IN THE SUPREME COURT

On Appeal from the Michigan Court of Appeals
Talbot, PJ, and Beckering and M. J. Kelly, JJ

HELEN YONO,

Plaintiff-Appellee,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellant.

Supreme Court Docket No. 146603

Court of Appeals Docket No. 308968

Court of Claims Case No. 11-000117-MD

L. Page Graves (P51649)
SMITH & JOHNSON, ATTORNEYS, P.C.
Attorneys for Plaintiff-Appellee
603 Bay Street
PO Box 705
Traverse City, MI 49685
(231) 946-0700

William L. Henn (P61132)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for *Amicus Curiae* Michigan County Road Commission Self-Insurance Pool
100 Monroe Center NW
Grand Rapids, MI 49503-2802
(616) 774-8000

Justin Gray (P73704)
Bill Schuette (P32532)
MICHIGAN DEPARTMENT OF ATTORNEY GENERAL - TRANSPORTATION DIVISION
Attorneys for Defendant-Appellant
425 W. Ottawa Street
Lansing, MI 48913
(517) 373-0626

BRIEF OF AMICUS CURIAE MICHIGAN COUNTY ROAD COMMISSION SELF-INSURANCE POOL IN SUPPORT OF DEFENDANT-APPELLANT DEPARTMENT OF TRANSPORTATION

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

This appeal presents issues concerning the highway exception to governmental immunity. Plaintiff alleges bodily injury as a result of stepping into a crack on an asphalt edge of a parallel parking lane adjacent to the traveled portion of M-22 in Suttons Bay, Leelanau County. Plaintiff tripped and broke her ankle. Plaintiff sued MDOT in the Court of Claims, alleging a claim pursuant to the highway exception to governmental immunity, MCL 691.1402(1). MDOT requested summary disposition on the basis of governmental immunity, arguing that the alleged crack in the parking lane was outside of the improved portion of the highway designed for vehicular travel, and therefore was not encompassed within the highway exception to governmental immunity. The Court of Claims denied MDOT's summary disposition motion and concluded, as a matter of law, that the parallel parking lane was designed for vehicular travel.

MDOT appealed the Court's decision. After oral argument, the Court of Appeals affirmed the trial court's order. In doing so, the Court of Appeals wrongly distinguished this case from *Grimes v Dep't of Transp*, 475 Mich 72; 715 NW2d 275 (2006). In *Grimes*, this Court held that an alleged defect in a highway shoulder does not come within the highway exception to governmental immunity because highway shoulders are not designed for sustained vehicular travel. The Court of Appeals distinguished the parallel parking lane here from the shoulder in *Grimes* based on its conclusion that the parallel parking lane was not "physically separated from the center of the highway by a median, driveway, or other barrier." *Yono v Dep't of Transp*, 299 Mich App 102; ____ NW2d ____ (2012). The Court also buttressed its conclusion with reference to Michigan Vehicle Code provision MCL 257.637, which regulates overtaking and passing on the right of moving vehicles. The Court reasoned that the designated parallel parking lane must itself be a travel lane because vehicles may lawfully, under some circumstances, use unobstructed pavement to the right of a travel lane to overtake and pass a moving vehicle,

The Court of Appeals decision here is not faithful to the plain language of MCL 691.1402 and is contrary to longstanding precedent of this Court. MDOT should have received summary disposition. A parallel parking lane, unlike a travel lane, is not the improved portion of a highway designed for vehicular travel. In concluding otherwise, the Court of Appeals failed to construe the highway exception to governmental immunity narrowly, as mandated by many recent decisions of this Court. Most directly, the Court of Appeals decision is contrary to the reasoning employed by this Court in *Grimes*, which adopted a narrow definition of the phrase "designed for vehicular travel," emphasizing that in crafting the statutory language, the legislature "did not intend to extend the highway exception indiscriminately to every single 'improved portion of the highway.'" *Grimes* 475 Mich at 89. Key to this Court's reasoning in *Grimes*—and over overlooked by the Court of Appeals here—was the observation that not every "improved portion of the highway" is also "designed for vehicular travel" and that the mere fact that vehicular traffic "might *use* an improved portion of the highway does not mean that that portion was 'designed for vehicular travel.'" *Id.* at 90. The parallel parking lane here is not materially distinguishable from the shoulder at issue in *Grimes*. Merely because a vehicle may travel upon a parallel parking lane under certain circumstances and for a limited duration does not render that area of the highway "designed for vehicular travel" within the meaning of the highway exception. Had the Court of Appeals been faithful to the *Grimes* decision, it would have ordered summary disposition for MDOT.

For the reasons discussed at length, herein, Amicus Curiae MCRCSIP respectfully requests that this Court address these issues of statewide importance and reverse the lower courts' decisions.

STATEMENT OF APPELLATE JURISDICTION

Amicus curiae Michigan County Road Commission Self-Insurance Pool ("MCRCSIP" or the "Pool") adopts Appellant Michigan Department of Transportation's Statement of Appellate Jurisdiction.

STATEMENT OF *AMICUS CURIAE* INTEREST

The Michigan County Road Commission Self-Insurance Pool ("MCRCSIP" or the "Pool") supplies, among other things, general liability and auto coverage for seventy-five county road commissions within the state of Michigan. According to statistics published by the Michigan Department of Transportation, county road commissions within this state are responsible for maintaining 89,755 miles of county roads. www.michigan.gov/mdot/0,1607,7-151-9620_11154-129683--,00.html (visited March 27, 2013).

The Pool was organized pursuant to Michigan statutory authority, MCL 124.5, and began operation on April 1, 1984. It is governed by a Trust Agreement and an Inter-Local Agreement signed by all members, and also by an approved set of by-laws. The individual county road commissions are the members of the Pool. In other words, the Pool is comprised of the very entities that it serves.

Three main objectives for pooling have been identified by the Pool: (1) to allow members to manage, control, and reduce losses by establishing a joint effort to vigorously defend claims, and by providing a united effort to effect favorable legislation; (2) to maintain control over funds necessary to provide needed protection; and (3) to lower ultimate costs. Consistent with its history and stated objectives, the Pool has a strong interest in any aspect of the law which could impact the day-to-day operations, and exposure to tort liability arising from those operations, of its members. Along these lines, the Pool has a strong interest in ensuring that the exceptions to governmental immunity are construed consistently and narrowly.

For these reasons, MCRCSIP and its member road commissions have a strong interest in the issues presented here.

STATEMENT OF ISSUES PRESENTED

Amicus Curiae MCRCSIP adopts Defendant-Appellant Michigan Department of Transportation's Statement of Issues Presented.

STATEMENT OF FACTS

Amicus Curiae MCRCSIP adopts Defendant-Appellant Michigan Department of Transportation's Statement of Facts.

STANDARD OF REVIEW

The granting or denial of summary disposition is reviewed *de novo*. *Rowland v Washtenaw County Rd Comm*, 477 Mich 197, 202; 731 NW2d 41 (2007). "Questions of statutory interpretation are also reviewed *de novo*." *Id.*

ARGUMENT

I. THE MICHIGAN DEPARTMENT OF TRANSPORTATION IS ENTITLED TO SUMMARY DISPOSITION BECAUSE A PARALLEL PARKING LANE IS NOT PART OF THE IMPROVED PORTION OF THE HIGHWAY DESIGNED FOR VEHICULAR TRAVEL.

MDOT is entitled to summary disposition because a parallel parking lane is not encompassed by the duty created by the highway exception to governmental immunity, MCL 691.1402. More specifically, MDOT should have received summary disposition for the reason that the language of the highway exception—in carving out a narrow exception from otherwise broad governmental immunity—gives great significance to the *location* of the alleged highway defect. The parallel parking lane on which plaintiff was injured is not an area of the highway that is encompassed within the highway exception to governmental immunity.

A. Fundamental Principles of Governmental Immunity

The Legislature has the power to create a right to recover damages for injuries received due to the negligence of public authorities. *See, e.g., Sziber* v *Stout*, 419 Mich 514; 358 NW2d 330 (1984) (discussing the highway exception to governmental immunity); *Burnham v Byron Twp*, 46 Mich 555; 9 NW 851 (1881) (same). Because this right is purely statutory, the Legislature has the power to modify, abridge, or even abolish that right by appropriate action. *Westgate* v *Adrian Twp*, 161 Mich 333; 126 NW 422 (1910). The Legislature can also attach to the right conferred any limitation it chooses. *Moulter v City of Grand Rapids*, 155 Mich 165; 118 NW 919 (1908) (overruled on other grounds in part by, *Grubaugh v City of St Johns*, 384 Mich 165; 180 NW2d 778 (1970)). Whether the limitations imposed are reasonable or unreasonable are questions for the Legislature and not for the courts, *id.*, so long as a limitation on a vested right does not violate the Constitution, *Grubaugh v City of St Johns*, 384 Mich at 175

(abrogated on other grounds, *Rowland v Washtenaw Co Rd Comm*, 477 Mich 197; 731 NW2d 41 (2007)).

In Michigan, immunity for non-sovereign units of government is provided by statute in the Governmental Tort Liability Act ("GTLA"), MCL 691.1401, et seq. Section 7 of the GTLA confers sweeping immunity on governmental agencies performing governmental functions. MCL 691.1407(1). Where the governmental agency is performing a governmental function, the immunity under § 7 is as broad as possible—extending to all governmental agencies for all tort liability. *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 156; 615 NW2d 702 (2000) (consolidated with *Evens* v *Shiawassee Co Rd Comm'rs*).

The only exceptions to the broad grant of immunity are contained within the GTLA itself. *Id.* at 157 ("although governmental agencies may be under many duties, with regard to the services they provide to the public, only those enumerated within the statutorily-created exceptions are legally compensable if breached"). In *Nawrocki*, the Court stated that the purpose of its earlier opinion in *Ross v Consumers Power Co (on reh'g)*, 420 Mich 567; 363 NW2d 641 (1984), was to create a "cohesive, uniform, and workable set of rules which will readily define the injured party's rights and the governmental agency's liability." *Id.* at 148-149. The *Nawrocki* Court commented that the failure to consistently follow *Ross* "has precipitated an exhausting line of confusing and contradictory decisions" which have created a "rule of law that is virtually impenetrable, even to the most experienced judges and legal practitioners." *Id.* at 149. Accordingly, the *Nawrocki* court "return[ed] to a narrow construction of the highway exception predicated upon a close examination of the statute's plain language, rather than merely attempting to add still another layer of judicial gloss to those interpretations of the statute previously issued by [the Supreme Court] and the Court of Appeals." *Id.* at 150. In short, the

immunity granted to governmental agencies is broad, and the statutory exceptions must be narrowly construed. *Nawrocki*, 463 Mich at 158-159.

In reviewing questions of statutory construction, a court's role is to discern the Legislature's intent. *Nawrocki,* 463 Mich at 159. This is accomplished by examining the plain language of the statute, and providing words with their common and ordinary meaning. *Id.* This plain language requirement, combined with the narrow construction requirement, is perhaps best illustrated by this Court's decision in *Stanton v City of Battle Creek*, 466 Mich 611; 647 NW2d 508 (2002). There, because the term "motor vehicle," as used in MCL 691.1405, was not defined in the statute, this Court utilized various dictionaries to arrive at the term's common and ordinary meaning. *Stanton*, 466 Mich at 617. The *Stanton* Court held that because immunity exceptions must be narrowly construed, where there are competing dictionary definitions only the narrowest one should be used. *Id.*

B. The Highway Exception to Governmental Immunity

The highway exception to immunity, codified at MCL 691.1402, presently states:

> Sec. 2. (1) Each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21. Except as provided in section 2a, the duty of a governmental agency to repair and maintain highways, and the liability for that duty, extends only to the improved portion of a highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. A judgment against the state based on a claim arising under this section from acts or omissions of the state transportation department is payable only from restricted funds appropriated to the state transportation department or funds provided by its insurer.

MCL 691.1402(1).

The meaning of this statute is well settled. In *Nawrocki*, 463 Mich at 159-162, the Supreme Court stated that the first sentence of the statutory clause, crucial in determining the scope of the highway exception, describes the basic duty imposed on all governmental agencies, including the state's, having jurisdiction over any highway:

> "[T]o maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel." This sentence establishes the duty to keep the highway in reasonable repair. The phrase "so that it is reasonably safe and convenient for public travel" refers to the duty to maintain and repair. **The plain language of this phrase thus states the desired outcome of reasonably repairing and maintaining the highway; it does not establish a second duty to keep the highway "reasonably safe."**

Id. at 160 (emphasis added). The Court then observed that the fourth sentence of the statute limits the duty created by the first sentence:

> The fourth sentence of the statutory clause, specifically applicable to the state and county road commissions, proceeds to narrowly limit the general duty to repair and maintain, created by the *first* sentence "only to the improved portion of the roadway designed for vehicular travel." . . . We believe the plain language of this sentence definitively limits the state and county road commission's duty with respect to the *location* of the alleged dangerous or defective condition; if the condition is not located in the actual roadbed designed for vehicular travel, the narrowly drawn highway exception is inapplicable and liability does not attach.

Id. at 161-162 (emphasis in original).

Under *Nawrocki, supra*, a county road commission is only held to the specific duty to repair and maintain the roadway:

> [t]he state and county road commissions' duty, under the highway exception, is only implicated upon their failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage.

Id. at 183 (citing *Scheurman v Dep't of Transportation*, 434 Mich 619, 631; 456 NW2d 66 (1990)). The *Nawrocki* Court took care to note that the duty to repair or maintain is limited to

physical defects "in the roadbed's surface," and must not be construed as a mandate to ensure that travel is "reasonably safe on governmental highways." *Nawrocki*, 463 Mich at 176-177 n32. In other words, "[t]he state and county road commissions' duty, under the highway exception, is only implicated upon their failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage." *Nawrocki*, 463 Mich at 183.

This Court further elaborated on this specific duty in *Hanson v Bd of County Rd Comm'rs of County of Mecosta*, 465 Mich 492; 638 NW2d 396 (2002), where the plaintiff argued that the highway exception to immunity included a duty to design or to correct defects from the original design of the roadway. The Court disagreed with the plaintiff, instead articulating a far more narrow duty:

> In the highway exception, the Legislature has said that the duty of the road commission is to "*maintain* the highway in reasonable repair so that it is reasonably safe and convenient for public travel." The statute further provides that the specific duty of the state and county road commissions is to "*repair and maintain*" highways. "Maintain" and "repair" are not technical legal terms. In common usage, "maintain" means "to keep in a state of repair, efficiency, or validity: preserve from failure or decline." *Webster's Third New Int'l Dictionary, Unabridged Edition* (1966), p. 1362. Similarly, "repair" means "to restore to a good or sound condition after decay or damage; mend." *Random House Webster's College Dictionary* (2000), p. 1119.
>
> * * *
>
> The Legislature has clearly limited the duty of the road commission to the repair and maintenance of the roadways . . . .

Id. at 502-503, 504 (emphasis in original).

In short, reading *Nawrocki* and *Hanson* in tandem requires the conclusion that the single duty which gives rise to liability against a highway authority in relation to highway defects is the duty to preserve the actual physical structure of the highway surface from failure or decline, or to restore the surface to a good or sound condition after decay or damage.

C. *Grimes v Department of Transportation*

Full appreciation of this Court's decision in *Grimes* is central to the issues presented in MDOT's Application of Leave. In *Grimes*, this Court considered whether a highway shoulder is part of the "improved portion of the highway designed for vehicular travel" for the purpose of the highway exception to governmental immunity. *Grimes,* 475 Mich at 73. This Court concluded that a highway shoulder was not part of the "improved portion of the highway designed for vehicular travel," thereby overruling *Gregg v State Hwy Dep't*, 435 Mich 307; 458 NW2d 619 (1990). In reaching this conclusion, this Court reiterated the now well settled maxim that the duty of an agency with authority over a highway to repair and maintain "does not extend to every 'improved portion of highway.' It attaches only 'to the improved portion of the highway' that is also 'designed for vehicular travel.'" *Grimes*, 475 Mich at 78. This Court's focus was "determining whether a shoulder is actually designed for public vehicular travel." *Id.*

In rejecting the analysis of the *Gregg* Court, this Court applied principles of statutory construction requiring that the language of a statute be given its plain meaning. *Id.* at 84. This Court also expressly rejected *Gregg's* reliance on portions of the Michigan Vehicle Code (the "MVC"), observing that the MVC was mentioned only in the Governmental Tort Liability Act ("GTLA") in connection with the definition of "owner" for purposes of the motor vehicle exception. The absence of any other reference to the MVC instructed this Court that the Legislature intended to limit the applicability of the MVC in the GTLA. *Id.* at 85. It was important, in rejecting this portion of the *Gregg* analysis, that the GTLA provides its own unambiguous definition of "highway," and therefore there is no need to resort to another statute to define that term. *Id.* at 87.

Turning from *Gregg* to the text of the highway exception itself, the *Grimes* Court concluded that a shoulder is not "designed for vehicular travel." This Court considered the plain

and ordinary meaning of the phrase "the improved portion of the highway designed for vehicular travel." *Id.* at 88. Notably, this Court drew a distinction between whether an area of the highway is "designed" with the intention that it be used by vehicles, and whether an area of the highway is designed as a travel lane. *Id.* at 89. This distinction, according to *Grimes*, turned on the meaning of "travel." This Court, mindful that the Governmental Tort Liability Act and its exceptions to immunity must be narrowly construed, rejected a broad definition of the term "travel." *Id.* at 89. Specifically, this Court rejected the concept that "travel" in the highway exception could include the "shortest incremental movement by a vehicle on an improved surface." *Id.* Viewed slightly differently, if a broad definition of "travel" were employed, then "it must follow that every area surrounding the highway that has been improved for highway purposes is 'designed for vehicular travel' since such improved portions could support even momentary vehicular 'travel.'" *Id.* at 90. Such a construction would render the phrases "improved portion of the highway" and "designed for vehicular travel" redundant contrary to settled rules of statutory interpretation. *Id.* at 90. To do so would also conflate to separate concepts: design and contemplated use. *Id.* Ultimately, *Grimes* holds that "only the travel lanes of the highway are subject to the duty of repair and maintenance specified in MCL 691.1402(1)." *Id.* at 91.

D. A Parallel Parking Lane is Not A "Travel Lane"

MDOT should have received summary disposition because a parallel parking lane is not a "travel lane" for purposes of MCL 691.1402. In support of its summary disposition motion, MDOT established by affidavit that M-22 in the area of the incident consists of only two travel lanes, bordered by two parking lanes with designated parking spots painted onto the surface. (MDOT App. at 3). Additionally, the two parking lanes are separated from the travel lanes by an 8.3 feet wide buffer. (MDOT App. at 3).

Applying the plain language of MCL 691.1402, as construed in *Grimes*, is a straightforward endeavor. The crux of the inquiry is whether the *location* of the alleged defect is within the travel lane of a highway. In turn, utilizing a narrow definition of the term "travel lane" limits the potential areas of liability to those that are designed for sustained vehicular travel. That an area on a highway may accommodate, and may have even been designed for, momentary starting and stopping, parking, or even temporary travel for other purposes such as overtaking and passing, does not render that area of the highway a "travel lane" in the narrow sense commanded by *Grimes*.

The only correct and consistent application of MCL 691.1402 on these facts is to exclude the parallel parking lanes from the statutory duty of maintenance and repair. Doing so mandates the conclusion that MDOT is entitled to summary disposition.

E. Appellee's Reliance on *Nawrocki* is Misplaced

Appellee's principal argument is that this Court's decision in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143; 615 NW2d 702 (2000) controls the outcome. This argument is based on a misapprehension of the holding in *Nawrocki*. The specific issue addressed there was "the extent, if any, to which the highway exception accords protection to pedestrians injured by a condition within the improved portion of the highway designed for vehicular travel." *Id.* at 148. There, the Macomb County Road Commission argued that as a general rule, pedestrians are excluded from the protection of the highway exception. *Id.* at 162. The crux of the Macomb County Road Commission's argument was that a highway need only be maintained and repaired so that it is reasonably safe for vehicular travel, as opposed to pedestrian travel. *Id.* This Court's singular focus, therefore, was "whether, or to what extent, the highway exception extends to pedestrians . . . ." *Id.* at 163. Ultimately, this Court concluded that the duty does extend to pedestrians on the highway, and that it is the "location of an alleged dangerous or defective

condition, as narrowly defined in the fourth sentence of the statutory clause" that constitutes the critical factor in determining whether a plaintiff is successful in pleading an avoidance of governmental immunity under the highway exception. *Id.* at 168.

The *Nawrocki* Court simply did not address whether the defect in that case was located in the improved portion of the highway designed for vehicular travel. Apparently, no argument was made by the appellant in that case concerning the location of the defect, and therefore this Court was not required to render any opinion on that issue. Therefore, Appellee's argument in the instant case that *Nawrocki* is dispositive fails because it attributes to *Nawrocki* a legal conclusion that was not part of the *Nawrocki* decision. Put differently, Appellee attributes to *Nawrocki* a legal conclusion that logically does not follow from the issue that was resolved there: whether the highway exception duty extends to pedestrians. Thus, although Appellee devotes much argument to the factual parallels between the mechanism of Ms. Nawrocki's injury and Ms. Yono's injury, there is a fundamental disconnect between the two cases that prevents *Nawrocki* from having dispositive effect in this case.

F. The Court of Appeals Erred in Drawing Upon the Michigan Vehicle Code to Define Terms Within the Highway Exception.

The Court of Appeals' analysis relies, in part, on portions of the Michigan Vehicle Code which regulate overtaking and passing on the right. Specifically, the Court of Appeals referred to MCL 257.637(1)(b) to support its conclusion that parallel parking lanes may be used by drivers as a "thoroughfare" under certain circumstances. The Court described MCL 257.637(1)(b) as "making it legal to use such areas as a travel lane when the highway has 'unobstructed pavement not occupied by parked vehicles of sufficient width for 2 or more lines of moving vehicles in each direction . . . .'" *Yono*, 299 Mich App 102, at *5.

There are two significant problems with the Court of Appeals' analysis. First, courts are counseled against interpreting the terminology of one statute by referring to terminology from other, unrelated statutes. *Grimes,* 475 Mich at 85. The simple reason for this is that where the statutes are unrelated, there is no reason to believe that the Legislature had terms from one in mind when it crafted the other. To presume so makes it more likely that the common meaning of a statute's language will be stretched, twisted, or outright ignored.

Second, even in relying on MCL 257.637, the Court of Appeals overstates the import of the statute. Nothing about that statute uses the term "thoroughfare" or otherwise suggests that a parallel parking lane may be used as a "travel lane." No part of the statute contemplates the use of an area of the highway that is designated for parking as an area appropriate for sustained vehicular travel. To the contrary, the statute is titled "Overtaking and Passing on Right of Moving Vehicles." This title suggests travel of a temporary nature. The plain language of the statutory text follows suit: the first section indicates that the statute describes the circumstances when a "vehicle may overtake and pass upon the right of another vehicle . . . ." MCL 257.637(1). The statute states, in full:

> Sec. 637. (1) The driver of a vehicle may overtake and pass upon the right of another vehicle only if 1 or more of the following conditions exist:
>
> (a) When the vehicle overtaken is making or about to make a let turn.
>
> (b) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for 2 or more lines of moving vehicles in each direction and when the vehicles are moving in substantially continuous lanes of traffic.
>
> (c) Upon a 1-way street, or upon a roadway on which traffic is restricted to 1 direction of movement, where the roadway is free from obstructions and of sufficient width 2 or more lines of moving vehicles and when the vehicles are moving in substantially continuous lanes of traffic.

> (2) The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting the overtaking and passing of safety. The driver of a vehicle shall not overtake and pass another vehicle upon the right by driving off the pavement or main-traveled portion of the roadway.

MCL 257.637.

The statute only describes the limited circumstances under which the driver of a vehicle may overtake and pass another vehicle on the right. The statute does not expressly permit sustained continuous travel to the right of the main travel lane of the highway. Quite the opposite, the statute expressly prohibits a driver from overtaking and passing another vehicle on the right outside of the main travel lane. *Yono* suggests that this statute means that so long as there are no obstructions in the highway, it is permissible for a vehicle to travel in a sustained manner to the right of the intended travel lane. Nothing about the plain language of the statute supports this conclusion. The statute does nothing more than authorize temporary travel to the right of the intended travel lane sufficient to permit a driver to overtake and pass another vehicle under limited conditions. In short, the Court of Appeals read far too much into MCL 257.637, and its reliance on that statute is specious at best.

RELIEF REQUESTED

WHEREFORE, for the foregoing reasons and authorities, *Amicus Curiae* Michigan County Road Commission Self-Insurance Pool respectfully requests that this Court reverse the decision of the lower court, and thereby order that summary disposition be granted in favor of the defendant-appellant Michigan Department of Transportation. *Amicus Curiae* Michigan County Road Commission Self-Insurance Pool respectfully requests any additional relief deemed necessary.

DATED: April 22, 2013

William L. Henn (P61132)
SMITH HAUGHEY RICE & ROEGGE
Attorneys for *Amicus Curiae* Michigan County Road Commission Self-Insurance Pool
100 Monroe Center NW
Grand Rapids, MI 49503-2802
(616) 774-8000