qualified electors of the City of Richmond, Casco Township

[67] *People v McFarlin*, 389 Mich 557, 563-564; 208 NW2d 504 (1973), *overruled on other grounds*, *People v Marshall*, 59 Mich App 140; 229 NW2d 346 (1975).

> and Columbus Township, as provided for by 1909 PA 279, as amended. The territory proposed to be detached from the City of Richmond to Casco Township and Columbus Township is legally described in the attached Exhibit A . . . . [68]

Section 6 of the Act provides that the detachment may originate by "petition therefore signed by the qualified electors who are freeholders residing within the cities or townships . . . to be affected thereby." Section 11 states that this "petition" shall be presented to the Secretary of State and sworn that "each signature affixed thereto is the genuine signature of *a qualified elector residing in a city, village or township to be affected by the carrying out of the purposes of the petition* and that not less than 25 of such signers reside in *each city, village or township to be affected thereby.*" (Emphasis added.) Thus, to sign a petition an individual must reside and own property in an area to be affected by the purposes of the petition.

Although § 6 refers to "cities or townships" in the plural, § 11 refers to the detaching party in the singular (township), rather than the plural (townships). This suggests that the Legislature intended to allow the detachment of territory to only one township. Furthermore, if the only person who can sign a petition is someone who lives and owns property in a township to be affected by the purpose of the petition, it makes sense that a petition can only propose a purpose affecting that signer. The instant petitions, however, set forth multiple purposes and contain signatures from electors who obviously only reside in one of the areas to be affected by the petitions. For instance, Casco Township residents are not qualified electors[69] of Columbus Township, nor are they affected by the proposed detachment from Richmond to Columbus Township. Similarly, Columbus Township residents are not qualified electors of Casco

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[68] *Casco* Appellants' Appendix, p 15a.

[69] Although the HRCA does not define "qualified elector," it is a term of art defined in the Michigan Election Law, MCL 168.1 *et seq*, as "any person who possesses the qualifications of an elector as prescribed in section 1 of article 2 of the state constitution and who has resided in the city or township for 30 days." MCL 168.10.

Township, nor are they affected by the proposed detachment from Richmond to Casco Township.

Defendants assert that § 11 does not contemplate that electors from two or more detaching townships would file a joint petition, as Plaintiffs have done here. Rather, § 11 contemplates that electors from each township will file separate sets of petitions. Plaintiffs point to the Legislature's use of the word "each" in §§ 9 and 11 to suggest that a detachment petition can include multiple townships. Plaintiffs' definition of "each," as "every (individual of two or more, esp. of a definite number) considered separately from the rest,"[70] does not convert a singular reference into a plural. Rather, as the definition suggests, the word "each" serves to separate one thing mentioned from another.[71] The word "each" simply does not mean what Plaintiffs propose it does in this context.

Similarly, Plaintiffs' argument with respect § 11's reference to "*a* city, village, or township affected," in other words the use of the indefinite article "a" as opposed to the definite article "the" as further signifying the Legislature's intent to permit more than one township to be involved at a time also fails.[72] Like "each," use of the word "a" does not allow what is clearly singular to be transformed into the plural. Plaintiffs' hypertechnical argument does not support a finding that the HRCA contemplates the filling of a joint petition.

2. <u>The HRCA does not unambiguously permit a single election and aggregated vote.</u>

With respect to whether a single election may be held, § 9 states that "the district to be affected by every such proposed change of boundaries shall be deemed to include the whole of each city . . . or township from which territory is to be taken or to which territory is to be

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[70] *Casco* Appellants' Brief, pp 16-17.
[71] See *Dimas v Macomb Co Election Comm*, 248 Mich App 624; 639 NW2d 850 (2002) (Court followed plain meaning of "each" that items on a list should be considered separately.)
[72] *Casco* Appellants' Brief on Appeal, p 17.

annexed." Plaintiffs refuse to recognize the underlying basis of this statutory language: i.e., *those who are actually affected by the outcome of a vote are extended the right to vote.* Specifically, Plaintiffs' interpretation is contrary to the Act's explicit mandate that questions regarding boundary changes "shall be submitted to the qualified electors of the district to be affected."[73] To read the Act, as Plaintiffs do, to require that electors who are *not affected* by the detachment of a specific territory (because they are not residents and freeholders of that territory, the municipality from which the territory is being detached, or the municipality to which the territory is being reattached) violates the requirement in § 8 that detachment questions only "be submitted to the qualified electors of the district to be affected."

Contrary to Plaintiffs' argument, nowhere does the statutory language explicitly mandate that multiple-detachment questions be allowed on a single petition. The Act's definition of the "district to be affected" as including the whole of the municipalities affected in no way mandates the conclusion that multiple-detachment questions must be allowed in a single petition and voted on in an election as a single question. Rather, the term must be read in context.[74] The quoted language from § 9 merely recognizes that when jurisdiction over territory moves from one municipality to another, both municipalities are affected in their entirety. One loses a piece and the other takes it. The Legislature granted the right to vote to all qualified electors in both municipalities because the entirety of the municipalities are inherently affected by the alteration of boundaries. The definition of "the district to be affected" in § 9 provides that not just the residents of the land area that is subject to detachment, but rather the residents of both municipalities that will be affected by the change in their common boundary line, are allowed to

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[73] MCL 117.8.

[74] *Crowe v City of Detroit*, 465 Mich 1, 7; 631 NW2d 293 (2001) ("Contextual understanding of statutes is generally grounded in the doctrine of noscitur a sociis: 'it is known from its associates,' see Black's Law Dictionary (6th ed), p 1060. This doctrine stands for the principle that a word or phrase is given meaning by its context or setting." (citation omitted).)

vote on the question of whether that change should occur. Unlike Plaintiffs' construction of this sentence in § 9, the foregoing interpretation protects, rather than injures, the fundamental rights of voting and self-governance. In sum, it is a fundamental misreading of § 9's definition of "the district to be affected" to read it as meaning that electors who are *unaffected* by the proposed boundary change (by virtue of their residency in a municipality whose boundaries will not be changed either way by the vote) must be allowed to vote on such questions.

Similarly, the fact that § 9 lists multiple *kinds* of municipalities merely recognizes the basic fact that the universe of municipalities that can be affected by a boundary change includes cities, villages, or townships. This recognition that territory may be moved between any cities, villages or townships, however, does not unambiguously mandate that a single election for multiple boundary changes between more than any two such entities must be allowed. Plaintiffs stretch the statutory language beyond its natural and reasonable meaning to argue that the Act expressly requires the Secretary of State to certify a single petition and election for multiple detachments.

Furthermore, reading the Act as a whole further supports the conclusion that the Act does not give a vote to someone not affected by the outcome. In each instance explicitly covered by the Act, it is apparent that those given a voice have a stake in the outcome. From that basic limitation, the Act sometimes limits who votes even further. For example, when the question is whether to incorporate an area as a city, only the residents of the area to be incorporated vote on the question.[75] Under the statutory scheme, the starting point is putting the question to voters who are in a municipal body that will actually change in character, either by expanding or contracting. The exceptions move from that basic point and limit the scope of the electorate further.

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[75] MCL 117.9(1).

Moreover, when the Legislature drafted a section dealing only with detachments, it showed its understanding that detachment only affects the city and the municipality losing or receiving the detached parcel. Under § 9b, detachments can be accomplished via formal agreement between the city council and the legislative body of the municipality that will receive the detached portion (if other conditions are met). In requiring that the agreement be consummated between the city council (representing the interests of the city) and the legislative body of the township (representing the interests of the township), § 9b shows who the Legislature understood to be affected by the detachment.

Finally, like Plaintiffs' arguments with respect to the Act's use of the words "each," and "a," Plaintiffs' reliance on the use of the singular form for "petition" and "election" in the Act is also inadequate to support their strained construction of the Act. In dictating the rules that govern statutory construction, the Legislature directed that "every word importing the singular number only may extend to and embrace the plural number."[76] Consequently, Plaintiffs' steadfast assertion that the Act uses the singular form when discussing petitions and elections does not advance their argument because it contradicts the Legislature's express instructions to not read its language so restrictively.

In sum, the language of the Act does not support Plaintiffs' suggested construction. Moreover, that same language supports the propriety of the Secretary's refusal to certify the multiple-detachment petitions at issue here.

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[76] MCL 8.3b.

F. **Case law does not support Plaintiffs' flawed interpretation of the Act.**

Relevant case law further supports the trial court's, the Court of Appeals', and the Secretary of State's conclusion that Plaintiffs' multiple-detachment petitions do not conform to the Act. In *Cook v Board of County Canvassers*,[77] this Court addressed a similar issue. In dispute was an annexation petition. The territory to be annexed consisted of two areas lying in two different townships. The petition to annex, however, was presented as one question, i.e., should this territory be annexed.

The problem arose because the majority of voters from each subdivision of the proposed annexation did not agree on the annexation. The majority vote from the portion of Paris Township proposed for annexation was for it; the majority vote from the portion of Wyoming Township proposed for annexation was against it. If counted collectively, the voters in the combined area proposed for annexation approved the annexation. This was relevant because at that time the statute gave a veto power to the voters in the area proposed to be annexed. The provision that instituted the veto power was silent about what to do if the area to be annexed actually consisted of land lying in two different townships.[78]

As in the instant case, the parties supporting the annexation in *Cook* argued that the statute plainly instructed that the votes in proposed annexation areas be counted. Thus, the annexation supporters (the defendants in *Cook*) argued that since the statute did not disallow collective voting of the two distinct proposed annexation areas, the Legislature plainly intended that one vote could decide the fate of the entire combined area proposed for annexation. The

[77] *Cook, supra,* 190 Mich 149.
[78] *Id.* at 153-154.

Cook Court found that argument, just as this Court should find Plaintiffs' argument here, to be a flawed reading of the statutory text that misses the point of the statutory requirements:

> It is the contention of the defendants that the words "district proposed to be annexed" should be construed to mean either a part of a single township to be annexed or the several parts of two or more townships, which might in one proceeding be annexed. Plaintiff's contention is that the "district to be annexed" means that portion of each township to be annexed, and that the statute requirement of a majority vote in the "district to be annexed" means that that portion of each township to be annexed must vote affirmatively before annexation can follow.
>
> While it may be conceded that the language of the statute, without straining, will support either of the foregoing views, we are of opinion that the contention of the plaintiff should be sustained as being more nearly consonant with justice and with the principles of local self-government, which have been so frequently enunciated by this court.... To permit the favorable minority in that portion of Paris township to be annexed to overcome the adverse majority in that portion of Wyoming township to be annexed would, in our opinion, be contrary to the spirit of section 9, and, we believe, under a fair construction of the language, it is likewise contrary to its express terms.[79]

Although the statutory veto granted to the proposed annexation area has been removed from the statute since the *Cook* decision, the statutory language on which the instant Plaintiffs rely for their multiple-detachment petition was in the Act at the time of that decision and remains today.[80] The basic import of the *Cook* decision, which is applicable here, is that only those electors in the district to be affected by the proposed change of boundaries may vote on the question. Since the electors in Paris Township were not in the district to be affected by the proposal to annex territory from Wyoming Township, the Paris Township electors should not have voted on the proposal to annex part of Wyoming Township. Hence, this Court should reject Plaintiffs' reading of § 9, which contradicts this basic principle. The underlying rationale in *Cook* is that the legislative scheme does not contemplate what Plaintiffs want to do in the instant

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[79] *Id.* at 154-155.
[80] *Id.* at 153. See MCL 117.9(1) (second sentence).

case, which is to gain votes by submitting multiple questions to voters not affected by each proposed detachment.[81]

Additionally, since statutory language should be read in light of previously established rules of common law,[82] and a statute should not be construed to alter the common law any further than the words of the statute import,[83] the effect of the statutory change since *Cook* does not negate its applicability to this case. Therefore, Plaintiffs' assertion that the Court of Appeals erred to the extent it relied on *Cook* based on the deletion of the statutory veto power given to areas subject to annexation is without merit. While the area proposed to be annexed is no longer granted a veto under the Act, the principle that joint petitions should not be used as a tactic for manipulating the outcome of a vote remains.

This Court's decision in *Cook* and application of those principles here is also consistent with the generally accepted principle that independent questions referred to voters must be submitted separately so that they pass or fail independently. "A proposition stated on the ballot should not present a duplex issue, nor, in submitting a question to electors, should separate subjects, separate purposes or independent propositions be so combined that one may gather votes for the other."[84] In light of these guiding principles, the statute's failure to specifically disallow joint petitions does not demonstrate legislative intent to allow them. On the contrary, that silence is better understood as legislative appreciation that joint petitions such as the two

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[81] Other states addressing this issue have reached similar conclusions. See *Lake Wales v Florida Citrus Canners Coop*, 191 So2d 453, 457 (1966) and *People v San Jose*, 222 P2d 947, 949 (1950).

[82] *Nummer v Dep't of Treasury*, 448 Mich 534, 544; 533 NW2d 250 (1995), *cert den,* 516 US 964 (1995); *In re Childress Trust*, 194 Mich App 319, 326; 486 NW2d 141 (1992).

[83] *Gruskin v Fisher*, 70 Mich App 117, 123; 245 NW2d 427 (1976), *rev'd on other grounds,* 405 Mich 51 (1979).

[84] 8A Michigan Civil Jurisprudence, § 63, pp 87-88; see also 26 Am Jur 2d, Elections § 314, p 119, and *Public Schools of Muskegon v VanderLaan*, 211 Mich 85, 87; 178 NW 424 (1920) (separate subjects, separate purposes, or independent propositions should not be combined so that one may gather votes for the other").

proposed by Plaintiffs did not have to be specifically disallowed because such tactics are not proper under broader principles.

Plaintiffs unpersuasively argue that this Court's treatment of *Cook* in *Walsh v Hare* [85] made it error for the Court of Appeals to rely on any principles articulated in *Cook* to reject the mandamus relief sought here.[86] This argument is without merit because *Walsh* did not overrule *Cook* and did not address the question before the trial court, the Court of Appeals or this Court, i.e., does the Act mandate certification of a multiple detachment petition? With respect to this Court's treatment of *Cook,* the *Walsh* Court explicitly held that its decision did not conflict with or overrule *Cook,* stating that "nothing in the cited case of *Cook v Kent County Board of Canvassers*, . . . offends [the Court's] conclusion [in *Walsh*]."[87]

More importantly, *Walsh* does not independently contradict the conclusion that the Act does not require the Secretary to certify a multiple-question detachment petition and call for a single election on multiple boundary change questions. At issue in *Walsh* was a post-election challenge to how the Ingham Board of Canvassers tallied the votes on an election question that posed the annexation of five areas from two separate townships to the City of Lansing.[88] Most significantly, however, the Court was *not* asked to resolve the question of whether a single petition and a single election on multiple annexation questions was proper under the Act. *The Walsh decision does not indicate that anyone challenged the validity of the manner in which the election was held – thus that issue was not before the Court.* Rather, the post-election challenge before the Court was whether the proposal was divisible such that the votes could be separately tallied, allowing some annexations to occur despite a majority adverse vote in one of the affected

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[85] 355 Mich 570; 95 NW2d 511 (1959).
[86] *Casco* Appellants' Brief on Appeal, pp 21-23.
[87] *Walsh*, *supra* at 574.
[88] *Id.* at 572.

townships. The Court held that the "package" ballot proposition was not divisible and that "it was bound to fail should 1 of the voting units, such as the territory of Delta township, turn thumbs down by majority vote. That territory did so."[89] The *Walsh* Court did not analyze whether it was error to allow a package petition, it merely took the case as it was presented - that being that "but 1 proposition was submitted to the electors voting in the city of Lansing and in both Lansing township and Delta township" - and answered the question put to it regarding how to count the votes on such a proposition.[90] Moreover, the proposed boundary changes were submitted separately to the districts affected. Under *Walsh*, the multiple detachments presented as "package" propositions in the instant cases would have to be approved in all of the districts to be affected. Each proposed boundary change question in *Walsh* was submitted to the appropriate district to be affected, consisting of the whole of each city, village, or township from which territory was to be taken or to which territory was to be annexed. The deletion of the various counting provisions in § 9 does not mean that the district to be affected by the boundary change questions should be interpreted differently. Regardless of how the votes were counted in *Walsh*, it is evident that each boundary change question was submitted to the corresponding district to be affected, which was determined to consist of each political unit from which territory was to be taken or to which territory was to be added. The same law applies here. For example, the detachment question that would take territory from the City of Richmond and annex it to Casco Township must be submitted to the electors of Richmond and Casco, which is the "district to be affected." The detachment question that would take territory from the City of Richmond and annex it to Columbus Township must be submitted to the electors of Richmond and Columbus, which is the other "district to be affected."

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[89] *Id.* at 574.
[90] *Id.* at 573-74.

In addition to their unpersuasive attempts to distinguish and limit *Cook*, Plaintiffs attempt to rely on *Williamston v Wheatfield Twp,*[91] to support their interpretation of the Act.[92] Specifically, Plaintiffs argue that the *Williamston* Court held that the detachment provisions of the Act are clear and unambiguous, and thus that the Court of Appeals was wrong to find ambiguity in the Act.[93] Like their reliance on *Walsh*, Plaintiffs' reliance on *Williamston* is misplaced, as Plaintiffs mischaracterize the scope and context of the Court of Appeals' ruling in *Williamston.*

In *Williamston,* the plaintiffs argued that the Court of Appeals should hold that the Act gave a separate veto power over proposed annexations or detachments to both the electors residing in the subject area and to the electors living in the area "to or from which territory is to be attached or detached."[94] Significantly, the *Williamston* plaintiffs did not argue that there should be *separate elections* in the city and the township for the detachment. On the contrary, like the *Walsh* case, *Williamston* was a *post-election* challenge regarding the manner in which votes should be counted. Moreover, *Williamston* presented a proposed boundary change between two political units, not multiple units like the proposals before this Court. Therefore, not only was the *Williamston* Court not presented with the argument that two elections should be held, the facts of that case did not implicate the issue before this Court, i.e., vote dilution resulting from non-resident electors voting on detachments proposed between more than two municipalities. The *Williamston* Court did not consider or decide whether combining several distinct detachment proposals into a single ballot question is permitted under the HRCA, thereby determining "the district to be affected," who can sign the petition, and who can vote on the

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[91] *Williamston*, *supra*, 142 Mich App 714.
[92] *Casco* Appellants' Brief on Appeal, pp 18-21.
[93] *Id.*
[94] *Williamston*, *supra* at 718.

proposals, and how the votes should be counted. *Williamston* involved only one petition, one proposal, one city and one township, and revolved around how to count votes already cast.

In arguing that the Court of Appeals should read the Act as providing a separate veto power, the *Williamston* plaintiffs argued that the Legislature inadvertently omitted language establishing that separate veto power.[95] Because the Legislature amended the statute and deleted that separate veto power, the *Williamston* Court held that "the language of the provisions now in effect is clear and unambiguous."[96] This, however, was not a blanket statement regarding all detachment questions that may arise under the Act; rather, like all judicial pronouncements, that statement by the Court must be read in the context of what the Court was addressing. In *Williamston,* the issue was the alleged ambiguity of the Act regarding whether a separate veto power is held by the electors from the subject area and by the two political units "to or from which territory is to be attached or detached." *Williamston* does not speak to the issue before this Court and is not authoritative with respect to whether the Act is ambiguous regarding the instant issue. Thus, contrary to Plaintiffs assertions, the Court of Appeals did not err in finding *Williamston* unpersuasive with respect to the issue of ambiguity.

Consequently, none of the cases cited by Plaintiffs establish that the Secretary of State was under any clear legal duty to adopt Plaintiffs' flawed construction of the Act and to certify Plaintiffs' multiple-question petitions. On the contrary, the principles enunciated by this Court in *Cook* mandate the rejection of that flawed interpretation.

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[95] *Id.* at 718.
[96] *Id.* at 719.

G. **Plaintiffs' interpretation of the Act threatens the rights that are the bedrock of our representative democracy – the right to a full and fair vote and the right to self-governance.**

Finally, Plaintiffs cannot prevail in their argument that the HRCA permits the Secretary of State to certify single elections on Plaintiffs' multiple-question detachment petitions because Plaintiffs' construction of the Act threatens fundamental voting rights and violates basic principles of self-governance. To read the Act as allowing individuals to vote on, and decide, questions regarding boundary changes for political units in which they do not reside is contrary to basic principles that form the bedrock of our representative democracy. Defendants recognize and do not challenge this Court's previous annunciations that cities, villages, townships and their respective residents do not have vested rights or legally protected interests in their boundaries.[97] Rather, it is Defendants' contention that once the Legislature has conferred the right to vote on an issue, which it is undisputed in this case that the detachment questions must be submitted to the qualified electors in the district to be affected, that this right must be exercised in a manner consistent with the law and public policy.[98]

For example, the United States Court of Appeals for the Fifth Circuit addressed this issue in the context of school board elections in *Phillips v Andress*.[99] There, Tuscaloosa County voters ultimately sought an injunction preventing residents living within the City of Tuscaloosa from voting for members of the county school board. The city's residents were permitted, pursuant to an Alabama statute, to vote in county school board elections by virtue of their residence in

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[97] See *Midland Twp, supra* at 664-667; *Shelby Twp*, *supra* at 56-58.
[98] See *Carlyn v City of Akron*, 726 F2d 287, 289 (6th Cir 1984) (Recognizing in an annexation action that "where the state agreed to have important municipal decisions made by voters, the equal protection clause must be applied to all within the jurisdiction whose rights are affected."). See e.g., *Hussey v City of Portland*, 64 F3d 1260 (9th Cir 1995); *Haywood v Clay*, 573 F2d 187 (4th Cir 1978).
[99] 634 F 2d 947 (1981).

Tuscaloosa County, despite the fact that the City of Tuscaloosa had its own independent school system and city school board. The Court held, however, that the residents of the City of Tuscaloosa did not have a substantial interest in the operation of the Tuscaloosa County school system. The two systems were operated separately. Therefore, the residents of Tuscaloosa County had their votes unconstitutionally diluted by the participation of the city electors in choosing the county school board members.[100]

Nothing in the HRCA or the cases cited by Plaintiffs support their proposition that the qualified electors of the various townships involved should be permitted to vote upon the detachment of property from the City of Richmond or the City of Holland, to townships in which the electors do not reside. This proposition is antithetical to longstanding principles of representative democracy.

Furthermore, this Court should reject Plaintiffs' construction of the Act because established rules of statutory construction require this Court to give the Act the most reasonable meaning and one that does not threaten fundamental rights. Previously, this Court held that when alternative interpretations are possible, a court must ascribe to the Legislature the most probable and reasonable interpretation.[101] Finally, a guiding principle for interpreting statutes that regulate elections is that "[p]ublic policy requires that statutes controlling the manner in which elections are conducted be construed as fair as possible in a way which prevents the disenfranchisement of voters through fraud or mistake of others."[102] In addition to the statutory

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[100] *Id.* at 952. The United States Court of Appeals for the Sixth Circuit employed a similar analysis in *Duncan v Coffee Co*, 69 F3d 88 (6th Cir, 1995) ("We find persuasive [other circuits'] conclusion that the benchmark for determining whether the inclusion of "out-of-district" voters in another district's elections unconstitutionally dilutes those votes is whether the decision is irrational.").

[101] *Oakland Schools Bd of Ed v Superintendent of Public Instruction*, 392 Mich 613, 619; 221 NW2d 345 (1974).

[102] *Kennedy v Board of State Canvassers*, 127 Mich App 493, 496; 339 NW2d 477 (1983).

language that reveals the intent to only provide the right to vote to those affected by a proposed boundary change, it is not reasonable to ascribe to the Legislature the intent to create a statutory structure that inherently results in the dilution of voting rights. Plaintiffs offer no persuasive argument to support assigning this counter-intuitive intention to the Legislature. Because the right to participate in decisions regarding our government is the most basic right in the panoply of rights that form the foundation of our representative democracy, our courts have long provided the most zealous protection of our right to a full and fair vote.

As the chief elections officer of the state, the Secretary of State is delegated the responsibility to ensure the integrity of elections and the protection of voting rights. While the HRCA is not exclusively delegated to the Secretary for enforcement, the Secretary of State is empowered with the responsibility to oversee all aspects of elections within the state including detachment petitions involving multiple counties.[103] Consequently, the Secretary's conclusion that single elections on multiple detachments should not be held is entitled to deference.[104] Plaintiffs ask this Court to reject the State's chief election officer's conclusion regarding what is necessary to ensure against the improper dilution of voting rights. Plaintiffs ask this Court to reject that reasoned conclusion in order to assign to the Legislature the intent to extend the franchise to non-resident electors so that they may weigh in on, and potentially decide, the issue of where the boundary between other political units should occur. In addition to being

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[103] MCL 117.11.

[104] See *Peden v Detroit*, 470 Mich 195, 207; 680 NW2d 657 (2004), in which this Court accorded deference to an agency's interpretation pursuant to *Yellow Transportation, Inc v Michigan*, 537 U.S. 36, 45; 123 S. Ct. 371; 154 L. Ed. 2d 377 (2002), where the United States Supreme Court held that "if a statute is . . . 'silent or ambiguous with respect to [a] specific issue,' [courts] must sustain the agency's interpretation if it is 'based on a permissible construction of the statute.'" *See also Magreta v Ambassador Steel Co*, 380 Mich 513, 519; 158 NW2d 473 (1968) ("The construction given to a statute by those charged with executing it is entitled to respectful consideration and should not be overturned without cogent reasons."); *Boyer-Campbell Co v Fry*, 271 Mich 282, 296; 260 NW2d 165 (1935).

unsupported by the statutory language or purpose, Plaintiffs' interpretation is an unreasonable construction of the Act. Consequently, the Secretary, the trial court, and the Court of Appeals properly rejected that interpretation and the relief requested by Plaintiffs. The Secretary respectfully requests that this Court uphold those decisions and affirm the Court of Appeals.

II. A writ of mandamus may only issue if a proponent shows a clear legal right to performance of the duty sought, and that the defendant has a clear legal duty to perform the act requested. Because the HRCA does not permit a single petition and election to effect multiple detachments, Plaintiffs do not have a clear legal right to certification of their petitions, and the Secretary of State has no clear legal duty to grant certification. No writs should issue.

No writs of mandamus should issue to compel Defendants Secretary of State and Director of Elections to issue notices directing elections on the change of boundaries sought by Plaintiffs in both cases because Plaintiffs cannot show that they have such a right nor can they show that Defendants have a clear legal duty to perform this act.

A. Standard of Review

In *Baraga Co v State Tax Comm*,[105] this Court stated:

> An order of mandamus will only be issued if a plaintiff proves it has a "'clear legal right to performance of the specific duty sought to be compelled' and the defendant has a 'clear legal duty to perform such act . . . .'" *In re MCI Telecommunications*, 460 Mich 396, 443-444; 596 NW2d 164 (1999), quoting *Toan v McGinn*, 271 Mich 28, 34; 260 NW 108 (1935). We review a trial court's decision regarding an order of mandamus for abuse of discretion. 460 Mich. at 443. Where a central issue in the appeal involves statutory interpretation, which is a question of law, that is reviewed de novo.

"The burden of showing entitlement to the extraordinary remedy of a writ of mandamus is on the plaintiff."[106] Generally, to be enforced by a writ of mandamus, the duty must be ministerial, i.e., "where the law defines a duty to be performed with such precision and certainty as to leave

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[105] 466 Mich 264, 269; 645 NW2d 12 (2002).

[106] *White-Bey v Michigan Department of Corrections,* 239 Mich App 221, 223; 608 NW2d 833 (1999).

nothing to the exercise of discretion or judgment."[107] This Court, however, has clarified that "mandamus will lie to compel the exercise of discretion, but not to compel its exercise in a particular manner."[108]

B. Plaintiffs do not have a clear legal right to certification of their petitions, nor do Defendants have a clear legal duty to certify Plaintiffs' petitions.

Plaintiffs are wrong when they say that they have a clear legal right to, and the Secretary of State has a clear legal duty to certify, a vote on their petitions as presented. Plaintiffs essentially suggest that the Secretary of State's decision regarding whether to certify the instant petitions involved no discretion; that the law was clear and that there was no reason to deny certification of Plaintiffs' petition to effect multiple detachments in multiple townships. This simply is not true. Indeed, in his letter to Plaintiffs' counsel in *Casco Township* denying certification, the Director of Elections noted that "the Department's statutory obligations regarding the certification of the detachment petitions are unclear."[109] The Director continued, stating that "the Department rarely receives detachment petitions (most are submitted to the county clerk) and has not previously encountered a 'joint' detachment petition."[110] In fact, Defendants' proper course of action was so unclear that Defendants sought informal advice from the Attorney General's Office on how to proceed.[111] On the basis of this advice, the Secretary of State and the Director of Elections determined that they "were not in a position to certify the detachment petition because it [did] not appear to meet the requirements of the HRCA."[112]

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[107] *Delly v Bureau of State Lottery*, 183 Mich App 258; 261, 454 NW2d 141 (1990).
[108] *Teasel v State of Michigan*, 419 Mich 390, 409-410; 355 NW2d 75 (1984).
[109] *Casco* Appellants' Appendix, p 37a.
[110] *Id.* Notably, the Director of Elections has served in this position for over 20 years.
[111] *Id.*
[112] *Id.*, p 38a.

Defendants' decision must and should be accorded some deference.[113] Thus, Plaintiffs' suggestion that Defendants somehow ignored a clear duty is not well taken.

Plaintiffs failed to demonstrate below, as they do here on appeal that they have a clear legal right to certification of their petitions, and that Defendants have a clear legal duty to certify the petitions. Again, § 11 states in part:

> *The secretary of state shall examine such petition and the affidavit or affidavits annexed, and if he shall find that the same conforms to the provisions of this act he shall so 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 affected by the carrying out of the purposes of such petition, together with his certificate as above provided, and a notice directing that at the next general election occurring not less than 40 days thereafter the question of making the incorporation, consolidation or change of boundaries petitioned for shall be submitted to the electors of the district to be affected, and if no general election is to be held within 90 days the resolution may fix a date preceding the next general election for a special election on the question. *If he shall find that said petition and the affidavit or affidavits annexed thereto do not conform to the provisions of this act he shall certify to that fact*, and return said petition and affidavits to the person from whom they were received, together with such certificate. [Emphasis added.]

Plaintiffs have a right to have proper petitions certified, and Defendants have a duty to examine and then certify proper petitions or refuse to certify invalid petitions. In this case, Defendants properly determined that the petitions and questions could not be presented to the City of Richmond, Casco Township and Columbus Township, on the one hand, and the City of Holland, Fillmore Township, Park Township, Holland Charter Township and Laketown Township, on the other, as single ballot questions. Plaintiffs' single petitions with multiple proposals are contrary to the provisions of §§ 6 and 11, and the proposed single voting districts are contrary to §§ 9 and 11 as interpreted in light of the relevant provisions of the act, the law, and public policy.

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[113] *Peden*, *supra* at 287.

Plaintiffs did not have a clear legal right[114] to certification of their petitions, nor did Defendants have a clear legal duty to grant certification. Thus, because the petitions are invalid, the requests for mandamus were properly denied.[115]

Again, to be enforced by a writ of mandamus, the duty "must be a ministerial act, one 'where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.'"[116] Here, § 11 requires the Secretary of State to examine a petition to determine whether it complies with the HRCA. To the extent this "duty" requires the Secretary to review and construe other provisions of the Act, it goes beyond the realm of merely "ministerial" to involve the exercise of discretion and judgment.[117] In *Toan v McGinn*, this Court addressed whether mandamus should issue to compel a local board of supervisors to take action to collect unpaid fees from former employees.[118] In declining to issue mandamus, the *Toan* Court observed:

> Where an official act required construction of a group of statutes, it was held that the determination by the officer of his duty to perform the act involved the exercise of judgment and his duty was not ministerial. *American Casualty Ins Co v Fyler*, 60 Conn 448 (22 Atl. 494, 25 Am. St. Rep. 337).
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> In *United States, ex rel. Dunlap, v. Black*, 128 U.S. 40 (9 Sup. Ct. 12), the court held that, where several statutes were applicable to a given situation, the commissioner of pensions could not be compelled by mandamus to pay a pension under a specific one of such statutes, although the facts were undisputed.

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[114] "Within the meaning of the rule of mandamus, a 'clear, legal right' is one 'clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided.' 55 CJS, Mandamus, § 53, p 93." *Univ Medical Affiliates, PC v Wayne Co Executive*, 142 Mich App 135, 143; 369 NW2d 277 (1985).

[115] See *Taylor v Nieusma*, 374 Mich 393, 132 NW2d 80 (1965).

[116] *Toan v McGinn*, 271 Mich 28, 34; 260 NW 108 (1935).

[117] See e.g., *Southfield Woods Water Co v Commr of State Dept of Health*, 352 Mich 597, 599-600; 90 NW2d 850 (1958) (Mandamus would not lie to compel issuance of a well permit because it would "require exercise of defendant's judgment and discretion to see that certain factors were subserved in the interests of protection of the public health. This would involve more than a purely ministerial act.).

[118] *Toan, supra.*

> In *Roberts v United States*, 176 U.S. 221 (20 Sup. Ct. 376), involving a plain duty imposed by a single statute, the court distinguished the *Black* Case on the ground that:
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> > "The writ was refused in the *Black* Case, because, as the court held, the decision which was demanded from the commissioner of pensions required of him, in the performance of his regular duties as commissioner, the examination of several acts of congress, their construction and the effect which the latter acts had upon the former, all of which required the exercise of judgment to such an extent as to take his decision out of the category of a mere ministerial act. A decision upon such facts, the court said, would not be controlled by mandamus."
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> * * *
>
> No specific statute requires the board of supervisors to institute legal proceedings to recover fees from officers. Whether suit shall be brought in any case obviously involves consideration of such business matters as the amount involved, the probable expense, the probability of success in litigation and the chances of collection. These are matters of judgment and discretion which the law commits to the board and not to the court. Moreover such an action would require the board to construe statutes of the State and resolution of the board of supervisors and determine their effect upon the matters involved. From an examination of the entire record we cannot say that the action required by the board was purely ministerial, we think it required judgment and discretion.[119]

In this case, as in *Toan*, the Secretary of State and the Director of Elections were called upon to construe a group of statutes. Defendants had to review numerous sections of the HRCA, and when that failed to reveal a proper course of action, Defendants sought advice from the Attorney General's Office. Upon receiving that advice, Defendants exercised significant discretion and judgment in denying certification of Plaintiffs' petition in the *Casco Township*.[120] Plaintiffs simply do not like the way Defendants exercised this discretion. Defendants' duty under these circumstances was not ministerial, and therefore mandamus may not lie to compel Defendants to

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[119] *Id.* at 34-36.
[120] *Casco* Appellants' Appendix, pp 37a-38a.

act.[121] In denying certification in *Fillmore Township*, the Secretary and Director relied on the ruling, and its substantive correctness, by the Ingham County Circuit Court in *Casco Township*, which specifically addressed the issue and held that the HRCA does not permit the single petition and single election tactics proposed by Plaintiffs.[122] Clearly, the Secretary and Director could not have been expected to ignore the holding of the trial court in the analogous case when addressing certification of the *Fillmore* petition. These circumstances obviously do not present the typical ministerial duty that may be compelled by a writ of mandamus.

In sum, Plaintiffs ask this Court to reject the State's chief election officer's conclusion regarding what is necessary to ensure against the improper dilution of voting rights. Plaintiffs ask this Court to reject that reasoned conclusion in order to assign to the Legislature the intent to extend the franchise to nonresident electors so that they may weigh in on, and potentially decide, the issue of where the boundary between two other municipalities should be drawn. In addition to being unsupported by the statutory language or purpose, Plaintiffs' interpretation is simply unreasonable. Consequently, the Secretary, the trial court and the Court of Appeals properly rejected that interpretation and the relief requested by Plaintiffs.

C. Plaintiffs have an adequate alternative remedy to issuance of a writ of mandamus.

In deciding a request for mandamus, a court should consider whether the plaintiff has an adequate alternative remedy to mandamus.[123] In addition to finding no clear legal right and no

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[121] See also *Taylor v Ottawa Circuit Court*, 343 Mich 440; 72 NW2d 146 (1955) ("It is well established that mandamus will not be granted when the action of the court is not ministerial and involves the exercise of judgment. In the case at bar the circuit judge had occasion to construe the statute relating to body executions. It was not a ministerial duty.").

[122] *Fillmore* Appellants' Appendix, p 19a.

[123] *Toan, supra* at 33; *Hazel Park Racing Ass'n, Inc, v Racing Commr*, 336 Mich 508; 58 NW2d 241 (1953); *Constantine v Michigan Liquor Control Comm*, 374 Mich 259, 261; 132 NW2d 146 (1965); *White-Bey supra* at 224; *Lickfeldt v Dep't of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001).

clear legal duty, the trial court further determined that Plaintiffs had "a clear alternative, the circulation of separate petitions in the affected areas."[124] This is absolutely correct. There is no impediment to Plaintiffs' circulation of new petitions that do not improperly seek to aggregate voting strength by diluting the votes of those actually affected by a proposed detachment. Thus, the request for mandamus was and is properly denied upon this basis as well.

D. **Even if this Court determines that the multiple-question format does not render Plaintiffs' petitions invalid under the HRCA, remand to the Secretary of State and Director of Elections for further examination of whether the petitions otherwise comply with the Act is necessary.**

Plaintiffs' petitions were not certified because their multiple-question format was deemed inappropriate. Defendants have not undertaken to examine the petitions further and determine whether they comply with other requirements of the Act. Should the Court determine that Plaintiffs have a clear legal right to such multiple-question petitions, the proper course would be to submit the petitions to the Secretary of State for further review to ensure their compliance with the statute in all other respects. An order requiring that Plaintiffs' petitions be certified would violate the Act's directive that the Secretary examine the petitions and their accompanying affidavits for conformance with the requirements of the Act.[125] As quoted above, these requirements include that the petition contain a minimum number of signatures of qualified electors from the political units affected by the proposed boundary changes.[126] If this Court concludes that the multiple-detachment petitions are proper, the Court should remand the petitions to the Secretary of State for this examination. The Secretary of State's review is necessary to ensure that the petitions meet the other statutory requirements not at issue in this appeal.

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[124] Appellants' Appendix, p 42a.
[125] MCL 117.11.
[126] MCL 117.6.

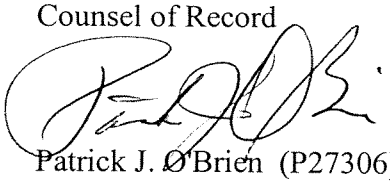
CONCLUSION AND RELIEF SOUGHT

Defendants Secretary of State and the Director of the Bureau of Elections assert that the trial court and the Court of Appeals correctly determined that the HRCA should not be interpreted as permitting a single petition and election to effect the detachment of multiple parcels of property to multiple townships. The relevant statutory provisions and case law support this conclusion. Because Plaintiffs' petitions are invalid under the law, Plaintiffs had no clear legal right to certification of the petitions, and the Secretary of State and Director of Elections had no clear legal duty to grant such certification. Accordingly, Plaintiffs are not entitled to mandamus relief, and the lower court decisions must be affirmed.

Respectfully submitted,

Michael A. Cox
Attorney General

Thomas L. Casey (P24215)
Solicitor General
Counsel of Record



Patrick J. O'Brien (P27306)
Heather S. Meingast (P55439)
Assistant Attorneys General
Attorneys for Defendants - Appellees
P.O. Box 30736
Lansing, Michigan 48909
(517) 373-6434

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