

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Murphy, P.J., and Gleicher and Leticia, JJ

COUNCIL OF ORGANIZATIONS AND OTHERS, FOR EDUCATION ABOUT PAROCHIAD, AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN, MICHIGAN PARENTS FOR SCHOOLS, 482FORWARD, MICHIGAN ASSOCIATION OF SCHOOL BOARDS, MICHIGAN ASSOCIATION OF SCHOOL ADMINISTRATIONS, MICHIGAN ASSOCIATION OF INTERMEDIATE SCHOOL ADMINISTRATORS, MICHIGAN SCHOOL BUSINESS OFFICIALS, MICHIGAN ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS, MIDDLE CITIES EDUCATION ASSOCIATION, MICHIGAN ELEMENTARY AND MIDDLE SCHOOL PRINCIPALS ASSOCIATION, KALAMAZOO PUBLIC SCHOOLS AND KALAMAZOO PUBLIC SCHOOLS BOARD OF EDUCATION,

Supreme Court No. 158751

Court of Appeals No. 343801

Court of Claims No. 17-68-MB

**BRIEF OF *AMICUS CURIAE*
NATIONAL SCHOOL BOARDS
ASSOCIATION IN SUPPORT OF
PLAINTIFFS-APPELLANTS**

Plaintiffs-Appellants,

-v-

STATE OF MICHIGAN, GOVERNOR,
DEPARTMENT OF EDUCATION, AND
SUPERINTENDENT OF PUBLIC INSTRUCTION,

Defendants-Appellees.

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SUMMARY OF ARGUMENT

Article 8, § 2 of the Michigan Constitution prohibits direct and indirect aid to any nonpublic school, regardless of religious affiliation. The plain language of this constitutional provision, which reflects the will of Michigan’s citizens, unambiguously prohibits the Legislature from appropriating funds for the direct benefit of nonpublic schools, thereby making § 152 of the State Aid Act unconstitutional. Because Article 8, § 2 applies to all nonpublic schools without regard to religion, the Supreme Court’s decision in *Trinity Lutheran Church of Columbia v Comer* does not apply.

INTEREST OF AMICUS

The National School Boards Association (“NSBA”) represents state associations of school boards across the country, and the board of education of the U.S. Virgin Islands. NSBA represents over 90,000 of the Nation’s school board members who, in turn, govern over 13,600 local school districts that serve approximately 50 million public school students — 84 percent of the elementary and secondary students in the nation. NSBA believes that public funds raised by general taxation for education purposes should be administered efficiently by public officials, and that public funds for elementary and secondary education should be spent only for public education.¹

¹ Counsel for a party neither authored this brief, either in whole or in part, nor made a monetary contribution intended to fund the preparation or submission of this brief.

ARGUMENT

I. *Article 8, § 2 of the Michigan Constitution Does Not Burden the Free Exercise of Religion, Because It Applies Uniformly to All Non-Public Schools.*

This case does not present free exercise of religion issues. The First Amendment of the United States Constitution states, “Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof.*” US Const Am I. (Emphasis added). The uniform state constitutional bar to public expenditures for private education implicates neither the religious discrimination nor interference prohibited by the Free Exercise Clause.

Const 1963, art 8, § 2 prohibits “public monies or property” from being “appropriated or paid” to either “aid or maintain any private, denominational or other nonpublic . . . school,” or “to support the . . . employment of any person at any such nonpublic school.” This provision facially applies equally to secular and sectarian nonpublic schools. Since it neither burdens, favors, nor disfavors religion or its practice, the Free Exercise Clause of the United States Constitution is not implicated.

A. *Article 8, § 2 of the Michigan Constitution Does Not Burden Religious Schools More Than Other Private Schools.*

Many state constitutions have “no-aid” amendments proscribing only public support for parochial, as opposed to secular, private schools. Those amendments clearly state a state’s intent to prohibit its funds from being used to support private education of a religious nature. See Joseph P. Viteritti, *Blaine’s Wake: School Choice, the First Amendment, and State Constitutional Law*, 21 Harv. J.L. & Pub. Pol’y 657, 659-60 (1998). Challenges to states’ application of such provisions to prevent public dollars from flowing to religious instruction are proceeding through state and federal courts. The main issue is whether such prevention efforts violate the First Amendment’s Free Exercise Clause.

In *Trinity Lutheran Church of Columbia, Inc. v Comer*, __ US __; 137 S Ct 2012; 198 L Ed 2d 551 (2017), the United States Supreme Court struck down Missouri’s practice of withholding direct payments of state funds to religious institutions. There, a state-operated playground resurfacing grant program “had a policy of categorically disqualifying churches and other religious organizations” from receiving grants due in large part to Missouri’s no-aid provision.² The court held that practice violated the Free Exercise Clause, as it essentially required any otherwise qualified program that sought public funding to “renounce its religious character.” 137 S Ct at 2024.

A broad band of constitutional permissibility exists, however, where state constitutional provisions relating to public fund expenditures do not singularly and expressly burden religious institutions or practice. In *Locke v Davey*, 540 US 712; 124 S Ct 1307; 158 L Ed 2d 1 (2004), the United States Supreme Court affirmed the State of Washington’s post-secondary educational scholarship program, which could be used for any education-related expense. 540 US at 716. Scholarship funds, however, could not be expended upon degrees in theology, in accordance with Washington’s state constitution. *Id.* Although the Ninth Circuit found the scholarship program unconstitutionally burdened the free exercise of religion, the Supreme Court reversed. *Id.* at 718.

Finding that not all distinctions based on religion are unconstitutional, the Supreme Court reasoned:

[T]he Establishment Clause and the Free Exercise Clause are frequently in tension. Yet we have long said that “there is room for play in the joints” between them. In other words, there are some state actions permitted by the Establishment Clause but not required by the Free Exercise Clause.

² Mo Const, art 1, § 7 states: “That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.”

Id. (Internal citations omitted).

Ultimately finding that the burden imposed upon religion by the scholarship was constitutionally insignificant under the Free Exercise Clause, the Court first found that the prohibition could barely be considered to burden religion as it: (1) does not sanction any type of religious service or right; (2) does not deny ministers “the right to participate in the political affairs of the community”; and (3) “does not require students to choose between their religious beliefs and receiving a governmental benefit.” *Id.* at 720. The Court accordingly determined that, given “the historic and substantial state interest at issue,” it could not “conclude that the denial of funding for vocational religious instruction alone is inherently constitutionally suspect.” *Id.*

A few months after *Locke* was decided, the U.S. Court of Appeals for the First Circuit applied it to uphold Maine’s tuition program, which excludes “sectarian” schools. *Eulitt ex rel. Eulitt v Maine, Dep’t of Educ.*, 386 F3d 344 (CA 1, 2004). There, the First Circuit determined that under *Locke* “the Free Exercise Clause’s protection of religious beliefs and practices from direct government encroachment does not translate into an affirmative requirement that public entities fund religious activity simply because they choose to fund the secular equivalents of such activity.” *Id.* at 354, citing *Locke, supra*, 124 S Ct at 1213. Put differently, the First Circuit stated “[t]he fact that the state cannot interfere with a parent’s fundamental right to choose religious education for his or her child does not mean that the state must fund that choice.” *Id.* *Eulitt* then recognized *Locke*’s reaffirmation that there is “‘room for play in the joints’” between the Free Exercise Clause and the Establishment Clause. *Id.* at 355, quoting *Locke, supra*, 124 S Ct at 1311. The First Circuit rejected an argument that *Locke*’s analysis was limited to the type of restriction in the state program that had been challenged in that case, i.e., a narrow barrier to the use of public scholarship money for pursuit of training to enter religious ministries. *Id.* Instead, the *Eulitt* court applied *Locke* for

the broader proposition that “state entities, in choosing how to provide education, may act upon their legitimate concerns about excessive entanglement with religion, even though the Establishment Clause may not require them to do so.” *Id.*³

The religiously neutral terms of Const 1963, art 8, § 2 are constitutional under the *Locke* analysis, easily clearing the joints between the Establishment Clause and the Free Exercise Clause. The prohibition on directing public monies to non-public schools under Article 8, § 2 applies to *all* non-public schools, both secular and religious. That critical distinguishing feature removes Article 8, § 2 from the Free Exercise Clause scrutiny, as religious private schools are not affected by it any more than secular private schools.

B. *Other State Courts Have Affirmed Religiously Neutral “No-Aid” Provisions.*

Other courts interpreting neutral state constitutional provisions like Article 8, § 2 of Michigan’s Constitution have found them constitutionally sound. That result should follow in the present case.

In *Bush v Holmes*, 886 So2d 340 (Fl Ct App, 2004), Florida created a school voucher program where students residing in public school districts with low performance indicators could choose to attend a public school with higher indicators or participating private school. Florida provided tuition assistance to those selecting a participating private school.

The legislation was challenged based on two state constitutional provisions: (1) Article 9, § 6, requiring all income from the state school fund to support public schools; and (2) its no-aid provision, found at Article 1, § 3. That provision states:

There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals,

³ The First Circuit is considering another challenge to the Maine program in *Carson v Makin*, unpublished decision of the United States District Court of the District of Maine dated June 26, 2019 (Docket No. 1:18-cv-327-DBH). (App. A).

peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

Fl Const, art. 1, § 3.

Relying heavily on *Locke v Davey, supra*, the Florida Court of Appeals determined that the state's no-aid provision did not violate the federal Free Exercise Clause. *Bush*, 886 So 2d at 340. Critically, the court also rejected the notion that not providing funding for religious schools was synonymous to discriminating against them. No violation of the neutrality required by the Free Exercise Clause therefore occurred. *Id.*

Similarly, in *Witters v State Comm'n for the Blind*, 112 Wash 2d 363; 771 P2d 1119, 1122 (1989), the Washington Supreme Court upheld the decision to withhold assistance to Mr. Witters, who was blind and sought financial assistance through a state program to attend seminary. The Washington Supreme Court analyzed that state's no-aid provision under the lens of the federal Free Exercise Clause and determined:

A state action is constitutional under the Free Exercise Clause if the action results in no infringement of a citizen's constitutional right of free exercise or if any burden on free exercise of religion is justified by a compelling state interest. To prevail in a free exercise case, the complaining party must show "the coercive effect of the enactment as it operates against him in the practice of his religion."

In the present case, the Commission's denial of vocational aid to the [applicant] did not compel or pressure him to violate his religious beliefs. [Applicant] chose to become a minister, and the Commission's only action was to refuse to pay for his theological education. The Commission's decision may make it financially difficult, or even impossible, for [applicant] to become a minister, but this is beyond the scope of the Free Exercise Clause.

771 P2d at 1122-1123 (internal citations omitted). See also *Bagely v Raymond Sch Dep't*, 1999 Me 60; 728 A2d 127 (1999) (statute excluding tuition benefits for religious schools did not violate

the Constitution because it did not place a substantial burden on the free exercise of religion and would have violated the Establishment Clause without such an exclusion.)

Michigan's constitutional provision prevents public monies from being disbursed to any private school, regardless of religious affiliation. It accordingly cannot burden any constitutionally protected right to freely exercise religion by attending or operating a private religious school. All private schools are treated similarly.

This case presents a state constitutional provision, neutral on its face with respect to religion, which fails to implicate the "play in the joints" analysis applied in *Locke, supra*. Michigan is not required under the Free Exercise Clause to fund private sectarian schools. In fact, even if Const 1963, art 8, § 2 only impacted sectarian schools, it likely still would not violate the Free Exercise Clause. *See, e.g., Eulitt, supra*, 386 F3d 344. Ultimately, however, that issue is not before this Court. Article 8, § 2 applies to all non-public schools; Section 152b of the State School Aid Act directly conflicts with that constitutional provision; and the Free Exercise Clause is not implicated in any manner.

II. *States Have the Right to Define the Parameters of Their Own Constitutions Within Federal Constitutional Guidelines.*

The Tenth Amendment makes clear that our federal constitution forms a federal, not national, government which reserves to the states and the people "[t]he powers not delegated to the United States by the Constitution." US Const Am X. As such, "states retain broad autonomy [...] in structuring their governments and pursuing legislative objectives." *Shelby County v Holder*, 570 US 529, 530; 133 S Ct 2612; 186 L Ed 2d 651 (2013). "Being an instrument of limited and enumerated powers, it follows irresistibly, that what is not conferred [by the Constitution], is withheld, and belongs to the state authorities." *New York v United States*, 505 US 144, 156; 112 S Ct 2408; 120 L Ed 2d 120 (1992). In fact, "The Constitution never would have been ratified if the

States and their courts were to be stripped of their sovereign authority except as expressly provided by the Constitution itself.” *Alden v Maine*, 527 US 706, 727; 119 S Ct 2240; 149 L Ed 2d 636 (1999), quoting *Atascadero State Hospital v Scanlon*, 473 US 234, 239, n. 2; 105 S Ct 3142; 87 L Ed 2d 171 (1985).

It follows, then, that states have wide latitude to draft their state constitutions to suit the policy concerns of their own populace.

The state constitutions are based on diverse understandings and philosophies of government, are substantially easier to amend than the U.S. Constitution, provide for direct citizen involvement in the process of amendment and change (unlike the federal constitution), have a tendency, therefore, to accumulate detailed provisions [...], and have bills of rights that often are different from the U.S. Bill of Rights.

State Constitutions in the Federal System: Selected Issues and Opportunities for State Initiatives, Advisory Commission on Intergovernmental Relations (July 1989), available at <https://library.unt.edu/gpo/acir/Reports/policy/a-113.pdf>. “[T]he primary role of the states is to make policy choices dealing with that wide range of matters assigned to them by their citizens and left open to them by the very incompleteness of the U.S. Constitution.” *Id.* at 8.

Additionally, the U.S. Supreme Court has explicitly recognized that state courts are free to interpret their own state constitutions with latitude, without running afoul of the U.S. Supreme Court’s interpretations of similar provisions of the U.S. Constitution. *Minnesota v National Tea Co*, 309 US 551, 557; 60 S Ct 676; 84 L Ed 2d 920 (1940) (“[i]t is fundamental that state courts be left free and unfettered by us in interpreting their state constitutions.”) see also *City of Mesquite v Aladdin’s Castle, Inc*, 455 US 283, 293; 102 S Ct 1070; 71 L Ed 2d 152 (1982) (“[A] state court is entirely free to read its own State’s constitution more broadly than this Court reads the Federal Constitution.”) Further evidencing its deference to state court constitutional decisions, the U.S.

Supreme Court has divested itself of jurisdiction if a case is decided on independent state grounds. *Michigan v Long*, 463 US 1032, 1041; 103 S Ct 3469; 77 L Ed 2d 1201 (1983) (“If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds, we, of course, will not undertake to review the decision.”); see also *Fox Film Corp. v Muller*, 296 US 207, 210; 56 S Ct 183; 80 L Ed 158 (1935) (“where the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, our jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment”).

Consistent with these concepts, it necessarily follows that in its determination, this Court has authority to consider Michigan’s own precedent and state interests with regard to its interpretation of Article 8, § 2 of its Constitution. That premise is reflected in *Locke v Davey*, *supra*, in which the Court respected and upheld the State of Washington’s constitutional prohibition of providing funds to students to pursue degrees that are “devotional in nature or designed to induce religious faith.” 540 US at 716. A key factor in that holding was the court’s recognition that the Washington constitution did not violate the US Constitution, even though Washington’s constitution “draws a more stringent line than that drawn by the United States Constitution,” noting that Washington has “historic and substantial state interest” in the matter, especially regarding “religious instruction.” 540 US at 713, 725, 723.

As previously discussed, Article 8, § 2 of Michigan’s Constitution is consistent with established First Amendment Free Exercise Clause jurisprudence. As federal courts have supported states’ establishment of their own constitutional standards within the federal framework, this Court should provide the people of the State of Michigan with the full protection of the constitutional provisions they enacted.

III. *The Neutrality of Michigan’s Constitution Renders Its Impact on Parochial School Funding Irrelevant.*

Article 8, § 2 of the Michigan Constitution denies state funds to *all* nonpublic schools, regardless of their religious affiliation. Its mandate to apply public funds to public purposes therefore does not burden religion in a manner implicating the Free Exercise Clause. To hold otherwise would conflict with the U.S. Supreme Court’s holding in *Zelman v Simons-Harris*, 536 US 639; 122 S Ct 2460; 153 L Ed 2d 604 (2002), which was based on the Establishment Clause.

In *Zelman*, a state-sponsored voucher plan provided tuition assistance to low income families in a specific district for their children to attend public *or* private schools of their choice. *Id.* at 645. Ninety-six percent of participating students enrolled in religious schools. 536 US at 647. Despite the large proportion of religious school enrollments, the Supreme Court rejected the Establishment Clause claim, finding that the facially neutral program only incidentally advanced religion. The Court reasoned:

The constitutionality of a neutral educational aid program simply does not turn on whether and why, in a particular area, at a particular time, most private schools are run by religious organizations, or most recipients choose to use the aid at a religious school.

Id. at 659.

The *Zelman* Court further concluded that attributing constitutional significance to the number of religious schools chosen would lead to an “absurd result”; specifically, that a neutral program would be permissible in an area with few religious schools but not in an area with a high concentration of religious schools. *Id.* at 657. The statute’s constitutionality was therefore not dependent upon the inherently variable number of religious schools then in existence.

Since the *Zelman* court declined to find constitutionally significant a religion-neutral program that incidentally benefitted a substantial number of religious schools, the reverse must also hold true. The religious neutrality of Article 8, § 2 of the Michigan Constitution renders

irrelevant the number of parochial schools that might be affected by its provisions. No Establishment Clause issues therefore arise from its application to MCL 388.1752b. Similarly, no Free Exercise Clause violation results.

Article 8, § 2 of the Michigan Constitution distinguishes only public from nonpublic schools for funding purposes, without singling out religious schools. That a substantial number of religious schools may be impacted by this religiously-neutral constitutional provision's effect upon the State School Aid Act does not suggest that free exercise of religion is being unconstitutionally denied. Rather, Michigan's Constitution requires only that public educational funds be spent only for public education. Religion is not a factor. Under those circumstances, no arguable constitutional burdens upon religion exist. As the First Circuit has recognized, "The fact that the state cannot interfere with a parent's fundamental right to choose religious education for his or her child does not mean that the state must fund that choice." *Eulitt, supra*, 386 F3d at 354, citing *Maher v Roe*, 432 US 464, 475-77; 97 S Ct 2376; 53 LEd 2d 484 (1977).

IV. *Holding State School Aid Act § 152b Unconstitutional Supports the People's Constitutional Determination to Ensure That Public Educational Funds Support Only Public Education.*

The importance of protecting the peoples' constitutionally-expressed will concerning the funding of public schools in Michigan cannot be overemphasized. The Supreme Court has long recognized the crucial importance of education in preparing students for participation as responsible members of society and its unique role as "the very foundation of good citizenship."⁴

⁴ *Brown et al. v Board of Educ of Topeka, Shawnee County, Kan. et al.*, 347 US 483, 493; 74 S Ct 686; 98 L Ed 873 (1954) ("Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be

In landmark decisions, it has affirmed “the importance of education in maintaining our basic institutions, and the lasting impact of its deprivation on the life of the child,” asserted that “education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all,” and recognized education’s “fundamental role in maintaining the fabric of our society.” *Plyler v Doe*, 457 US 202, 221; 102 S Ct 2382; 72 LEd 2d 786 (1982).

At the same time, it is well-established that public education is a state and local responsibility. *US v Lopez*, 514 US 549, 580-581; 115 S Ct 1624; 131 LEd2d 626 (1995) (“... it is well established that education is a traditional concern of the States.”) (citing *Milliken v Bradley*, 418 US 717, 741-742; 94 S Ct 3112; 41 L Ed 2d 1069 (1974) and *Epperson v Arkansas*, 393 US 97; 89 S Ct 266; 21 LEd 2d 228 (1968)). From our nation’s birth, states, not the federal government, have borne the responsibility of financing, managing, and supporting public education, through locally chosen school boards that govern their community schools. Public education was omitted from those functions delegated to the new central government in an effort to preserve a federal system of state sovereigns and to avoid a national government. *See* Alexander, Kern and M. David, *American Public School Law*, 8th Ed (Wadsworth Cengage Learning 2012), p. 119.

Indeed, the United States Supreme Court has recognized that in Michigan, education is “a state function.” *Milliken v Bradley*, 418 US at 794. The constitutionally expressed will of Michigan’s citizens concerning the manner in which its public schools are funded is therefore of paramount importance.

expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms”); *Wisconsin v Yoder*, 406 US 205, 221; 92 S Ct 1526; 32 LEd 2d 15 (1972) (“education prepares individuals to be self-reliant and self-sufficient participants in society”).

In *Traverse City Sch Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971), this Court established the following as the primary rule of constitutional interpretation:

A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it.* For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it *the intent to be arrive at is that of the people*, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense more obvious to the common understanding*, and ratify the instrument in the belief that was the sense designed to be conveyed.

Id., quoting *Cooley's Const Lim* 81; (emphasis in original).

The intent reflected in Const 1963, art 8, § 2 to keep public funds for the public, subject to applicable judicial exceptions, could not be clearer:

No public monies or properties shall be appropriated or any public credit utilized, by the legislature or any other political subdivision or agency of this state directly or indirectly to aid or maintain any private, denominational or other nonpublic pre-elementary, elementary, or secondary school.

The broad prohibition against any public funds used to “aid” or “maintain” nonpublic schools, either “directly” or “indirectly,” unambiguously prohibits the Legislature from directing appropriated funds to offset costs for nonpublic schools. This constitutional provision, placed on the ballot in 1970 as Proposal C, passed overwhelmingly by a margin of 56.77 percent to 43.23 percent. Michigan Dep’t of State, *Initiatives and Referendums Under the Constitution of the State of Michigan of 1963* (December 5, 2008) (App B).

It is no secret that Michigan public schools historically have been woefully underfunded. The Michigan State University College of Education in January 2019 reported that Michigan ranks “dead last” among all states in revenue growth for K-12 schools since Proposal A, which drastically reduced property tax-based funding for the state’s public schools, was approved in

1994. See *Michigan School Finance at the Crossroads: A Quarter Century of State Control* (2019), located at <http://education.msu.edu/ed-policy-phd/pdf/Michigan-School-Finance-at-the-Crossroads-A-Quarter-Center-of-State-Control.pdf>. Avoiding such under-funding of public schools by reducing dependence on local property taxes is exactly why Michigan's voters, in part, voted for Proposal C. The plain language of that constitutional provision soundly rejects the notion that public educational funds may be diverted to private purposes.

Less than twenty years ago, Michigan voters rejected a separate measure that would have directed public funds to private schools. A proposed "voucher amendment" to the Michigan Constitution was defeated by a margin of 69% to 31% in 2000. (App B., p. 10). In addition to eliminating the language in Const 1963, art 8, § 2 prohibiting indirect aid to private schools, this defeated measure would have established a publicly funded voucher system to offset private school tuition. The relevant proposed language stated:

Subject to the provisions of Section 10, under procedures established by law, qualified school districts and any approving school district shall participate in an educational choice program to permit any pupil resident in the district to receive a voucher for actual elementary and secondary school tuition to attend a nonpublic elementary or secondary school.

(App. C).

These are policy choices that are constitutional under the First Amendment's religion clauses. States may enact a constitutional provision keeping tax dollars levied for public education from being spent on private schools not held to the same anti-discrimination and accountability standards. The notion that the neutral expression of such a policy violates fundamental religious rights should be soundly rejected.

This Court stands in the unique position of being the first to have the opportunity to affirm a clear, neutral, nondiscriminatory state policy of protecting public funding for public schools. By

implementing the plain language of Const 1963, art 8, § 2, this Court would both respect the constitutionally-expressed will of Michigan's people, and undercut the fatally flawed notion that a neutral determination not to publicly fund private education of all kinds is an unconstitutional burden on religious freedom.

CONCLUSION

For the reasons discussed above and in Plaintiffs-Appellants' Brief, *amicus curiae* National School Boards Association respectfully requests that this Court reverse the Court of Appeals majority's decision upholding the constitutionality of MCL 388.1752b and reinstate the Court of Claims' decision finding that statute to violate Const 1962, art 8, § 2.

Respectfully submitted,

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Dated: December 19, 2019

Dated: December 19, 2019

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App. A

to Brief of Amicus Curiae National School Boards Association in Support of Plaintiff-Appellants

**Supreme Court No. 158751
Court of Appeals No. 343801
Court of Claims No. 17-68-MB**

Carson v. Makin

United States District Court for the District of Maine

June 26, 2019, Decided; June 26, 2019, Filed

CIVIL NO. 1:18-CV-327-DBH

Reporter

2019 U.S. Dist. LEXIS 106656 *; 2019 WL 2619521

DAVID AND AMY CARSON, on their own behalf and as next friends of their child, O.C.; ALAN AND JUDITH GILLIS, on their own behalf and as next friends of their child, I.G.; AND TROY AND ANGELA NELSON, on their own behalf and as next friends of their children, A.N. and R.N., PLAINTIFFS V. A. PENDER MAKIN, in his official capacity as Commissioner of the Maine Department of Education, DEFENDANT

Prior History: Carson v. Hasson, 2018 U.S. Dist. LEXIS 205925 (D. Me., Dec. 6, 2018)

Core Terms

schools, funding, tuition, religious, sectarian, secondary school, private school, public school, secondary, free exercise clause, public funds, First Amendment, cross-motions, parties

Counsel: [*1] For DAVID CARSON, as parent and next friend of OC, AMY CARSON, as parent and next friend of OC, ALAN GILLIS, as parent and next friend of IG, JUDITH GILLIS, as parent and next friend of IG, TROY NELSON, as parent and next friend of AN and RN, ANGELA NELSON, as parent and next friend of AN and RN, Plaintiffs: ARIF PANJU, LEAD ATTORNEY,

INSTITUTE FOR JUSTICE, AUSTIN, TX; JEFFREY T. EDWARDS, LEAD ATTORNEY, PRETI, FLAHERTY, BELIVEAU, & PACHIOS, LLP, PORTLAND, ME; JONATHAN R. WHITEHEAD, LEAD ATTORNEY, LAW OFFICE OF JONATHAN R. WHITEHEAD, LEES SUMMIT, MO; LEA PATTERSON, LEAD ATTORNEY, FIRST LIBERTY INSTITUTE, PLANO, TX; MICHAEL K. WHITEHEAD, LEAD ATTORNEY, LAW OFFICE OF MICHAEL K. WHITEHEAD, LEES SUMMIT, MO; TIMOTHY D. KELLER, LEAD ATTORNEY, PRO HAC VICE, INSTITUTE FOR JUSTICE, TEMPE, AZ.

For ROBERT G HASSON, JR, in his official capacity as Commissioner of the Maine Department of Education, Defendant: CHRISTOPHER C. TAUB, SARAH A. FORSTER, OFFICE OF THE ATTORNEY GENERAL, AUGUSTA, ME.

Judges: D. BROCK HORNBY, UNITED STATES DISTRICT JUDGE.

Opinion by: D. BROCK HORNBY

Opinion

DECISION AND ORDER ON CROSS-MOTIONS FOR JUDGMENT ON A STIPULATED RECORD

This case concerns the application of the First Amendment religion clauses to Maine's funding [*2] of secondary education—namely its exclusion of sectarian schools from its program of paying tuition to parent-chosen private schools when local government does not provide a public school. A number of *amici curiae* have demonstrated their interest in the issue by filing legal memoranda on both sides, and the United States has filed a statement of interest supporting the plaintiffs. The parties initially filed cross-motions for summary judgment but at oral argument on June 24, 2019, agreed to submit the case as cross-motions for judgment on a stipulated record.¹

UNDERLYING FACTS

The parties have stipulated that Maine school administrative units must "either operate programs in kindergarten and grades one to 12 or otherwise provide for students to participate in those grades as authorized elsewhere in this Title."² Of the 260 school administrative units in Maine, 143 do not operate a secondary school, including those that serve the plaintiffs' towns of residence—Glenburn, Orrington, and Palermo.³ Any school administrative unit like these "that neither maintains a secondary school nor contracts for secondary school privileges pursuant to chapter 115

shall pay the tuition, in accordance with [*3] chapter 219, at the public school or the approved private school of the parent's choice at which the student is accepted."⁴ The school administrative units that serve the plaintiffs' towns "do not contract for secondary school privileges with any particular public or private secondary school for the education of their resident secondary students."⁵ Those school administrative units therefore "are obligated to pay up to the legal tuition rate . . . to the public or private school approved for tuition purposes selected by the resident secondary student's parents."⁶ But a "private school may be approved for the receipt of funds for tuition purposes only if it . . . [i]s a nonsectarian school in accordance with the First Amendment of the United States Constitution."⁷

It is this last requirement—that the parent-selected private school be nonsectarian—that provokes this lawsuit.⁸

⁴ *Id.* ¶ 7 (quoting 20-A M.R.S.A. § 5204(4)).

⁵ *Id.* ¶ 9.

⁶ *Id.* ¶ 10.

⁷ *Id.* ¶ 14 (quoting 20-A M.R.S.A. § 2951(2)).

⁸ Maine's educational approach has not changed materially since this court and the First Circuit grappled with the same issue in 2004. *Eulitt ex rel. Eulitt v. Maine, Dep't of Educ.*, 386 F.3d 344 (1st Cir. 2004), *aff'd* 307 F. Supp. 2d 158 (D. Me. 2004). According to *Eulitt*, 386 F.3d at 346:

By statute, Maine commits to providing all school-aged persons with "an opportunity to receive the benefits of a free public education," Me. Rev. Stat. Ann. tit. 20-A, § 2(1) (West 2004), and vests authority in local school districts to fulfill that undertaking by maintaining and supporting elementary and secondary education, *id.* §§ 2(2), 4501. School districts, known in Maine's bureaucratic argot [*4] as school administrative units, enjoy some flexibility in administering this guarantee. They may satisfy the state mandate in any of three ways: by operating their own public schools, *see id.* § 1258(1), by contracting with outside public schools to accept their students, *see id.* §§ 1258(2), 2701; or by paying private schools to provide such an education, *see id.* §§ 2951, 5204(4). State law bars a school district that exercises the third option from paying tuition to any private sectarian school. *Id.* § 2951(2).

¹ *Boston Five Cents Sav. Bank v. Sec'y of Dep't of Hous. & Urban Dev.*, 768 F.2d 5, 11-12 (1st Cir. 1985) ("to stipulate a record for decision allows a judge to decide any significant issues of material fact that he discovers; to file cross-motions for summary judgment does *not* allow him to do so") (emphasis in original). As it turns out, I do not find any issues of material fact to decide, but judgment on a stipulated record is a cleaner approach than cross-motions for summary judgment.

² Joint Stipulated Facts ¶ 5 (quoting 20-A M.R.S.A. § 1001(8)) (ECF No. 25).

³ *Id.* ¶ 6.

ANALYSIS

Over the past many years, several court cases have upheld the Maine approach to school choice when the school administrative unit does not provide public secondary education. See Strout v. Albanese, 178 F.3d 57 (1st Cir. 1999); Bagley v. Raymond Sch. Dep't, 1999 ME 60, 728 A.2d 127 (Me. 1999); Anderson v. Town of Durham, 2006 ME 39, 895 A.2d 944 (Me. 2006); Joyce v. State, 2008 ME 108, 951 A.2d 69 (Me. 2008). The latest federal case to do so is Eulitt ex. rel. Eulitt v. Maine, Dep't of Educ., 386 F.3d 344 (1st Cir. 2004), aff'g 307 F. Supp. 2d 158 (D. Me. 2004). All those cases ruled in favor of the state against First Amendment or Equal Protection challenges. What provokes renewal of the dispute now, in the face of those many past decisions, is a 2017 United States Supreme Court decision, Trinity Lutheran Church of Columbia, Inc. v. Comer, 137 S. Ct. 2012, 198 L. Ed. 2d 551 (2017). In Trinity Lutheran, the Supreme Court held that it is a violation of the First Amendment's free exercise clause to deny a generally available subsidy for rubberized playground surfaces at preschool and daycare facilities solely on the ground that a church operates the facilities. According to the plaintiffs, [*5] some of the *amici*, and the United States, Trinity Lutheran has radically changed the constitutional landscape of First Amendment free exercise challenges and finally makes Maine's approach unconstitutional.

But Maine's Attorney General says that, notwithstanding Trinity Lutheran, these plaintiffs (the parents of secondary school students) have no standing to challenge the Maine law because there is no substantial likelihood that the sectarian schools to which they want to send their children—Bangor Christian Schools and Temple Academy—will even apply for state approval under section 2951(2). The Attorney General gives two reasons: first, the schools have not said they will apply, only that they might "consider" doing so, Def.'s Mot. For Summ. J. at 13 (ECF No. 29), citing Joint

Stipulated Facts ¶¶ 128, 182; second, that if they receive public funds, the Maine Human Rights Act will prohibit them from considering sexual orientation in their employment decisions, and they have said they are unwilling to alter their employment practices, id., citing Joint Stipulated Facts ¶¶ 127, 184.

The Attorney General's arguments about the schools pursuing state approval are plausible. I am doubtful, for example, of the plaintiffs' [*6] interpretation of the Maine Human Rights Act. They argue that because section 4554(4) defines employer to exclude nonprofit religious organizations (except in cases of disability discrimination) and section 4573-A(2) allows religious entities to give preference in employment to people of their own religion and to require applicants and employees to conform to their religious tenets—neither provision refers to receipt of public funds—religious schools are altogether exempt from the prohibition on considering sexual orientation in employment. But the 2005 law, Public Law of 2005 chapter 10, that added sexual orientation as a prohibited form of discrimination, stated that "a religious corporation, association or organization *that does not receive public funds* is exempt from this provision with respect to . . . [e]mployment" (codified as 5 M.R.S.A. § 4553(10)(G) (emphasis added)).⁹ It is certainly arguable that this is a narrower exemption and exempts only religious organizations that do not receive public funds when it comes to sexual orientation discrimination. If that is the correct interpretation of state law and if the schools are firm in their desire not to change their employment criteria, their willingness to "consider" applying for [*7] approval for public funding may not go

⁹I recognize that, as the plaintiffs point out, Pls.' Opp'n at 9 (ECF No.46), that employment section goes on to say "as is more fully set forth in section 4553, subsection 4, and section 4573-A," the provisions the plaintiffs rely upon, arguably thereby supporting their position. But that seems to read out of the statute the phrase "does not receive public funds." At the very least, the statute is ambiguous and might well deter the schools from proceeding to take public funds so as to avoid the risk.

far.

But even if the plaintiffs cannot show that if I find the statute unconstitutional the two religious schools to which they would like to send their children will in fact seek approval under section 2951(2), I conclude that the Attorney General's standing argument fails under the First Circuit's decision in Eulitt. In Eulitt, the court held that parents do not have standing to raise the sectarian schools' constitutional rights, only their own. But Eulitt said that the parents "do have standing in their own right to seek global relief in the form of an injunction against the enforcement of section 2951(2) and a declaration of the statute's unconstitutionality":

The [parents] have established standing directly based on their allegation that section 2951(2) effectively deprives them of the opportunity to have their children's tuition at [the sectarian school they chose] paid by public funding. Even though it is the educational institution, not the parent, that would receive the tuition payments for a student whose "educational requirements" application was approved, it is the parent who must submit such an application and who ultimately will benefit from the approval. Because section 2951(2) imposes restrictions [*8] on that approval, the parents' allegation of injury in fact to their interest in securing tuition funding provides a satisfactory predicate for standing.

Eulitt, 386 F.3d at 353 (internal citation omitted). There was no guarantee in Eulitt that the students would in fact gain access to the sectarian school there.¹⁰ That is the plaintiffs' position in this case: they seek the *opportunity* to find religious secondary education for their children that would

¹⁰ In Eulitt, the school administrative unit sent 90% of its students to a neighboring public high school, but sent up to 10% to other private or public schools "so long as those students can demonstrate that they have educational needs that [the neighboring public school] cannot satisfy." 386 F.3d at 346-47. The Eulitts had not demonstrated that their daughters would qualify.

qualify for public funding.¹¹ I conclude that under Eulitt these parents/plaintiffs have standing.¹²

I turn therefore to the issue whether Trinity Lutheran has effectively overruled the latest First Circuit decision to uphold Maine's educational funding approach, namely Eulitt. In that connection, it is necessary to consider my role as a federal trial judge. As a federal trial judge, I must follow any decision from the Court of Appeals for the First Circuit directly on point, except in limited circumstances: "Until a court of appeals *revokes* a binding precedent, a district court within the circuit is hard put to ignore that precedent unless it has *unmistakably been cast into disrepute* by supervening authority." Eulitt, 386 F.3d at 349 (internal citations omitted) [*9] (emphasis added). Eulitt has certainly not been revoked. Has Trinity Lutheran unmistakably cast Eulitt into disrepute? The answer is no. Trinity Lutheran may well have given good grounds to the plaintiffs to argue to the First Circuit that *that* court should reconsider its Eulitt holding, but it has not unmistakably cast the decision into disrepute such that I as a trial judge can ignore Eulitt. Here is why. Eulitt based its decision on all the relevant United States Supreme Court decisions up until then, including Zelman v. Simmons-Harris, 536 U.S. 639, 122 S. Ct. 2460, 153 L. Ed. 2d 604 (2002), and Locke v. Davey, 540 U.S. 712, 124 S. Ct. 1307, 158 L. Ed. 2d 1 (2004). Trinity Lutheran is the only later Supreme Court

¹¹ I see no reason to limit them to the willingness of the two schools they have identified; there may be other schools in existence or schools that will arise if funding is available. Until 1980, such schools did exist before the legislature enacted the ban on tuition to parent-selected sectarian schools. Joint Stipulated Facts ¶¶ 18-19. Maine's Law Court has said that "[o]ne of Maine's four Roman Catholic high schools, John Bapst High School, in Bangor, closed as a result of being excluded from the education tuition program." Bagley v. Raymond Sch. Dep't, 1999 ME 60, 728 A.2d 127, 138 n. 19 (Me. 1999). It later reopened as a nonsectarian school, John Bapst Memorial High School. Joint Stipulated Facts ¶¶ 23-24.

¹² The defendant says that the argument it makes was not presented to the First Circuit in Eulitt. If that is so, it may be a basis for persuading the First Circuit to abandon its standing decision in Eulitt. But I take the Eulitt precedent and language as they are.

decision that bears on the analysis.¹³ In Trinity Lutheran, while holding that Missouri could not disqualify pre-school programs from a subsidy for shredded tires on their playgrounds solely because they were operated by a church, four members of the Court (Justices Roberts, Kennedy, Alito, and Kagan) said in footnote 3: "This case involves express discrimination based on religious identity with respect to playground resurfacing. *We do not address religious uses of funding* or other forms of discrimination." (emphasis added). Justice Breyer (who did not concur in the opinion but only in the judgment) focused on "the particular [*10] nature of the 'public benefit' here at issue," and "would leave the application of the Free Exercise Clause to other kinds of public benefits for another day." 137 S. Ct. at 2027. That totals a majority of justices (five) who have said that Trinity Lutheran was not deciding such other issues.¹⁴ I cannot, as a trial judge, say that Eulitt therefore has unmistakably been cast into disrepute. It is certainly open to the First Circuit to conclude that, after Trinity Lutheran, it should alter its Eulitt holding that sustained Maine's educational funding law,¹⁵ but it is not my role to make that decision. I therefore apply Eulitt to this controversy and do not decide the post-Trinity Lutheran merits, nor the standard

of review that should apply in reaching the merits.¹⁶ Based upon the Eulitt decision, I conclude that Maine's educational funding program is constitutional.

My decision not to decide the ultimate question the parties and *amici* pose—whether Trinity Lutheran has changed the outcome in Eulitt—is no great loss for either the parties or the *amici*. It has always been apparent that, whatever my decision, this case is destined to go to the First Circuit on appeal, maybe even to the Supreme Court. [*11] In the First Circuit, the parties can argue their positions about how Trinity Lutheran affects Eulitt. I congratulate them on their written and oral arguments in this court. I hope that the rehearsal has given them good preparation for their argument in the First Circuit (and maybe even higher). My prompt decision allows them to proceed to the next level expeditiously.

Based upon Eulitt, I **GRANT** judgment on the stipulated record to the defendant and **DENY** it to the plaintiffs. The Clerk shall enter judgment accordingly.

SO ORDERED.

DATED THIS 26TH DAY OF JUNE, 2019

/s/ D. Brock Hornby

D. BROCK HORNBY

UNITED STATES DISTRICT JUDGE

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¹³ Trinity Lutheran, 137 S. Ct. at 2021 n. 2 (2017), does cite a 2012 decision in a footnote, namely, Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, 565 U.S. 171, 132 S. Ct. 694, 181 L. Ed. 2d 650 (2012), for this proposition: "This is not to say that any application of a valid and neutral law of general applicability is necessarily constitutional under the Free Exercise Clause." The Hosanna-Tabor case applied a ministerial exception to the Americans with Disabilities Act prohibition on employment retaliation because of the free exercise clause. No one has argued that the case has implications for this controversy.

¹⁴ Justices Thomas and Gorsuch, who otherwise concurred in the Court's opinion, rejected footnote 3, Trinity Lutheran, 137 S. Ct. at 2025. It is doubtful that the two dissenters (Justices Sotomayor and Ginsburg) would agree that Trinity Lutheran decided the broader question.

¹⁵ In Eulitt, the plaintiffs tried to focus their case on the constitutional equal protection clause, but the First Circuit made clear that it had to consider the free exercise clause of the First Amendment first. 386 F.3d at 352-54.

¹⁶ The plaintiffs say that an exacting standard applies; the defendant disagrees.

App. B

to Brief of Amicus Curiae National School Boards Association in Support of Plaintiff-Appellants

**Supreme Court No. 158751
Court of Appeals No. 343801
Court of Claims No. 17-68-MB**



STATE OF MICHIGAN
TERRI LYNN LAND, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

December 5, 2008

**INITIATIVES AND REFERENDUMS UNDER THE CONSTITUTION
OF THE STATE OF MICHIGAN OF 1963**

Constitutional Amendments (Pages 2-11)

- Since the adoption of the State Constitution of 1963, 68 proposed amendments to the Constitution have been presented on the ballot for a vote of the people. Thirty-one of the amendments were approved and 37 were rejected.
- Of the 68 proposed amendments, 42 were placed on the ballot by the State Legislature (21 were approved and 21 were rejected) and 26 were placed on the ballot by initiative petition (10 were approved and 16 were rejected).
- In addition, the “automatic” proposal relating to the calling of a constitutional convention was presented in 1978 and 1994; in both instances the proposals were rejected.

Legislative Referendums (Pages 12-13)

- Since 1963, 20 legislative referendums have been presented on the ballot for a vote of the people. Ten of the referendums were approved and 10 were rejected.
- Of the 20 referendums, 13 were placed on the ballot by the State Legislature (9 were approved and 4 were rejected) and 7 were placed on the ballot by petition (1 was approved and 6 were rejected).

Legislative Initiatives (Pages 14-15)

- Since 1963, 13 legislative initiatives have been presented on the ballot for a vote of the people. Seven of the initiatives were approved and 6 were rejected.
- Of the 13 legislative initiatives, all were placed on the ballot by petition as required by law.
- In addition to the above, the State Legislature has enacted 4 legislative proposals presented by petition during the 40-day period provided for such action. In such instances, the proposals do not appear on the ballot.

Constitutional Amendments

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
Lower minimum voting age from 21 to 18 years	2	1	Senate Joint Resolution "A" P.A. 1966, p. 678	Nov. 1966	1	Rejected	703,076	1,267,872
Establish judicial tenure commission	6	30	House Joint Resolution "PP" P.A. 1968, p. 706	Aug. 1968	1	Adopted	553,182	228,738
Require legislature to create state officers compensation commission	4	12	House Joint Resolution "AAA" P.A. 1968, p. 706	Aug. 1968	2	Adopted	417,393	346,839
Define manner of filling judicial vacancies	6	20, 22, 23, 24	House Joint Resolution "F" P.A. 1968, p. 707	Aug. 1968	3	Adopted	494,512	266,561
Permit election of members of legislature to another state office during their term of office	4	9	Senate Joint Resolution "Q" P.A. 1968, p. 708	Nov. 1968	5	Rejected	778,388	1,783,186
Permit state to impose a graduated income tax	9	7	Senate Joint Resolution "G" P.A. 1967, p. 672	Nov. 1968	1	Rejected	614,826	2,025,052
Prohibit public aid to nonpublic schools and students	8	2	Initiatory Petition P.A. 1970, p. 692	Nov. 1970	C	Adopted	1,416,838	1,078,740
Lower minimum voting age from 21 to 18 years	2	1	House Joint Resolution "A" P.A. 1970, p. 690	Nov. 1970	B	Rejected	924,981	1,446,884
Allow legislature to authorize lotteries and the sale of lottery tickets	4	41	House Joint Resolution "V" P.A. 1972, p. 1145	May 1972	A	Adopted	1,352,768	506,778
Permit members of legislature to resign and accept another office to which they have been elected or appointed	4	9	Senate Joint Resolution "DD" P.A. 1972, p. 1145	May 1972	B	Rejected	866,593	915,312

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
Allow trial by jury of less than 12 jurors in all prosecutions for misdemeanors punishable by imprisonment for not less than 1 year	1	20	House Joint Resolution "M" P.A. 1972, p. 1146	Aug. 1972	A	Adopted	696,570	357,186
Limit property tax for school, county, and township purposes and require legislature to establish a state tax program for support of schools	9	6	Initiatory Petition	Nov. 1972	C	Rejected	1,324,702	1,815,126
Permit state to impose graduated income tax and allow legislature to authorize political subdivisions to levy graduated income tax	9	7	Initiatory Petition	Nov. 1972	D	Rejected	959,286	2,102,744
Limit use of motor fuel tax fund	9	9	Senate Joint Resolution "LL" P.A. 1972, p. 1147	Nov. 1974	A	Rejected	1,091,938	1,146,109
Eliminate sales tax and use tax on food and prescription drugs	9	8	Initiatory Petition P.A. 1974, p. 1357	Nov. 1974	C	Adopted	1,337,609	1,071,253
Lower minimum age of eligibility for office of state representative or state senator from 21 to 18 years	4	7	House Joint Resolution "B" P.A. 1976, p. 1755	Nov. 1976	B	Rejected	698,993	2,580,945
Limit taxation imposed by legislature to 8.3% of state personal income	9	25, 26, 27, 28, 29, 30, 31	Initiatory Petition	Nov. 1976	C	Rejected	1,407,438	1,866,620
Permit state to impose a graduated income tax	9	7	Initiatory Petition	Nov. 1976	D	Rejected	897,780	2,332,513
Call for constitutional convention			Required by Const. 1963, art. 12, § 3.	Nov. 1978	A	Rejected	640,286	2,112,549
Authorize deposit of state funds in savings and loan associations and credit unions, as well as banks	9	19, 20	House Joint Resolution "GG". P.A. 1978, p. 2619	Nov. 1978	C	Adopted	1,819,847	933,101

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
Prohibit alcoholic beverages from being sold to, or possessed by, a person under the age of 21	4	40	Initiatory Petition P.A. 1978, p. 2627	Nov. 1978	D	Adopted	1,609,589	1,208,497
Establish limits on taxes imposed by legislature and units of local government (Headlee Amendment)	9	6, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34	Initiatory Petition P.A. 1978, p. 2627	Nov. 1978	E	Adopted	1,450,150	1,313,984
Grant Michigan state troopers and sergeants right to collective bargaining and binding arbitration	11	5	Initiatory Petition P.A. 1978, p. 2630	Nov. 1978	G	Adopted	1,535,023	1,203,930
Prohibit use of property taxes for school operating expenses and establish a voucher system for financing education of students at public and nonpublic schools	9 8	6 2	Initiatory Petition	Nov. 1978	H	Rejected	718,440	2,075,583
Reduce property tax assessments to establish a maximum of 5.6% on the rate of the state income tax; prohibit legislature from requiring new or expanded local programs without state funding; and allow school income tax with voter approval (Tisch Amendment I)	9	3, 3(a), 7(a), 7(b), 25(a), 25(b), 26	Initiatory Petition	Nov. 1978	J	Rejected	1,032,343	1,737,133
Allow courts to deny bail under certain circumstances involving violent crimes; provide for commencement of trial within 90 days	1	15	House Joint Resolution "Q" P.A. 1978, p. 2620	Nov. 1978	K	Adopted	2,307,038	458,357

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
Allocate at least 90% of gas tax revenues for general road purposes and the remainder for other transportation purposes; and replace state highway commission with transportation commission	5 9	28 9	House Joint Resolution "F" P.A. 1978, p. 2620	Nov. 1978	M	Adopted	1,478,316	1,233,196
Require legislature to create a railroad redevelopment authority to make loans to railroads with trackage in Michigan and to authorize authority to issue general obligation bonds in amount not to exceed 175 million dollars	4	54	House Joint Resolution "OO" P.A. 1978, p. 2622	Nov. 1978	R	Rejected	1,257,606	1,415,441
Make local school boards responsible for school personnel and programs, reduce local property tax maximums for operational purposes, provide additional property tax relief for senior retirees, and require the state to raise revenues necessary for equal per pupil funding of public schools	8 9	2 6, 31, 6a, 26a	Initiatory Petition	Nov. 1980	A	Rejected	746,027	2,769,497
Lower minimum legal age for possession or consumption of alcoholic beverages from 21 to 19 years	4	40	House Joint Resolution "S" P.A. 1980, p. 2321	Nov. 1980	B	Rejected	1,403,935	2,250,873

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
Provide property tax relief; reimburse local and state governments with additional sales tax; require net state lottery revenues be deposited in school aid fund; and mandate creation of state "rainy day" fund	4 9	41, 54 2, 3, 8, 30, 31	Senate Joint Resolution "X" P.A. 1980, p. 2317	Nov. 1980	C	Rejected	894,441	2,583,253
Decrease property taxes and prohibit new types of homestead taxes; require 60% voter approval to raise state taxes or fees; require partial state reimbursement to local units for lost income; limit legislature's ability to change tax exemptions or credits or change per pupil formula (Tisch Amendment II)	9	1, 2, 3, 31, 2a, 3a, 3b, 3c, 3d, 3e, 3f, 33a, 33b	Initiatory Petition	Nov. 1980	D	Rejected	1,622,301	2,051,008
Allow the legislature to pass laws relating to members' immunity from civil arrest and process during legislative sessions	4	11	Senate Joint Resolution "L" P.A. 1980, p. 2321	Nov. 1980	G	Rejected	1,287,172	2,134,546
Restrict authority of lieutenant governor and establish a procedure to fill a vacancy in the office of the lieutenant governor	4 5	9 25, 26	Senate Joint Resolution "K" P.A. 1980, p. 2322	Nov. 1980	H	Rejected	1,410,912	1,927,001
Reduce property taxes and city income taxes; limit growth of property tax revenues; return additional sales tax to local governments and schools; and require net lottery revenues be deposited in school aid fund	4 9	41 3, 8 30, 31	House Joint Resolution "G" P.A. 1981, p. 1067	May 1981	A	Rejected	560,924	1,451,305

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
Allow the legislature to pass laws to reform members' immunity from civil arrest and process during legislative sessions	4	11	Senate Joint Resolution "A" P.A. 1981, p. 1070	Nov. 1982	A	Adopted	1,804,728	1,029,743
Create a Michigan department of state police; provide for its personnel; prescribe its duties; and require minimum staffing	5	2, 30	Initiatory Petition	Nov. 1982	B	Rejected	720,915	2,111,802
Provide for an elected public service commission	5	30	Initiatory Petition	Nov. 1982	G	Rejected	1,026,160	1,771,098
Allow legislature to approve or disapprove administrative rules proposed by state agencies	4	37	House Joint Resolution "P" P.A. 1984, p. 1618	Nov. 1984	A	Rejected	1,280,948	1,827,677
Establish a natural resources trust fund and a board to administer it; to provide revenues for the fund from natural resources leases and existing funds; specify and limit expenditures therefrom	9	35	House Joint Resolution "M" P.A. 1984, p. 1617	Nov. 1984	B	Adopted	2,066,554	1,120,794
Amend constitution relating to taxes, other revenues and voter or legislative approval for same	9	1, 2	Initiatory Petition	Nov. 1984	C	Rejected	1,376,141	2,035,867
Allow establishment of the library of Michigan within the legislative branch	4	54	House Joint Resolution "V" P.A. 1986, p. 1543	Nov. 1986	A	Rejected	908,627	936,643
Allow for approval or rejection of administrative rules by the legislature	4	37	House Joint Resolution "W" P.A. 1986, p. 1544	Nov. 1986	B	Rejected	648,116	1,136,721

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
Expand authority of state officers compensation commission to determine compensation of attorney general and secretary of state	4	12	House Joint Resolution "U" P.A. 1986, p. 1543	Nov. 1986	C	Rejected	905,767	910,297
Provide for rights of crime victims	1	24	House Joint Resolution "P" P.A. 1988, p. 2163	Nov. 1988	B	Adopted	2,662,796	650,515
Increase the sales/use tax from 4¢ to 4½¢ and dedicate funds for local schools	4 9	41 8, 10, 11	House Joint Resolution "I" P.A. 1989, p. 1793	Nov. 1989	A	Rejected	514,407	1,341,292
Increase the sales/use tax from 4¢ to 6¢, reduce school property taxes, set permanent school operating millages subject to voter renewal, and dedicate funds for local schools	4 9	41 3, 5, 6 8, 10 11, 14	House Joint Resolution "I" P.A. 1989, p. 1793	Nov. 1989	B	Rejected	436,958	1,392,053
Limit annual increases in homestead property tax assessments and provide separate tax limitations for different property classifications	9	3, 31	House Joint Resolution "H" P.A. 1991, p. 1321	Nov. 1992	A	Rejected	1,433,354	2,384,777
Restrict/limit the number of times a person can be elected to congressional, state executive and state legislative offices	2 4 5 12	10 54 30 4	Initiatory Petition P.A. 1992, p. 1651	Nov. 1992	B	Adopted	2,295,904	1,613,404
Exempt property from a portion of school operating property taxes and limit annual increases in all property tax assessments	9	3	Initiatory Petition	Nov. 1992	C	Rejected	1,552,119	2,276,360
Limit property tax assessments and increase sales tax	4 9	41 3, 6, 8, 10, 11	House Joint Resolution "G"	June 1993	A	Rejected	1,008,425	1,164,468

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
To increase sales and use tax rates from 4% to 6%; limit annual increases in property tax assessments, exempt school operating millages from uniform taxation requirement, and require $\frac{3}{4}$ vote of legislature to exceed statutorily established school operating millage rates	9	3, 5, 8, 11, 36	Senate Joint Resolution "S" P.A. 1993, p. 2484	March 1994	A	Adopted	1,684,541	750,952
Call for constitutional convention			Required by Const 1963, art 12, sec 3	Nov. 1994	A	Rejected	777,779	2,008,070
To limit criminal appeals	1	20	Senate Joint Resolution "D" P.A. 1994, p. 2659	Nov. 1994	B	Adopted	2,118,734	761,784
To establish a Michigan state parks endowment fund, increase maximum allowable funds in Michigan natural resources trust fund, and eliminate diversion of dedicated revenue from Michigan natural resources trust fund	9	35, 36	Senate Joint Resolution "E" P.A. 1994, p. 2661	Nov. 1994	P	Adopted	2,007,097	806,888
To establish qualifications for judicial offices	6	19	Senate Joint Resolution "D" P.A. 1995, p. 2445	Nov. 1996	B	Adopted	2,806,833	629,402
To establish the current Michigan Veterans' Trust Fund in the state constitution and require that expenditures from the fund be made solely for purposes authorized by the trust fund's board of trustees	9	37, 38, 39	House Joint Resolution "H" P.A. 1995, p. 2445	Nov. 1996	C	Adopted	2,447,905	849,525
To change the word "handicapped" to "disabled" in the state constitution	8	8	Senate Joint Resolution "I" P.A. 1998, p. 2549	Nov. 1998	A	Adopted	1,708,873	1,181,138

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
To permit the state to indirectly support nonpublic school students	8	2, 10	Initiatory Petition P.A. 2000, p. 2420	Nov. 2000	00-1	Rejected	1,235,533	2,767,320
Require a 2/3 legislative vote to enact laws affecting local governments	4	55	Initiatory Petition P.A. 2000, p. 2421	Nov. 2000	00-2	Rejected	1,242,516	2,548,995
Amend the provision of the state constitution governing the operation of the state officers compensation commission (SOCC)	4	12	House Joint Resolution "E"	Aug. 2002	02-1	Adopted	1,057,503	404,682
Allow certain permanent and endowment funds to be invested as provided by law and increase allowed spending for state parks, local parks and outdoor recreation	9	19, 35, 36(1), 37	Senate Joint Resolution "T"	Aug. 2002	02-2	Adopted	925,475	565,971
To grant state classified employees the constitutional right to collective bargaining with binding arbitration	11	5	Initiatory Petition	Nov. 2002	02-3	Rejected	1,336,249	1,591,756
To reallocate the "tobacco settlement revenue" received by the state from cigarette manufacturers	9	36	Initiatory Petition	Nov. 2002	02-4	Rejected	1,018,644	2,011,105
Require voter approval of any form of gambling authorized by law and certain new state lottery games	4	41	Initiatory Petition	Nov. 2004	04-1	Adopted	2,689,448	1,926,721
Specify what can be recognized as a "marriage or similar union" for any purpose	1	25	Initiatory Petition	Nov. 2004	04-2	Adopted	2,698,077	1,904,319
Dedicate use of conservation/ recreation funds	9	40, 41, 42	House Joint Resolution "Z"	Nov. 2006	06-1	Adopted	2,915,106	680,859

Subject of Amendment	Article	Section	Method of Proposal	Year of Election	Prop.	Action	Total Vote	
							For	Against
Ban affirmative action programs	1	26	Initiatory Petition	Nov. 2006	06-2	Adopted	2,141,010	1,555,691
Restrict use of eminent domain	10	2	Senate Joint Resolution "E"	Nov. 2006	06-4	Adopted	2,914,214	724,573
To address human embryo and embryonic stem cell research in Michigan	1	27	Initiatory Petition	Nov. 2008	08-02	Adopted	2,521,026	2,271,083

Legislative Referendums

Subject of Referendum	Method	Date of Election	Prop.	Action	Total Vote	
					For	Against
Act 240 of 1964, to amend sections 685, 696, 706,737, 775, 782, 786, 803, and 804 of Act 116 of 1954, to institute use of Massachusetts ballot in Michigan to prevent straight party ticket voting	Referendum Petition	Nov. 1964	C	Rejected	795,546	1,515,875
Act 6 of 1967, to permit establishment of daylight saving time in Michigan	Referendum Petition	Nov. 1968	2	Rejected	1,402,562	1,403,052
Act 76 of 1968, to authorize issuance of bonds for planning, acquisition, and construction of facilities for prevention and abatement of water pollution and for loans and grants to municipalities	Legislative Action	Nov. 1968	3	Adopted	1,906,385	796,079
Act 257 of 1968, to authorize issuance of bonds to provide funding for public recreational facilities and programs and for loans and grants to municipalities	Legislative Action	Nov. 1968	4	Adopted	1,384,254	1,235,681
Act 304 of 1969, to authorize issuance of bonds for urban redevelopment to increase the supply of low-income housing and for loans and grants to municipalities and redevelopment corporations	Legislative Action	Nov. 1970	A	Rejected	921,482	1,388,737
Act 231 of 1972, to authorize issuance of bonds to provide funding for bonus payments and educational benefits to Vietnam and other veterans	Legislative Action	Nov. 1972	E	Rejected	1,490,968	1,603,203
Act 106 of 1974, to authorize issuance of bonds to provide funding for bonus payments to Vietnam and other veterans	Legislative Action	Nov. 1974	B	Adopted	1,668,641	700,041
Act 245 of 1974, to authorize issuance of bonds to provide funding to plan, acquire, construct, and equip transportation systems and to make loans and grants for that purpose	Legislative Action	Nov. 1974	D	Rejected	963,576	1,319,586
Act 250 of 1980, to amend sections 51 and 475 of Act 281 of 1976, to increase the state income tax 0.1% for 5 years to fund the construction of regional correctional facilities, the demolition of the Michigan Reformatory, and other state and local correctional projects	Legislative Action	Nov. 1980	E	Rejected	1,288,999	2,202,042
Act 212 of 1982, to amend sections 6a and 6b of Act 3 of 1939, to prohibit certain utility rate adjustment clauses, utility rate increases without notice and hearing, and acceptance of employment with any utility for 2 years by member of 81 st Legislature	Legislative Action	Nov. 1982	H	Adopted	1,670,381	1,131,990

Subject of Referendum	Method	Date of Election	Prop.	Action	Total Vote	
					For	Against
Act 59 of 1987, to prohibit the appropriation of public fund to pay for welfare abortions unless the abortion is necessary to save the life of the mother	Referendum Petition	Nov. 1988	A	Adopted	1,959,727	1,486,371
Act 326 of 1988, to authorize issuance of bonds to finance environmental protection programs that would clean up environmental contamination sites and address related problems	Legislative Action	Nov. 1988	C	Adopted	2,528,109	774,451
Act 327 of 1988, to authorize issuance of bonds to finance state and local public recreation projects	Legislative Action	Nov. 1988	D	Adopted	2,055,290	1,206,465
Act 143 of 1993, to reduce auto insurance rates; place limits on personal injury benefits, fees paid to health care providers, and right to sue; and allow rate reduction for accident-free driving	Referendum Petition	Nov. 1994	C	Rejected	1,165,732	1,812,526
Act 118 of 1994, to amend certain sections of Michigan Bingo Act	Referendum Petition	Nov. 1996	A	Rejected	1,511,063	1,936,198
Act 377 of 1996, an amendment regarding the management of Michigan's wildlife populations	Legislative Action	Nov. 1996	G	Adopted	2,413,730	1,099,262
Act 284 of 1998, to authorize bonds for environmental and natural resources protection programs	Legislative Action	Nov. 1998	C	Adopted	1,821,006	1,081,988
Act 269 of 2001, to eliminate "straight ticket" voting and amend other sections of the election law	Referendum Petition	Nov. 2002	02-1	Rejected	1,199,236	1,775,043
Act 396 of 2002, to authorize bonds for sewage treatment works projects, storm water projects and water pollution projects	Legislative Action	Nov. 2002	02-2	Adopted	1,774,053	1,172,612
Act 160 of 2004, to allow the establishment of a hunting season for mourning doves	Referendum Petition	Nov. 2006	06-3	Rejected	1,137,379	2,534,680

Legislative Initiatives

Subject of Petition	Date of Election	Prop.	Action	Total Vote	
				For	Against
New legislation to allow licensed physicians to perform abortions upon demand if period of gestation has not exceeded 20 weeks.	Nov. 1972	B	Rejected	1,270,416	1,958,265
Repeal Act 6 of 1967, to permit the establishment of daylight saving time in Michigan.	Nov. 1972	A	Adopted	1,754,887	1,460,724
New legislation to prohibit use of nonreturnable beverage containers; to require refundable cash deposits for returnable containers; and to provide penalties for violation of the law.	Nov. 1976	A	Adopted	2,160,398	1,227,254
Amendment to revise standards for grant of parole and to prohibit grant of parole for certain defined crimes until court-imposed minimum sentence is served.	Nov. 1978	B	Adopted	2,075,599	711,262
Amendment to prohibit lender from using a "due on sale" clause in foreclosure proceedings on a mortgage or land contract unless security is impaired.	Nov. 1982	C	Rejected	1,344,463	1,445,897
Amendment to prohibit utility increases without full notice or opportunity for hearing; to abolish all rate adjustment clauses; and to prohibit the public service commission from conducting 2 or more proceedings on same petition or application for rate increase and from conducting hearing on additional rate increase petition or application when utility already has petition or application pending.	Nov. 1982	D	Adopted	1,472,442	1,431,884
New legislation calling for mutual, verifiable nuclear weapons freeze between the United States and the Union of Soviet Socialist Republics and requiring transmission of communication to United States government officials.	Nov. 1982	E	Adopted	1,585,809	1,216,172
Amendment to reform auto insurance statutes.	Nov. 1992	D	Rejected	1,482,577	2,480,032
Amendment to limit bear hunting season and prohibit the use of bait and dogs to hunt bear.	Nov. 1996	D	Rejected	1,379,340	2,225,675
New legislation to permit casino gaming in qualified cities.	Nov. 1996	E	Adopted	1,878,542	1,768,156
Amendment to legalize the prescription of a legal dose of medication to terminally ill, competent, informed adults in order to commit suicide.	Nov. 1998	B	Rejected	859,381	2,116,154
Amendment to establish mandatory school funding levels.	Nov. 2006	06-5	Rejected	1,366,355	2,259,247
New legislation to permit the use and cultivation of marijuana for specified medical conditions.	Nov. 2008	08-1	Adopted	3,006,820	1,790,889

Legislative Initiatives Adopted by State Legislature

Subject of Petition	Legislative Action
Amendment to prohibit the appropriation of public funds to pay for welfare abortions unless the abortion is necessary to save the life of the mother.	Adopted by State Legislature: P.A. 59 of 1987
Amendment to require parental consent for abortions performed on unemancipated minors.	Adopted by State Legislature: P.A. 211 of 1990
Amendment to define legal birth and the commencing of legal personhood.	Adopted by State Legislature: P.A. 135 of 2004
Amendment to repeal P.A. 228 of 1975 ("Single business tax act").	Adopted by State Legislature: P.A. 325 of 2006

App. C

to Brief of Amicus Curiae National School Boards Association in Support of Plaintiff-Appellants

**Supreme Court No. 158751
Court of Appeals No. 343801
Court of Claims No. 17-68-MB**

Language of Proposal

Proposal 00-1 would amend Article VIII, Section 2, and add a Section 10 to Article VIII of the Michigan Constitution. The language of the proposal is as follows (Deleted language is ~~lined through~~. New language is in CAPS.):

Local Option and Qualified District Voucher**Article VIII, Section 2**

Sec. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. ~~No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students.~~ The legislature may provide for the transportation of students to and from any school.

Teacher Testing

SUBJECT TO THE PROVISIONS OF SECTION 4 OF ARTICLE I, THE LEGISLATURE SHALL PROVIDE FOR REGULAR TESTING OF THE KNOWLEDGE IN ACADEMIC SUBJECTS OF TEACHERS IN PUBLIC SCHOOLS AND IN NONPUBLIC SCHOOLS WHICH REDEEM TUITION VOUCHERS UNDER THIS SECTION.

Qualified Schools and Local Option Tuition Voucher

SUBJECT TO THE PROVISIONS OF SECTION 10, UNDER PROCEDURES ESTABLISHED BY LAW, QUALIFIED SCHOOL DISTRICTS AND ANY APPROVING SCHOOL DISTRICT SHALL PARTICIPATE IN AN EDUCATIONAL CHOICE PROGRAM TO PERMIT ANY PUPIL RESIDENT IN THE DISTRICT TO RECEIVE A VOUCHER FOR ACTUAL ELEMENTARY AND SECONDARY SCHOOL TUITION TO ATTEND A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL.

School District Per Pupil Funding Guarantee

BEGINNING IN THE 2001-2002 STATE FISCAL YEAR, THE STATE SHALL GUARANTEE THAT THE TOTAL STATE AND LOCAL PER PUPIL REVENUE FOR SCHOOL OPERATING PURPOSES FOR EACH LOCAL SCHOOL DISTRICT, AS ADJUSTED FOR CONSOLIDATIONS, ANNEXATIONS, AND BOUNDARY CHANGES, SHALL NOT BE LESS THAN IN THE 2000-2001 STATE FISCAL YEAR; PROVIDED THE SCHOOL DISTRICT DOES NOT LEVY A MILLAGE RATE FOR SCHOOL DISTRICT OPERATING PURPOSES LESS THAN IT LEVIED IN 2000.

SECTION 10

SEC. 10. THE PROVISIONS OF THIS SECTION SHALL APPLY TO SECTION 2 OF THIS ARTICLE.

THE TUITION VOUCHER ESTABLISHED IN SECTION 2 SHALL BE LIMITED TO THE LESSER OF ONE-HALF THE AVERAGE PER-PUPIL STATE AND LOCAL REVENUE FOR OPERATING PURPOSES IN PUBLIC SCHOOLS IN THE PRECEDING FISCAL YEAR OR THE ACTUAL TUITION PAID PER PUPIL AT A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL. THE TUITION VOUCHER MAY BE SUPPLEMENTED FOR PUPILS WHO REQUIRE SPECIAL EDUCATION SERVICES.

THE STATE TREASURER SHALL, BEFORE THE END OF EACH CALENDAR YEAR, CERTIFY THE AVERAGE PER-PUPIL STATE AND LOCAL REVENUE FOR OPERATING PURPOSES IN PUBLIC SCHOOLS FOR THE FISCAL YEAR CONCLUDING IN THAT CALENDAR YEAR.

A QUALIFIED SCHOOL DISTRICT IS A DISTRICT THAT HAD A FOUR-YEAR GRADUATION RATE OF LESS THAN TWO THIRDS AS REPORTED BY THE DEPARTMENT OF EDUCATION FOR THE 1998-1999 SCHOOL YEAR, AS CERTIFIED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

A SCHOOL DISTRICT MAY APPROVE THE EDUCATIONAL CHOICE PROGRAM BY VOTE OF THE ELECTED SCHOOL BOARD OR OF THE ELECTORS IN THE SCHOOL DISTRICT, WHO SHALL HAVE THE RIGHT OF INITIATIVE TO INVOKE THE INITIATIVE, PETITIONS SIGNED BY A NUMBER OF REGISTERED ELECTORS, NOT LESS THAN TEN PERCENT OF THE TOTAL NUMBER OF ELECTORS CASTING BALLOTS FOR SCHOOL BOARD AT THE LAST PRECEDING ELECTION AT WHICH MEMBERS OF THE SCHOOL BOARD WERE ELECTED, SHALL BE REQUIRED.

THE LEGISLATURE SHALL PROVIDE BY LAW FOR THE IMPLEMENTATION OF THIS SECTION.

Proposal 00-1 Ballot Language

Article XII, Section 2, of the Michigan Constitution requires that the purpose of a proposed amendment be stated on the ballot in not more than 100 words, exclusive of caption. As approved by the Board of State Canvassers, the ballot language is as follows:

A PROPOSAL TO AMEND THE CONSTITUTION TO PERMIT THE STATE TO PROVIDE INDIRECT SUPPORT TO STUDENTS ATTENDING NONPUBLIC PRE-ELEMENTARY, ELEMENTARY AND SECONDARY SCHOOLS; ALLOW USE OF TUITION VOUCHERS IN CERTAIN SCHOOL DISTRICTS; AND REQUIRE ENACTMENT OF TEACHER TESTING LAWS

The proposed constitutional amendment would:

- 1.) Eliminate ban on indirect support of students attending nonpublic schools through tuition vouchers, credits, tax benefits, exemptions or deductions, subsidies, grants or loans of public monies or property.
- 2.) Allow students to use tuition vouchers to attend nonpublic schools in districts with a graduation rate under 2/3 in 1998-99 and districts approving tuition vouchers through school board action or a public vote. Each voucher would be limited to 1/2 of state average per-pupil public school revenue.
- 3.) Require teacher testing on academic subjects in public schools and in nonpublic schools redeeming tuition vouchers.
- 4.) Adjust minimum per-pupil funding from 1994-1995 to 2000-2001 level.

Should this proposal be adopted?

III. What Proposal 00-1 Would Do

A. Provisions of Proposal 00-1

Proposal 00-1 would do five things:

1. *Remove general prohibition against indirect aid.* The proposal would remove the *general* prohibition against action by the legislature or subdivision of the state or other state agency to provide *indirect* aid to private, denominational, or other nonpublic schools.

2. *Remove specific prohibitions against certain forms of aid.* The proposal would remove the *specific* prohibitions against—

- Payments
- Credits
- Tax benefits, exemptions, or deductions
- Tuition vouchers
- Subsidies
- Grants
- Loans of public property or money

to support the attendance of any student or the employment of any person in any nonpublic school.

3. *“Section 10” Vouchers.* The amendments to Section 2

call for a program of educational choice, set out in Section 10, to be implemented by law, in which pupils resident in either a “qualified” district or an “approving” district could receive vouchers for “actual elementary and secondary school tuition to attend a nonpublic elementary or secondary school.”

Qualified school districts have a four-year graduation rate of less than two-thirds as reported by the Department of Education for the 1998-99 school year, as certified by the Superintendent of Public Instruction.

Approving school districts are those that choose to participate in the voucher plan authorized by Section 10 as a result of either—

- a vote of the elected school board, or
- a vote of the electors as the result of initiative petitions signed by a number of registered electors, not less than ten percent of the total number of electors casting ballots for school board at the last preceding election at which members of the school board were elected.