MICHIGAN SUPREME COURT

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CHALLENGE TO COUNTY COMMISSION APPORTIONMENT LAW TO BE HEARD BY MICHIGAN SUPREME COURT ON MARCH 21

Supreme Court will hear arguments on whether 2011 Public Act 280 violates state Constitution; Governor, Oakland Board of Commissioners appeal Michigan Court of Appeals ruling striking down part of act as unconstitutional "local or special act"

LANSING, MI, March 20, 2012 – A reapportionment plan for the Oakland County Board of Commissioners is at stake in a case that the Michigan Supreme Court will hear on Wednesday, March 21.

The plaintiffs in *Houston, et al. v Governor of Michigan and Oakland County Board of Commissioners* challenge 2011 Public Act 280, which limits county commissions to 21 members. The plaintiffs argue in part that the law is unconstitutional as a "local or special act" that currently applies only to Oakland County, which has a 25-member commission. The act would mandate a new apportionment plan for the county, which approved one in 2011 before PA 280 went into effect. In addition, PA 280 would change the composition of the county apportionment commission; the board of commissioners would become the apportionment commission. The plaintiffs prevailed in a 2-1 decision of the Court of Appeals; the Supreme Court will now hear oral argument to decide whether to grant the Governor's and board's applications for leave to appeal, or take other action.

The Court will hear arguments in its courtroom on the sixth floor of the Michigan Hall of Justice on **March 21**, starting at **9:30 a.m**. The Court's oral arguments are open to the public.

Please note: The summary that follows is a brief account of a complicated case and may not reflect the way that some or all of the Court's seven justices view the case. The attorneys may also disagree about the facts, issues, procedural history, or significance of the case. Briefs are online at http://www.courts.michigan.gov/supremecourt/Clerk/msc_orals.htm. For more details about this case, please contact the attorneys.

HOUSTON, et al. v GOVERNOR OF MICHIGAN, et al. (case nos. 144691, 144768)
Court of Appeals case nos. 308724, 308725
Trial Court: Ingham County Circuit Court
Attorney for plaintiffs Frank Houston, Edna Freier, Christy Jenson, Loretta Coleman, Jim Nash, David Richards, and Eric Coleman: Mary Ellen Gurewitz/(313) 965-3464
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At issue: Public Act 280 of 2011 limits the maximum number of county commissioners to 21 for any county with a population of 50,000 or more, and changes the composition of the county apportionment commission for certain counties. Only Oakland County, with 25 commissioners, will be immediately affected by this bill. The plaintiffs, all Oakland County electors, filed a lawsuit claiming that PA 280 violates the Michigan Constitution's prohibition against "local or special" acts, imposes a new unfunded "activity" on local government in violation of the Headlee Amendment, and also violates the plaintiffs' right to have judicial review of the new reapportionment plan required by the act. A majority of the Court of Appeals held that PA 280 amounted to a "local or special act" in violation of the state Constitution, but did not rule on the plaintiffs' other issues: the dissenting judge would have upheld PA 280 as constitutional on all three grounds. The Michigan Supreme Court is hearing oral arguments to decide whether to grant the defendants' applications for leave to appeal the Court of Appeals ruling, or to take other action.

Background: After the 2010 decennial census, Oakland County's apportionment commission adopted a reapportionment plan for the Oakland County Board of Commissioners. This plan was consistent with the County Apportionment Act (MCL 46.401 *et seq.*). As permitted by the apportionment act, electors in the county challenged the plan in the Court of Appeals, arguing that the plan violated constitutional and statutory requirements. On November 15, 2011, the Court of Appeals upheld the plan; the plaintiffs in that case did not appeal to the Supreme Court.

Meanwhile, the legislature adopted Public Act 280, which amends the County Apportionment Act to reduce the maximum number of commissioners that a county may have from 35 to 21. In counties with more than the allowable number of commissioners, "the county apportionment commission of that county shall, within 30 days of the effective date [of 2011 PA 280], apportion the county in compliance with [MCL 46.402]," the bill states. In counties with a population of one million or more that have "an optional unified form of county government … with an elected county executive, the county apportionment commission shall be the county board of commissioners." The bill's effective date is March 28, 2012. Candidates who wish to run for the commission in the August primary must file by May 15.

Only Oakland County, with 25 commissioners, will be immediately affected by these changes. In addition to requiring the county to reduce the number of commissioners, the bill would also require the board of commissioners to adopt a reapportionment plan for the districts from which its members would be elected. (Before 2011 PA 280 was enacted, MCL 46.403 provided that an apportionment committee consisted of the county clerk, the county treasurer, the prosecuting attorney, and the statutory county chairpersons of the two political parties that received the greatest number of votes for secretary of state in the last general election.)

The plaintiffs, Oakland County electors, sued to challenge the law. The circuit court ruled in their favor, finding that PA 280 was unconstitutional on three grounds:

- 2011 PA 280 amounts to a "local or special act." The Michigan Constitution provides that the legislature "shall pass no local or special act in any cases where a general act can be made applicable." If the legislature does elect to pass a local or special act, it must be "approved by a two-thirds vote of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected." Const 1963, art 4, § 29. Because PA 280 effectively applied to Oakland County only, the bill violated the Michigan Constitution, the circuit court concluded.
- PA 280 constitutes an unfunded mandate that violates the Headlee Amendment to

the Michigan Constitution (Const 1963, art 9, §§ 25-34). The Headlee Amendment provides in part that the state Legislature may not impose new or increased activities or services on local government without making an appropriation to pay for such activities or services. Const 1963, art 9, § 29. The second apportionment required by the bill would cost the county about $8,000.

- The bill violates the right to petition for judicial review of Oakland County's reapportionment. The circuit court acknowledged that Oakland County had passed a resolution to provide a new apportionment in compliance with 2011 PA 280 by March 28, 2012. But, the court reasoned, the statutory time frame permitted up to 30 days for the county to act and the county could amend its apportionment plan any time within the 30-day compliance period. Because the deadline for filing as county commissioner candidates to be on the primary ballot is May 15, 2012, the act does not allow enough time for judicial review and appeals, the circuit court concluded.

On March 7, the Court of Appeals issued a split, published decision upholding part of the circuit court decision, but reversing in part and remanding the case to the circuit court. The majority held that PA 280 was unconstitutional to the extent that it amounted to a local act: "[I]t is manifest that Public Act 280 is – at least in part – directed at a single locality: Oakland County. Oakland County alone would be required to reduce the number of members on its county board of commissioners and to undertake a second reapportionment of its county board of commissioners within 30 days of the effective date of the act." The majority went on to hold that, "In all other respects, Public Act 280 is a valid statute of general application." The majority said that it did not need to reach the other issues because, under the majority's ruling, Oakland County would be allowed to retain its current number of commissioners and apportionment "until after the next decennial census."

The dissenting judge would have held "that 2011 PA 280 is constitutional in its entirety." The act did not violate the state constitution's prohibition against local or special acts, the dissent said, because the 21-comissioner limit applies to every county with a population over 50,000 – about 35. The dissenting judge added, "All counties … are subject to the requirements of 2011 PA 280 …. It is a general law, not a local law." Moreover, even if the act applied in practical terms to only one county, it could apply to others in the future: "2011 PA 280 also provides a mechanism for counties to be reevaluated in the future to ensure that they comply with the various commissioner limits."

The dissent also concluded that the circuit court erred in its other rulings. PA 280 does not violate the Headlee Amendment, the dissent reasoned; county apportionment is a local activity, so PA 280 does not shift state services onto the county. And, even if the second reapportionment could be considered a "new activity" required by the state, PA 280 "does not impose 'any necessary increased costs' on Oakland County," the dissenting judge said. The savings the county would realize by reducing the number of commissioners – estimated at about $225,000 per year – "will far outweigh the relatively minimal cost of the reapportionment," the dissent said.

As to the circuit court's ruling that PA 280 deprived the plaintiffs of judicial review, the dissent said that there were would "significant time for judicial review" because Oakland County had adopted resolutions to complete the reapportionment process by April 27. "The circuit court's entire analysis of this issue is predicated on the act's not allowing an elector the full 30-day period provided for by MCL 46.406 to seek review in this Court of a plan for

reapportionment of a county commission," the dissenting judge wrote. "However, MCL 46.406 is merely a *statutory* provision, not a constitutional one." In any case, the plaintiffs' claims on this issue were premature, the dissent said, "until and unless circumstances actually arise in which an elector seeks such review of an actual apportionment plan and then contends that there is inadequate time for proper judicial review."

The defendants, including Governor Snyder and the Oakland County Board of Commissioners, appealed to the Michigan Supreme Court. In a March 14 order, the Court scheduled oral argument to determine "whether to grant the [defendants'] applications [for leave to appeal] or take other action."

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