

STATE OF MICHIGAN  
IN THE SUPREME COURT

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MICHIGAN EDUCATION ASSOCIATION,

Appellant,

v

TERRI LYNN LAND, Michigan Secretary of  
State, in her official capacity,

Appellee.

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Supreme Court  
Case No. 137451

Court of Appeals  
Case No. 280792

Ingham County Circuit Court  
Case No. 06-1537-AA

137451  
**MICHIGAN CHAMBER OF COMMERCE'S**  
**AMICUS CURIAE BRIEF TO ADDRESS THE ISSUES**  
**RAISED IN THIS COURT'S MAY 8, 2009 ORDER**

**THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE**  
**CONSTITUTION, A STATUTE, RULE OR REGULATION,**  
**OR OTHER STATE GOVERNMENTAL ACTION IS INVALID**

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## STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

As indicated in this Court's May 8, 2009 Order, this Amicus Curiae Brief addresses the following issues:

1. Whether a school district's use of government resources for a payroll deduction plan for contributions made by members of the Petitioner-Appellant Michigan Education Association (MEA) to MEA's political action committee is either an "expenditure" or "contribution" under the Michigan Campaign Finance Act (MCFA)?

As to "expenditure" - all participants answer "Yes"<sup>1</sup>

As to "contribution" - this issue has not been raised, however, Michigan Chamber of Commerce, as Amicus Curiae, answers "Yes"

2. Whether Section 57(1) of the MCFA, MCL 169.257(1), prohibits a school district from expending government resources for such a payroll deduction plan if the costs of the plan are prepaid by the MEA?

Petitioner-Appellant Michigan Education Association answers "No"

Respondent-Appellee Michigan Department of State answers "Yes"

The Trial Court answers "No"

The Court of Appeals answers "Yes"

Michigan Chamber of Commerce, as Amicus Curiae, answers "Yes"

3. Whether a school district has the authority to collect and deliver payroll deductions for such contributions?

Petitioner-Appellant Michigan Education Association presumably answers "Yes"

Respondent-Appellee Michigan Department of State presumably answers "No"

The Trial Court did not address this question

The Court of Appeals answered "No"<sup>2</sup>

Michigan Chamber of Commerce, as Amicus Curiae, answers "No"

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<sup>1</sup> *Michigan Education Association v Secretary of State*, 280 Mich App 477, 486 fn 4; 761 NW2d 234 (2008).

<sup>2</sup> *Michigan Education Association v Secretary of State*, 280 Mich App 477, 489 fn 6; 761 NW2d 234 (2008).

**STATEMENT OF INTEREST OF AMICUS CURIAE**

**STATEMENT OF FACTS**

Rather than merely repeat these items which are already before this Court in the Michigan Chamber of Commerce's Amicus Curiae Brief filed with this Court on October 31, 2008 (the "Chamber's Amicus Curiae Brief") and the Michigan Chamber of Commerce's Supplemental Amicus Curiae Brief filed with this Court on March 2, 2009 (the "Chamber's Supplemental Amicus Curiae Brief"), the content of these items is hereby incorporated by reference. The purpose of this Amicus Curiae Brief is to address the issues raised by this Court's May 8, 2009 Order.

## ARGUMENT

I. **A SCHOOL DISTRICT'S USE OF GOVERNMENT RESOURCES FOR A PAYROLL DEDUCTION PLAN FOR CONTRIBUTIONS MADE BY MEMBERS OF THE PETITIONER-APPELLANT MICHIGAN EDUCATION ASSOCIATION (MEA) TO MEA'S POLITICAL ACTION COMMITTEE IS BOTH AN "EXPENDITURE" AND A "CONTRIBUTION" UNDER THE MICHIGAN CAMPAIGN FINANCE ACT.**

A. **While There Is Disagreement On Other Issues In This Case, All Agree That The Expenses Associated With A Political Contribution Payroll Plan Are "Expenditures" Under the Michigan Campaign Finance Act.**

As recognized by the Court of Appeals in this case, every litigant to this case agrees that an "expenditure" occurs with respect to the costs associated with collecting and delivering political contributions to a committee.<sup>3</sup>

"In fact, the trial court and the appellate briefs concede that an expenditure has occurred absent the asserted magical effects of prior reimbursement."

B. **Under the Michigan Campaign Finance Act, If An Expense Is An "Expenditure," It Is Also A "Contribution."**

With respect to whether a payroll deduction plan for political contributions is a "contribution," the term "contribution" includes the term "expenditure" as defined in the Michigan Campaign Finance Act.<sup>4</sup> In other words, the Michigan Campaign Finance Act states that if something is an "expenditure," it is also a "contribution." "[W]hen a statute specifically defines a given term, that definition alone controls."<sup>5</sup> As indicated in the Court of Appeals decision below and as every litigant in this case agrees, a public body's expenses in connection with a political contribution payroll deduction program are "expenditures" under the Michigan Campaign Finance Act; consequently, such "expenditures" are also "contributions" under the Michigan Campaign Finance Act.

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<sup>3</sup> *Michigan Education Association v Secretary of State*, 280 Mich App 477, 486, fn 4; 761 NW2d 234 (2008).

<sup>4</sup> MCL 169.204.

<sup>5</sup> *Tryc v Michigan Veteran's Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996).

**II. SECTION 57 OF THE MICHIGAN CAMPAIGN FINANCE ACT, MCL 169.257(1), PROHIBITS A SCHOOL DISTRICT FROM EXPENDING GOVERNMENT RESOURCES FOR A PAYROLL DEDUCTION PLAN FOR POLITICAL CONTRIBUTIONS EVEN IF THE COSTS OF THE PLAN ARE PREPAID BY THE PETITIONER-APPELLANT MICHIGAN EDUCATION ASSOCIATION.<sup>6</sup>**

As recognized by the Michigan Attorney General:<sup>7</sup>

"Both before and after OAG, 1981-1982, No 5822, supra, it was well established that 'school districts and other public boards and commissions lack statutory authority to expend public funds to influence the electorate in support of or in opposition to a particular ballot proposal or candidate.' OAG, 1987-1988, No 6423, p 33, 35 (February 24, 1987). The language in new section 57 of the MCFA reinforces this principle by expressly prohibiting public bodies from spending public funds or other resources for the passage or defeat of ballot questions." (footnote omitted)

As recognized by the Michigan Department of State:<sup>8</sup>

"It is imperative to maintain strict government neutrality in elections in order to protect the integrity of the democratic process. State and local units of government, and their elected officials and employees, share a heightened duty to safeguard public resources from misuse for political purposes. The MCFA is only one part of the state's comprehensive statutory scheme that prohibits a public body from participating in political campaigns. A public body that administers a payroll deduction plan on behalf of a separate segregated fund violates the Act and runs afoul of this sound public policy."

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<sup>6</sup> On pages 8-10 of the Chamber's Amicus Curiae Brief, the Michigan Chamber of Commerce has already presented this Court with a dispositive analysis of why there is no authority that would allow a public body to administer a political contribution payroll deduction program to benefit a private entity. Nonetheless, in this Court's May 8, 2009 Order, the litigants were cautioned not to "submit mere restatements of their application papers." Consequently, the arguments contained herein will not repeat the Michigan Chamber of Commerce's earlier and dispositive discussion of this topic.

<sup>7</sup> OAG, 2001-2002, No 7080, p 25 (April 17, 2001).

<sup>8</sup> Interpretive Statement issued to Robert LaBrant dated February 17, 2006 (Chamber's Amicus Curiae Brief, Exhibit 3).

And last, but certainly not least, as recognized by the Legislature when it last amended Section 57<sup>9</sup> of the Michigan Campaign Finance Act ("Section 57"):<sup>10</sup>

"The bill contains the following statement:

It is the policy of this state that a public body shall maintain strict neutrality in each election and that a public body or a person acting on behalf of a public body shall not attempt to influence the outcome of an election held in this state. If there is a perceived ambiguity in the interpretation this section, this section shall be construed to best effectuate the policy of strict neutrality by a public body in an election." (emphasis added)

It should be beyond dispute that operating a political contribution payroll deduction program, the very purpose of which is to raise contributions to effect the outcome of an election, will necessarily affect the outcome of an election. Nonetheless, the United States Supreme Court squarely addressed this point in *Secretary of State of Idaho v Pocatello Education Association*.<sup>11</sup> In upholding a statutory ban on a political contribution payroll deduction program similar to Section 57, the United States Supreme Court stated:

"The First Amendment prohibits government from 'abridging the freedom of speech;' it does not confer an affirmative right to use government payroll mechanisms for the purpose of obtaining funds for expression. Idaho's law does not restrict political speech, but rather declines to promote that speech by allowing public employee checkoffs for political activities. Such a decision is reasonable in light of the State's interest in avoiding the appearance that carrying out the public's business is tainted by partisan political activity."<sup>12</sup>

"The prohibition . . . is instead justified by the State's interest in avoiding the reality or appearance of government favoritism or entanglement with partisan politics."<sup>13</sup>

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<sup>9</sup> MCL 169.257.

<sup>10</sup> See Exhibit 13 attached to this Brief, which is the November 6, 2001 Committee Summary for Senate Bill 759, which later became Public Act 250 of 2001. Public Act 250 of 2001 was the most recent amendment to Section 57.

<sup>11</sup> The Opinion of the Court in *Secretary of State of Idaho v Pocatello Education Association*, 555 U.S. \_\_\_\_ (2009) is attached as Exhibit 12 to the Chamber's Supplemental Amicus Curiae Brief.

<sup>12</sup> Exhibit 12 of the Chamber's Supplemental Amicus Curiae Brief, pp 1-2.

<sup>13</sup> Exhibit 12 of the Chamber's Supplemental Amicus Curiae Brief, p 6.

"The ban on such deductions plainly serves the State's interest in separating public employment from political activities."<sup>14</sup>

Stated differently, *Secretary of State of Idaho v Pocatello Education Association* recognizes that a political contribution payroll deduction program violates the "policy of strict neutrality by a public body in an election."<sup>15</sup> As such, a political contribution payroll deduction program violates Section 57.

Notwithstanding the text and clear purpose of Section 57, the Petitioner-Appellant Michigan Education Association attempts to insert a "prepayment" exception into the text of Section 57:<sup>16</sup>

"[W]here a public body is paid by union or its PAC for administering employee payroll deductions to a union PAC, there is no 'expenditure' involved, because there is no transfer of value."

Prepayment to a public body does not "cure" the violation of Section 57. This argument was properly addressed in OAG 2005-2006, No. 7187, p 83 (February 16, 2006),<sup>17</sup> where the Michigan Attorney General ruled that a payroll deduction plan in a state classified civil service under which state personnel and other resources are used to record, collect and disburse employee contributions to a political action committee would violate Section 57. In OAG 7187, the Michigan Attorney General indicated that a labor union's offer to reimburse the State for the expenses involved in administering a payroll deduction plan to facilitate employee contributions to a political action committee would neither obviate the violation nor permit the implementation of an otherwise prohibited plan. The analysis utilized by the Michigan Attorney General in OAG 7187 applies equally to "payments in advance" as it does to "reimbursements":

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<sup>14</sup> Exhibit 12 of the Chamber's Supplemental Amicus Curiae Brief, p 8.

<sup>15</sup> See Exhibit 13 attached.

<sup>16</sup> Appellant Michigan Education Association's Application for Leave to Appeal dated October 8, 2008, p 17.

<sup>17</sup> See Exhibit 7 attached to the Chamber's Amicus Curiae Brief.

“You also ask whether a union’s offer to reimburse the State for expenses involved in administering a payroll deduction plan would permit implementation of an otherwise prohibited plan.

Section 57 states that a public body “shall not use or authorize the use of . . . public resources to make a contribution.” There is nothing in the language of section 57 that indicates a violation may be remedied or excused through a reimbursement mechanism. Indeed, section 57 imposes significant penalties for its violation:

(2) A person who knowingly violates this section is guilty of a misdemeanor punishable, if the person is an individual, by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both, or if the person is not an individual, by 1 of the following, whichever is greater:

(a) A fine of not more than \$20,000.00.

(b) A fine equal to the amount of the improper contribution or expenditure. MCL 169.257(2).

These penalties demonstrate the Legislature’s clear intent to prohibit and punish this activity. Where the language of a statute is clear, it must be enforced as written and no provisions may be added that the Legislature did not choose to include. *Jones v Dep’t of Corrections*, 468 Mich 646, 655-656; 664 NW2d 717 (2003) (the courts may not engraft onto the terms of a statute a remedy that has no basis in the plain language of the statute); *Omne Financial, Inc v Shacks, Inc*, 460 Mich 305, 311; 596 NW2d 591 (1999). There is no basis in the plain language of section 57 for reading in a remedy or exception to the prohibition for unions that offer to reimburse the State for its use of public resources. To do so would be contrary to the intent of the Legislature as expressed in the plain language of section 57.

It is my opinion, therefore, that a payroll deduction plan in the state classified civil service under which state personnel and other resources are used to record, collect, and disburse employee contributions to a political action committee would violate section 57 of the Michigan Campaign Finance Act, MCL 169.257, which prohibits the use of public resources to make a political contribution.”

The foregoing analysis is not affected by the claim that public bodies should be treated like corporations under the campaign finance laws. In this regard, it is the position of the Michigan Department of State that where a corporation is reimbursed for all the costs of administering employee payroll deductions to a union political action committee, there is no

"transfer of value" and therefore no violation of the Michigan Campaign Finance Act.<sup>18</sup> The same logic does not apply if the cost attributable to administering a political contribution payroll deduction program is reimbursed to a public body.

There are many reasons to distinguish a corporation from a public body under the campaign finance laws. First, the Michigan Campaign Finance Act authorizes a corporation to administer a separate segregated fund;<sup>19</sup> nowhere in the Michigan Campaign Finance Act is a public body authorized to administer a separate segregated fund. Second, there are campaign finance rules that expressly allow a corporation to administer a labor union's political contribution payroll deduction program;<sup>20</sup> nowhere in the campaign finance laws is a public body authorized to administer a separate segregated fund or a labor union's political contribution payroll deduction program. Third, the devastating consequences referenced in pages 16-18 of the Chamber's Amicus Curiae Brief do not exist with respect to a corporation. For example (and again, the list is endless), the damage to democracy of renting a corporate meeting room for political purposes pales in comparison to allowing a private political entity to rent (by its reimbursement of) an entire city clerk's office to conduct political activity. Finally, even the Circuit Court opinion below (which is relied upon by the Appellant in this case), recognized the distinction between public bodies and corporations, concluding that a public body must be paid, in advance, for all costs of administering a payroll deduction plan.<sup>21</sup> Conversely, the Michigan Department of State's position is that a corporation must be reimbursed for all costs attributable

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<sup>18</sup> Declaratory Ruling issued to Kathleen Boyle dated November 20, 2006 available at [http://www.michigan.gov/documents/sos/Kathleen\\_Corkin\\_Boyle\\_Final\\_Response\\_11-20-2006\\_178712\\_7.pdf](http://www.michigan.gov/documents/sos/Kathleen_Corkin_Boyle_Final_Response_11-20-2006_178712_7.pdf).

<sup>19</sup> See MCL 169.255.

<sup>20</sup> See, for example, 11 C.F.R. § 114.5(k).

<sup>21</sup> See Circuit Court Opinion attached as Exhibit 6 to the Chamber's Amicus Curiae Brief.

to administering payroll deductions.<sup>22</sup> Therefore, not even the Circuit Court opinion below treats public bodies like corporations for the purposes of the campaign finance laws. Without question, campaign finance laws differentiate between a public body and a corporation.

Accordingly, as indicated by the Court of Appeals in this case,<sup>23</sup> the Secretary of State,<sup>24</sup> and the Attorney General,<sup>25</sup> Section 57 prohibits a public body from administering a political contribution payroll deduction program to benefit a private entity whether or not the expenses associated with such a program are paid in advance.

**III. A SCHOOL DISTRICT HAS NO AUTHORITY TO COLLECT AND DELIVER PAYROLL DEDUCTIONS FOR POLITICAL CONTRIBUTIONS.<sup>26</sup>**

In *Sittler v Board of Control*,<sup>27</sup> the Michigan Supreme Court set forth the following well-settled rules of law:

"The extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority."

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<sup>22</sup> See Interpretive Statement issued by Robert LaBrant dated February 17, 2006 (Chamber's Amicus Curiae Brief, Exhibit 2).

<sup>23</sup> *Michigan Education Association v Secretary of State* 280 Mich App 477; 761 NW2d 234 (2008).

<sup>24</sup> Interpretative Statement issued to Robert LaBrant dated November 14, 2005 (Chamber's Amicus Curiae Brief, Exhibit 1); Interpretative Statement issued to Robert LaBrant dated February 17, 2006 (Chamber's Amicus Curiae Brief, Exhibit 2); Interpretative Statement issued to Robert LaBrant dated February 17, 2006 (Chamber's Amicus Curiae Brief, Exhibit 3); Declaratory Ruling issued to Kevin Harty dated November 1, 2006 (Chamber's Amicus Curiae Brief, Exhibit 4); Declaratory Ruling issued to Michigan Education Association dated November 20, 2006 (Chamber's Amicus Curiae Brief, Exhibit 5).

<sup>25</sup> OAG, 2005-2006, No. 7187, p 83 (February 16, 2006) (Chamber's Amicus Curiae Brief, Exhibit 7).

<sup>26</sup> On pages 20-24 of the Chamber's Amicus Curiae Brief, the Michigan Chamber of Commerce has already presented this Court with a dispositive analysis of why there is no authority that would allow a public body to administer a political contribution payroll deduction program to benefit a private entity. Nonetheless, in this Court's May 8, 2009 Order, the litigants were cautioned not to "submit mere restatements of their application papers." Consequently, the arguments contained herein will not repeat the Michigan Chamber of Commerce's earlier and dispositive discussion of this topic.

<sup>27</sup> 333 Mich 681, 687; 53 NW2d 681 (1952).

"Public officers have and can exercise only such powers as are conferred on them by law."

According to the Michigan Supreme Court:<sup>28</sup>

"[S]chool districts possess such power as the statutes expressly or by reasonably necessary implication grant to them."

Black's Law Dictionary defines "express" as "[c]learly and unmistakably communicated."<sup>29</sup> Other dictionaries give substantially similar definitions. For example, Webster's Third New International Dictionary defines "express" as "directly and distinctly stated or expressed rather than implied or left to inference ... definite, clear, explicit, unmistakable"<sup>30</sup> and The Merriam Webster Dictionary defines "express" as "explicit; exact, precise ... specific".<sup>31</sup> To this end, what "express" authority exists to allow a school district to conduct and deliver payroll deductions for political contributions? The undisputed answer is "none."

Since no express authority exists, the Michigan Education Association must necessarily argue that the power for a school district to participate in the political contribution process is "necessarily implied" by statute. A power is "necessarily implied" if it is essential to the exercise of authority that is expressly granted.<sup>32</sup> For example, if the Worker's Compensation Appeal Board has been granted the express statutory authority to adopt procedural rules, it also has the "necessarily implied" power to enforce these procedural rules.<sup>33</sup>

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<sup>28</sup> *Senghas v L'Anse Creuse Public Schools*, 368 Mich 557, 560; 118 NW2d 975 (1962); see also, *Hanselman v Wayne County Concealed Weapon Licensing Board*, 419 Mich 168, 187; 351 NW2d 544 (1984), citing *Alan v Wayne County*, 388 Mich 210; 200 NW2d 628 (1972); *Mason County Civic Research Council v Mason County*, 343 Mich 313; 72 NW2d 292 (1955).

<sup>29</sup> Black's Law Dictionary (8th ed. 2004).

<sup>30</sup> Webster's Third New International Dictionary 803 (1993).

<sup>31</sup> The Merriam Webster Dictionary 182 (1995).

<sup>32</sup> *Conlin v Scio Township*, 262 Mich App 379, 385; 686 NW2d 16 (2004); *Michigan Municipal Liability and Property Pool v Muskegon County Board of County Road Commissioners*, 235 Mich App 183, 191; 597 NW2d 187 (1999).

<sup>33</sup> *Dries v Chrysler Corp*, 402 Mich 78, 79; 259 NW2d 561 (1977).

On March 20, 2009, this Court denied leave to appeal in *Taylor v Currie*.<sup>34</sup> Significantly, the "implied authority" question in *Taylor v Currie* was a lot closer than the "implied authority" in the present case. In *Taylor v Currie*, the Michigan Court of Appeals held that the mass mailing of unsolicited ballot applications by a local clerk was not essential to the authority expressly granted in MCL 168.759(5), which required a local clerk to have applications for absent voter ballots available in the clerk's office at all times and that the clerk shall provide an application to anyone upon verbal or written request.<sup>35</sup> In *Taylor v Currie*, at least a local clerk had some express authority with respect to absent voter ballot applications. Conversely, in the present case, a school district has no express grant of authority with respect to a political contribution payroll deduction program. Since a school district has no express grant of authority with respect to a political contribution payroll deduction program, then there can be no "necessarily implied" power which is essential to a nonexistent express grant of authority.

In its Application for Leave to Appeal filed with this Court, the Michigan Education Association makes two separate "authority" arguments. First, on page 11 of its Application for Leave to Appeal, the Michigan Education Association states:

"Had the Legislature intended to prohibit public employees and their unions from utilizing payroll deductions to fund union PACs, that surely would have been done explicitly in the language of MCFA Sections 55 or 57."

Stated differently, under this line of reasoning, the Michigan Education Association appears to argue that unless a statute expressly prohibits a public body from conducting an activity, authority is presumed. Such potentially limitless authority is contrary to the clear line of cases which hold that "school districts possess such power as the statutes expressly or by reasonably

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<sup>34</sup> 277 Mich App 85; 743 NW2d 571 (2007), lv den 483 Mich 907; 762 NW2d 169 (2009).

<sup>35</sup> 277 Mich App at 95.

necessary implication grant to them."<sup>36</sup> Second, in its Application for Leave to Appeal filed with this Court, the Michigan Education Association cites MCL 408.477 as "authority" of a school district to collect and deliver payroll deductions for political contributions.<sup>37</sup> However, MCL 408.477, which indicates that an "employer shall not deduct" certain payroll deductions, is a statute which limits authority. Words of limitation are not grants of power.<sup>38</sup>

The fact remains that there is no statute which the Michigan Education Association can reasonably cite, which expressly or even implicitly authorizes a school district to conduct and deliver payroll deductions for political contributions. In fact, the Michigan Education Association concedes that no such statute exists.<sup>39</sup>

"[I]t is true there is no specific provision permitting public employers to administer payroll deductions to a PAC. . . ."

The Michigan Chamber of Commerce anticipates that the Michigan Education Association will attempt to provide this Court with general and generic statutes as authority to conduct a political contribution payroll deduction program--since, as even the Michigan Education Association concedes, "there is no specific provision permitting public employers to administer payroll deductions to a PAC". However, Michigan has long and consistently adhered to the rule that where a statute creates an entity, grants to it express enumerated powers, and prescribes the mode of their exercise, the courts cannot imply or confer additional powers.<sup>40</sup>

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<sup>36</sup> *Senghas v L'Anse Creuse Public Schools*, 368 Mich 557, 560; 118 NW2d 975 (1962); see also, *Hanselman v Wayne County Concealed Weapon Licensing Board*, 419 Mich 168, 187; 351 NW2d 544 (1984), citing *Alan v Wayne County*, 388 Mich 210; 200 NW2d 628 (1972); *Mason County Civic Research Council v Mason County*, 343 Mich 313; 72 NW2d 292 (1955).

<sup>37</sup> Appellant Michigan Education Association's Application for Leave to Appeal dated October 8, 2008, p 25.

<sup>38</sup> *City of Niles v Michigan Gas & Electric Co.*, 273 Mich 255; 262 NW 900 (1935).

<sup>39</sup> Appellant Michigan Education Association's Application for Leave to Appeal dated October 8, 2008, p 17.

<sup>40</sup> *Sebewaing Industries, Inc v Village of Sebewaing*, 337 Mich 530, 544-546; 60 NW2d 444 (1953).

Powers specifically conferred by statute cannot be extended by inference; the only proper inference being that it was intended by the Legislature that no other or greater powers were given than those which the statute specified.<sup>41</sup>

In numerous opinions, the Michigan Attorney General has consistently opined that state and local governmental bodies may not expend public funds to benefit a political entity.<sup>42</sup> In the clearest terms possible, the Michigan Attorney General has stated:

"The rationale of these opinions is that governmental bodies lack constitutional or statutory authority to expend public tax moneys to influence the outcome of an election."<sup>43</sup>

This rationale applies with equal force to the present situation. If this Court were to allow school districts to engage in political fund raising activity, it is undisputed that election outcomes will be influenced. In the words of the Michigan Supreme Court:

"And we think it can safely be said that it was never contemplated under the Constitution and statutes of this State that [public bodies] should function as propaganda bureaus."<sup>44</sup>

Accordingly, there is no legitimate authority to allow a school district to conduct and deliver payroll deductions for political contributions. To the contrary, all relevant authority - by

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<sup>41</sup> *Eikhoff v Charter Comm of the City of Detroit*, 176 Mich 535, 540; 142 NW 746 (1913).

<sup>42</sup> See, e.g., OAG, 1965-1966, No 4291, p 1 (January 4, 1965) (school district could not spend public funds to advocate a favorable vote on a tax and bond ballot proposal); OAG, 1979-1980, No 5597, p 482 (November 28, 1979) (State Civil Rights Commission could not use public funds "to urge the electorate to support or oppose a particular candidate or ballot proposal"); OAG, 1987-1988, No 6423, pp 33, 35 (February 24, 1987); OAG, 1991-1992, No 6710, pp 125, 127 (February 13, 1992); OAG, 1993-1994, No 6763, p 45 (August 4, 1993) ("School districts may not permit their offices and phone equipment to be used in a restrictive manner for advocacy of one side of a ballot issue .... School districts may not endorse a particular candidate or ballot proposal"); OAG, 1993-1994, No 6785, p 102 (February 1, 1994). See also, OAG, 1991-1992, No 6709, p 124 (February 11, 1992) (state agency cannot use public funds to lobby unless authorized by law to do so), and *Mosier v Wayne County Bd of Auditors*, 295 Mich 27, 31; 294 NW 85 (1940) (addressing county board's lack of authority to expend county resources for political purpose).

<sup>43</sup> OAG, 1991-1992, No 6704, p 95 (October 22, 1991).

<sup>44</sup> *Mosier v Wayne County Board of Auditors*, 295 Mich 27, 31; 294 NW 85 (1940).

the Court of Appeals in this case,<sup>45</sup> by the Secretary of State,<sup>46</sup> and by the Attorney General,<sup>47</sup> - indicates that Section 57 prohibits a public body from administering a political contribution payroll deduction program to benefit a private entity.

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<sup>45</sup> *Michigan Education Association v Secretary of State*, 280 Mich App 477; 761 NW2d 234 (2008).

<sup>46</sup> Interpretative Statement issued to Robert LaBrant dated November 14, 2005 (Chamber's Amicus Curiae Brief, Exhibit 1); Interpretative Statement issued to Robert LaBrant dated February 17, 2006 (Chamber's Amicus Curiae Brief, Exhibit 2); Interpretative Statement issued to Robert LaBrant dated February 17, 2006 (Chamber's Amicus Curiae Brief, Exhibit 3); Declaratory Ruling issued to Kevin Harty dated November 1, 2006 (Chamber's Amicus Curiae Brief, Exhibit 4); Declaratory Ruling issued to Michigan Education Association dated November 20, 2006 (Chamber's Amicus Curiae Brief, Exhibit 5).

<sup>47</sup>OAG, 2005-2006, No 7187, p 83 (February 16, 2006) (Chamber's Amicus Curiae Brief, Exhibit 7).


**CONCLUSION AND RELIEF**

By issuing the Declaratory Ruling which is the subject of these proceedings,<sup>48</sup> the Michigan Department of State has maintained the integrity of the Michigan Campaign Finance Act to prohibit a public body from administering a political contribution payroll deduction program to benefit a private entity. The Declaratory Ruling is based on the plain meaning of the text of the Michigan Campaign Finance Act, Attorney General opinions, and previous rulings of the Michigan Department of State. For all the foregoing reasons, the Michigan Chamber of Commerce respectfully requests that this Court not substitute its judgment for that of the Michigan Department of State, maintain the integrity of the Michigan Campaign Finance Act, and deny the MEA's Application for Leave to Appeal.

Respectfully submitted,

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<sup>48</sup> Declaratory Ruling issued to Michigan Education Association dated November 20, 2006 (Chamber's Amicus Curiae Brief, Exhibit 5).