

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN EDUCATION ASSOCIATION,

Appellant,

v

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

Appellee.

Supreme Court
Case No. 137451

Court of Appeals
Case No. 280792

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

137451
(71) (3)

MICHIGAN CHAMBER OF COMMERCE'S
MOTION TO FILE SUPPLEMENTAL AMICUS CURIAE BRIEF

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MICHIGAN CHAMBER OF COMMERCE'S
MOTION TO FILE SUPPLEMENTAL AMICUS CURIAE BRIEF

Proposed Amicus Curiae Michigan Chamber of Commerce moves, pursuant to MCR 7.313 and MCR 7.306(D), for leave to file the accompanying Supplemental Amicus Curiae Brief with the Court as follows:

1. On or about October 31, 2008, the Michigan Chamber of Commerce filed with this Court its Motion to File Amicus Curiae Brief, along with an accompanying Amicus Curiae Brief.
2. On or about December 5, 2008, the Michigan Education Association (the "MEA"), the Appellant here, filed with this Court its Reply Brief. This December 5, 2008 Reply Brief was the last pleading filed with this Court in this matter.
3. On or about February 11, 2009, House Bill 4245 was introduced in the Michigan House of Representatives.
4. On or about February 24, 2009, the United States Supreme Court issued its Opinion in *Secretary of State of Idaho v. Pocatello Education Association*, 555 U.S. ____ (2009).
5. The attached Supplemental Amicus Curiae Brief does not raise any new issues in this matter, but merely discusses how these recent matters (House Bill 4245 and the decision in *Secretary of State v Pocatello Education Association*) apply to the case before this Court.

RELIEF REQUESTED

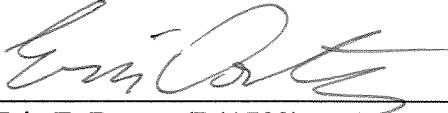
The Michigan Chamber of Commerce respectfully requests that the Court permit the accompanying Supplemental Amicus Curiae Brief to be filed with the Court, and that the Court consider that Brief in connection with the pending Application for Leave to Appeal filed by the MEA, the Appellant in this matter. In the event that the Court grants the pending Application for Leave to Appeal, in whole or in part, the Michigan Chamber of Commerce further requests that the Court grant it leave to file an additional brief in the calendar case pursuant to MCR 7.306(D).

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, PC
Attorneys for Michigan Chamber of Commerce

Dated: March 2, 2009

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**MICHIGAN CHAMBER OF COMMERCE'S
SUPPLEMENTAL AMICUS CURIAE BRIEF**

**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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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

STATEMENT OF INTEREST OF AMICUS CURIAE

COUNTER-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"), the content of these items is hereby incorporated by reference. The purpose of this Supplemental Amicus Curiae Brief is not to raise any new issues in this matter, but merely to discuss how certain recent developments apply to the case before this Court.

ARGUMENT

I. THE LEGISLATURE STILL CONSIDERS THE OUTCOME OF THE PRESENT MATTER TO BE THE LEGISLATURE'S DECISION - SO SHOULD THIS COURT.

As indicated by the Court of Appeals in this case,¹ the Secretary of State,² and the Attorney General,³ Section 57 of the Michigan Campaign Finance Act ("Section 57")⁴ prohibits a public body from administering a political contribution payroll deduction program to benefit a private entity. Consequently, the only way to change this result is to amend Section 57. As demonstrated by the legislative activity from the 2007-2008 legislative session, the introduction and passage of House Bill No. 4161 and House Bill No. 4628 illustrates the Legislature's willingness to address the present debate.⁵ Significantly, legislative efforts are already underway in the current legislative session to amend Section 57 to accomplish the results sought by the Michigan Education Association in the present case. On or about February 11, 2009, House Bill No. 4245 was introduced to amend Section 57 to allow the following:⁶

(g) The use of public resources to permit a public employee to contribute to a political action committee of the employee's collective bargaining unit by payroll deduction, if the collective bargaining unit provides full compensation to the public body for the use of the resources.

¹ *Michigan Education Association v Secretary of State*, 280 Mich App 477 (2008).

² 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).

³ OAG, 2005-2006, No. 7187, p. 83 (February 16, 2006) (Chamber's Amicus Curiae Brief, Exhibit 7).

⁴ MCL 169.257.

⁵ Chamber's Amicus Curiae Brief, pp. 14-16.

⁶ House Bill No. 4245 is attached as Exhibit 11 to this Brief.

Consequently, we once again respectfully urge this Court to allow the Legislature (not this Court) to determine whether Section 57 should be amended - a determination that House Bill No. 4245 illustrates the Legislature is certainly willing to make.

II. THE UNITED STATES SUPREME COURT HAS RECENTLY DETERMINED THAT STATUTES LIKE SECTION 57 OF THE MICHIGAN CAMPAIGN FINANCE ACT ARE JUSTIFIED BY THE STATE'S INTEREST IN AVOIDING THE REALITY OR APPEARANCE OF GOVERNMENT FAVORITISM OR ENTANGLEMENT WITH PARTISAN POLITICS.

It has been argued in these proceedings that courts have "uniformly rejected" the notion that a political contribution payroll deduction program politicizes government employment.⁷ However, on February 24, 2009, the United States Supreme Court issued its decision in *Secretary of State of Idaho v Pocatello Education Association*.⁸ 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."⁹

"The prohibition . . . is instead justified by the State's interest in avoiding the reality or appearance of government favoritism or entanglement with partisan politics."¹⁰

"The ban on such deductions plainly serves the State's interest in separating public employment from political activities."¹¹

⁷ See, for example, Brief Amici Curiae of Michigan State AFL-CIO and Change to Win in Support of the Michigan Education Association's Application for Leave to Appeal dated November 20, 2008, p. 23.

⁸ 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 this Brief.

⁹ Exhibit 12, pp. 1-2.

¹⁰ Exhibit 12, p. 6.

As argued repeatedly by the Michigan Chamber of Commerce in these proceedings, if the wisdom of the Declaratory Ruling¹² which is directly at issue in these proceedings is vacated and the clear public policy as expressed in Section 57 is compromised, then government will no longer be required to maintain neutrality in elections and the integrity of the democratic process will be destroyed. In *Secretary of State of Idaho v Pocatello Education Association*, the United States Supreme Court validated these legitimate concerns.

CONCLUSION AND RELIEF

By issuing the Declaratory Ruling, 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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Dated: March 2, 2009

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¹¹ Exhibit 12, p. 8.

¹² See Chamber's Amicus Curiae Brief, Exhibit 5, for the text of the Declaratory Ruling.