STATE OF MICHIGAN
IN THE SUPREME COURT

HILLSDALE COUNTY SENIOR SERVICES CENTER, INC., ELLA ASARO, LYLE GREEN, RUTH GREEN, DONELDA POTTS, JOHN POTTS, and KERBY RUSHING,

Plaintiff-Appellants,

v

COUNTY OF HILLSDALE,

Defendant-Appellee.

______________________________/

Supreme Court Case No: 144630

Court of Appeals Case No: 301607

Hillsdale County Circuit Court No: 10-000703-CZ

BRIEF OF AMICI CURIAE THE MICHIGAN MUNICIPAL LEAGUE, THE MICHIGAN TOWNSHIPS ASSOCIATION, THE MICHIGAN ASSOCIATION OF COUNTIES, THE MICHIGAN ASSOCIATION OF SCHOOL BOARDS, AND THE PUBLIC CORPORATION LAW SECTION OF THE STATE BAR OF MICHIGAN IN SUPPORT OF DEFENDANT-APPELLEE'S BRIEF OPPOSING PLAINTIFF-APPELLANT'S BRIEF ON APPEAL

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STATEMENT OF BASIS OF JURISDICTION

Amici Curiae adopt the jurisdictional summary of the Defendant-Appellee, County of Hillsdale, in its Brief opposing Plaintiff-Appellant's Brief on Appeal.

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STATEMENT OF QUESTION PRESENTED

WHETHER THE JUDICIARY HAS THE LEGAL AUTHORITY HERE TO COMPEL A MUNICIPALITY TO LEVY A TAX.

Appellant Hillsdale Senior Services Center, Inc., Ella Asaro, Lyle Green, Ruth Green, Donelda Potts, John Potts, and Kerby Rushing answer:	Yes.
Appellee County of Hillsdale answers:	No.

The Court of Appeals did not address this question.

The Hillsdale County Circuit Court did not address this question.

Amici Curiae answer:	No.

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STATEMENT OF FACTS

Amici Curiae adopt the Statement of Facts and Material Proceedings of the Defendant-Appellee, County of Hillsdale, in its Brief opposing Plaintiff-Appellant's Brief on Appeal.

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DESCRIPTION OF AMICI CURIAE

I. The Michigan Municipal League

The Michigan Municipal League is a non-profit corporation whose purpose is the improvement of municipal government and administration through cooperative effort. Its membership is comprised of 521 Michigan local governments of which 450 are also members of the Michigan Municipal League Legal Defense Fund. The Michigan Municipal League operates the Legal Defense Fund through a board of directors. The purpose of the Legal Defense Fund is to represent the member local governments in litigation of statewide significance. The brief amicus curiae is authorized by the Legal Defense Fund's Board of Directors whose membership includes: the president and executive director of the Michigan Municipal League, and the officers and directors of the Michigan Association of Municipal Attorneys: Randall L. Brown, city attorney, Portage; Lori Grigg Bluhm, city attorney, Troy; Stephen K. Postema, city attorney, Ann Arbor; Eric D. Williams, city attorney, Big Rapids; Clyde J. Robinson, city attorney, Kalamazoo; James O. Branson, III, city attorney, Midland; James J. Murray, city attorney, Cities of Boyne City and Petoskey; Robert J. Jamo, city attorney, Menominee; John C. Schrier, city attorney, Muskegon; Thomas R. Schultz, city attorney, Cities of Farmington and Novi; and William C. Mathewson, general counsel, the Michigan Municipal League.

II. The Michigan Townships Association

The Michigan Townships Association is a Michigan non-profit corporation whose membership consists in excess of 1,230 townships within the State of Michigan (including both general law and charter townships) joined together for the purpose of providing education, exchange of information and guidance to and among township officials to enhance the more efficient and knowledgeable administration of township government services under the laws and statutes of the State of Michigan.

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III. The Michigan Association of Counties

The Michigan Association of Counties (MAC) founded on February 1, 1898, is the only statewide organization dedicated to the representation of all county commissioners in Michigan. MAC is a non-partisan, non-profit organization which advances education, communication and cooperation among county government officials in the state of Michigan. 82 of the 83 counties are members of MAC. MAC is the counties' voice at the State Capitol, providing legislative support on key issues affecting counties. Over the past 100 years, MAC has evolved into a highly respected organization that offers the full spectrum of association services that distribute important public information to its members.

IV. The Michigan Association of School Boards

The Michigan Association of School Boards ("MASB") is a voluntary, non-profit association consisting of approximately 600 local and intermediate school district boards of education throughout the State of Michigan, which includes nearly all of the state's public school districts. Officially organized in 1949, MASB's goal is to advance the quality of public education in the state, promote high educational program standards, help school board members keep informed about education issues, represent the interest of boards of education, and promote public understanding about school boards and citizen involvement in schools. MASB is recognized as a major voice in influencing education issues at the state level and, through its affiliation with the National School Boards Association, at the national level. Consequently, for more than 60 years, MASB has worked to provide quality educational leadership services for Michigan boards of education and to advocate for student achievement and public education.

V. The Public Corporation Law Section of the State Bar of Michigan.

The Public Corporation Law Section (the "Section") is an affiliate section of the State Bar of Michigan. It is composed of Michigan lawyers interested in issues related to

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municipalities and other public entities in the state. The Section provides educational programs for its members as well as the public at large. Any member of the State Bar of Michigan is eligible for membership in the Section.

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INTRODUCTION

This case has serious implications for the constituencies of all 5 Amici Curiae. The issue in this case is simple: whether, outside of their statutorily-granted authority, the courts of this state have the authority to compel local governments to levy taxes.

Pursuant to the separation of powers doctrine, courts are limited to judicial power, and may not exercise legislative or executive power. Taxation is a legislative function. Moreover, courts' authority to compel the action of local governments is limited to those acts or duties that are purely ministerial in nature. Acts of discretion may not be compelled by the courts. The legislature granted local governments the discretionary authority to determine how much tax to levy each year upon voter approval of local governments' ability to levy. Thus, in this case the court lacks authority to compel the county to levy a tax.

Moreover, affirming the trial court's decision and granting Plaintiff-Appellants' requested relief would result in tremendous waste. Voters need to authorize the ability to levy. For these taxing units to have to return to voters annually for approval of their annual budget determinations would be a waste of taxpayer time and money to cover the costs of running such elections.

This Court should deny the Plaintiff-Appellant's requested relief in this case because giving the Court the authority to mandate a levy effectively removes the county board of commissioners' legislatively-granted discretion to determine the county's annual budget and millage rates. Moreover, treating voter-approved millages as tax levy mandates rather than caps or limits would result in tremendous waste, as a new voter approval process would be necessary with every fluctuation in the annually-determined budget.

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STANDARD OF REVIEW

Amici Curiae adopt the Standard of Review of the Defendant-Appellee, County of Hillsdale, in its Brief opposing Plaintiff-Appellant's Brief on Appeal.

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ARGUMENT

I. THE JUDICIARY DOES NOT HAVE THE AUTHORITY TO COMPEL A MUNICIPALITY THROUGH MANDAMUS TO LEVY A TAX

A. The Doctrine of the Separation of Powers Mandates That the Courts not Take Action in This Matter.

The doctrine of the separation of powers mandates that the courts not take action in this matter. The doctrine of the separation of powers is set forth in Article 3, § 2 of the Michigan Constitution:

> The powers of government are divided into three branches; legislative, executive and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution.

"The courts may not direct or control legislative action." *Randall v Township Bd of Meridian Tp*, 342 Mich 605, 607; 70 NW2d 728 (1955) (quoting *Bd of Education of City of Detroit v Superintendent of Public Instruction*, 319 Mich 436; 29 NW2d 902, 904 (1947)). Local governments are created by the legislature and it is within the legislature's purview to determine local government powers and limitations.[1]

The local government is a creature of the state, for convenience. *City of Taylor v Detroit Edison 6*, 475 Mich 109, 115 (2006) (local governments can exercise only those powers conferred); *Michigan Mun Liab & Prop Pool v Muskegon County Bd of County Rd Com'rs*, 235 Mich App 183, 190; 597 NW2d 187, 191 (1999) ("local governments have no inherent powers and possess only those limited powers which are expressly conferred upon them by the state

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[1] Similarly, the courts have no inherent power to order a local government to levy a tax. Courts can only tell the local governments what they can do (as far as levying millages) if the legislature has given the courts that power. For example, the legislature has given the courts that power through a judgment levy in the Revised Judicature Act (RJA). Section 6093(1) of the RJA requires municipalities to levy taxes to pay for judgments against them. This was written into the RJA by the state legislature. Thus, the court has the power and authority to mandate a judgment levy against a local government. If the legislature had wanted to provide for other mandatory levies, they would have done so in the Act or through other legislation. But they did not. Moreover, a judgment levy is an example of a ministerial duty, rather than a discretionary one, which does not violate the separation of powers. *See* discussion in section I.B., *infra*.

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constitution or state statutes or which are necessarily implied therefrom") (*quoting Hanselman v Wayne Co Concealed Weapon Licensing Bd,* 419 Mich 168, 187; 351 NW2d 544 (1984)) (additional citations omitted); 18 Mich Civ Jur Municipal Corporations § 1 ("A municipal corporation derives its existence and its powers from the legislature, having been created by the State as a convenient agency for exercising such of the State's governmental powers as may be entrusted to it with respect to matters peculiar to the area embraced by its corporate limits and not common to the State at large."). The state legislature has created these political subdivisions of the state and the state legislature governs the powers and authority of these local governments.

The Michigan Constitution provides that "[e]ach organized county shall be a body corporate with powers and immunities provided by law." Art 7, § 1. "It is elementary that a county has only such powers as have been granted to it by the Constitution or the State Legislature." *Alan v Wayne County*, 388 Mich 210, 245; 200 NW2d 628, 645 *opinion adhered to on denial of reh'g*, 388 Mich 626; 202 NW2d 277 (1972) (citing Mich Const 1963, art 7, § 1; art 7, § 8.32). In other words, the powers of the local government are limited to those powers that are granted to it by the state legislature. These powers shall "include those fairly implied and not prohibited by the constitution. The Michigan legislature may delegate to, or confer on, municipal corporations the powers necessary to effectively exercise local self-government, particularly with regard to local taxation and police regulations." 18 Mich Civ Jur Municipal Corporations § 4. One of the powers delegated to local governments, including counties, is the authority to levy taxes for certain purposes.

Counties are authorized pursuant to the Activities or Services for Older Persons Act, Act 39 of 1976, to ask voters for approval "to levy up to 1 mill for services to older citizens." MCL 400.576. Once authorized by voters, the county board of commissioners determines, through an annual budgeting and taxation process, how much money should be raised and for what

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purposes. The General Property Tax Act, Act 206 of 1893, expressly provides in §37 that "[t]he county board of commissioners ... shall ascertain and determine the amount to be raised for county purposes ...." In addition, the Uniform Budgeting and Accounting Act, Act 2 of 1968, provides that each year during the budgeting process the "legislative body shall determine the amount of money to be raised by taxation necessary to defray the expenditures and meet the liabilities of the local unit for the ensuing fiscal year, shall order that money to be raised by taxation, within statutory and charter limitations, and shall cause the money raised by taxation to be paid into the funds of the local unit." MCL 141.436. In other words, it is the discretion of the county board of commissioners to determine how much money should be levied and for what purposes. Plaintiff-Appellants are requesting that the judiciary mandate the Defendant-Appellee levy a tax at the full amount authorized by voters, which Defendant-Appellee lawfully determined was unnecessary. This determination is a legislative function to be exercised exclusively by the county, not the court.

"Taxation is a legislative function and not a judicial function. It is proper therefore that courts should not substitute their judgment for that of the taxing authorities and should not interfere with them except in cases of constructive fraud." *Helmsley v City of Detroit, Mich*, 320 F.2d 476, 480 (6th Cir 1963) (*citing Hudson Motor Car Co v City of Detroit*, 282 Mich 69, 79; 275 NW 770 (1937)). The doctrine of the separation of powers mandates that the courts not take action in this matter.

B. Discretionary Acts May Not be Compelled by the Court

The legislature granted counties the discretion to determine on an annual basis what amount of taxes should be levied and how they should be apportioned. The legislature did not provide a means for the court to step in and dictate through mandate how much the county should levy.

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With respect to either executive or legislative functions, there is a distinction between discretionary and ministerial acts and duties. It is generally understood that discretionary acts of the legislature or executive may not be compelled by mandamus, but ministerial acts may be compelled by mandamus. 12 Mich Pl & Pr § 94:50 (2d ed) ("The long-settled principle is that where nothing remains to be done by a board or commission except to perform a ministerial act that the board or commission will not perform, mandamus will lie to compel its performance. However, the exercise of discretion will ordinarily not be interfered with."). The difficulty comes in determining what acts are purely ministerial, and thus potentially subject to mandamus. "An act is 'ministerial' in nature, for purposes of mandamus, **if it is prescribed and defined by law with such precision and certainty as to leave nothing to the exercise of discretion or judgment**." *Carter v Ann Arbor City Attorney*, 271 Mich App 425; 722 NW2d 243 (2006) (emphasis added).

In *People ex rel Sutherland v Governor*, 29 Mich 320 (1874), Justice Cooley wrote at length about the importance and role of separation of powers in this country and state's government. He stated that "the very apportionment of power to one department is understood to be a prohibition of its exercise by either of the others." 29 Mich at 325. The court further noted that "it would be readily conceded that no court can compel the Legislature ... to take any action whatsoever, though the duty to take it be made ever so clear by the constitution or the laws." 29 Mich at 326. While this case was with respect to the separation of executive and judicial powers, the analysis guides us here. The Court determined that while there were some duties of the executive that could be described as being "ministerial" in nature, it "would be presumptuous" for the court to assume these duties assigned to the executive by the constitution or the legislature were "not essentially executive." 29 Mich at 329. In other words, because the executive receives his duties from the constitution and laws made by the legislature, the court's

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presumption should be that those duties are essentially executive, and not merely ministerial in nature. To do otherwise, and step in to grant writs of mandamus, would be overstepping their bounds and crossing into the realm of power that the people "either directly or by the action of their representatives, decided to entrust to the other departments of the government." *Id.* The court concluded that "in a case where jurisdiction is involved in doubt it is not consistent with the dignity of the court to pronounce judgments which may be disregarded with impunity, nor with that of the executive to place him in position where, in a matter within his own province, he must act contrary to his judgment, or stand convicted of a disregard of the laws." 29 Mich 330.

Similarly, here, the county board is an extension and creation of the legislature. It has been given certain duties and authority within its jurisdiction: the county of Hillsdale. The state legislature entrusted in the counties the power and discretion to determine their own annual budgets and how much money to be raised by taxation each year. This court would be overstepping its constitutionally and legislatively granted powers if it entered an order to compel Hillsdale County to levy the tax at an amount certain, as that determination is exclusively within the county's discretionary legislative power. The County was granted authority by the state legislature to levy taxes. As the tax levying body, the county has "considerable discretion" to determine how much to levy. Cooley on Taxation (4th Ed) § 1031 ("In fixing the amount or rate, the levying body has considerable discretion. The rate necessary to produce the amount required is largely within the discretion of levying officers, since it is uncertain what the deficiencies in the collection will amount to.") (quoted by *Burnett v City of Grand Rapids*, 264 Mich 593, 594; 250 NW 320 (1933)). Thus, as a discretionary duty, mandamus should not lie.

This Court has held that "[t]he levying of municipal taxes is a matter of municipal prerogative and concern to be exercised by the proper authorities of the" municipality. *Lucking v People*, 320 Mich 495, 504; 31 NW2d 707 (1948). The Court further noted that "[t]he court in

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chancery cannot substitute its judgment for that of the proper municipal authorities … as to whether taxes should be levied…." *Id.* It has also clearly acknowledged that the constitutionally granted authority to tax is a legislative power, not a judicial one. *46th Circuit Trial Court v Crawford County*, 476 Mich 131 (2006) ("Perhaps the most fundamental aspect of the 'legislative power,' authorized by the opening sentence of U.S. Const., art. I, § 8, which defines the powers of the legislative branch, is the power to tax and to appropriate for specified purposes."). Moreover, this Court has held that absent "mistake or abuse of discretion amounting to fraud," the general rule is that the determination of those municipal officers who have discretion to determine levies "should be treated as conclusive." *McKee v City of Grand Rapids*, 203 Mich 527, 536; 170 NW 100, 103 (1918) ("It is accepted as a general rule that the determination of municipal officers in whom discretion is vested to decide upon assessment district and levys of assessments should be treated as conclusive in the absence of mistake or abuse of discretion amounting to fraud.").

Other states have similarly held that the discretionary levy of a tax is not for the judiciary to determine or compel. In *Griffin v. Bd. of Sup'rs of Prince Edward County*, the Virginia supreme court found that granting the requested writ of mandamus to compel the levy and assessment of taxes "would mean that this court may substitute its discretion for that vested by law in the local legislative body," something "[c]learly" not allowed "under the division of powers embodied in" Virginia's Constitution. 203 Va 321, 329, 124 SE2d 227, 233 (1962). "Since the early days of the Commonwealth, we have repeatedly pointed out that the exercise of the power of taxation is a legislative function." *Griffin*, 203 Va at 328 (*citing* 18 Mich Jur, Taxation, § 5, p 127 *ff*). "It is firmly settled in [Virginia] that mandamus is the proper remedy to compel the performance of a purely ministerial duty, but does not lie to compel the performance of a discretionary duty." *Griffin*, 203 Va at 328 (*citing* 12 Mich Jur, Mandamus, § 6, p 340 *ff*).

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Similarly, the courts in Washington have held that "mandamus will lie to compel a ministerial act." *Eugster v City of Spokane*, 118 WashApp 383, 408 (2003). However, while mandamus might be appropriate to compel the county commissioners to exercise their ministerial duties, it is not appropriate to direct them how to exercise such duties. *Eugster*, 118 WashApp at 409 ("mandamus tells the respondent what to do, but not how to do it").

II. PLAINTIFF-APPELLANTS' REQUESTED RELIEF ELIMINATES TAXING BODIES' DISCRETION TO DETERMINE ANNUAL BUDGET NEEDS

A. Granting Plaintiff-Appellants' Requested Relief Will Take Away Local Governments' Discretion in Policy-Making

To grant Plaintiff-Appellants' requested relief or uphold the trial court's ruling would effectively tie the hands of local governments and take away their discretion for policy-making. If a local government is required, or can be forced (especially by a private entity, such as the Hillsdale County Senior Services Center, Inc.), to levy a tax at the full amount authorized by voters, it has lost its discretion for policy-making. The requested relief goes against the established process of municipal budgeting and tax levying. Determining what services to provide and at what level is a policy-making decision that rests with local governments. Annually, local governments determine the services to be provided to their constituents through the budgeting process. Local governments then determine through the budgeting process the number of mills to be levied in taxation and the purpose for which that millage is to be levied. While voters approve local governments' ability to levy taxes for certain purposes and the maximum rates at which those taxes may be levied, it is the local government that determines whether to levy those taxes and at what amounts the taxes should be levied – up to the maximum approved by the voters. The millage rate authorized by voters merely sets the limits or cap up to which the local government may levy.

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This Court needs to preserve the standard process of millage authorization by voters and discretion by the local board to determine and set specific amounts each year. Section 211.24f of Act 206, the General Property Tax Act, provides for counties to request tax millage rates to be authorized by voters. The ability and discretion to determine the county's annual budget is granted to the county board of commissioners by section 211.37 of the General Property Tax Act. MCL 211.37 (providing that the county board of commissioners "*shall* ascertain and determine the amount of money to be raised for county purposes ....") (emphasis added). Thus, pursuant to law and practice, millages are authorized by the voters, and the amount to be levied is determined at the discretion of the county commissioners. The millage rate authorized does not necessarily equal the amount the county commissioners deems necessary to levy. The millage rate authorized merely sets the limit or cap up to which the county commissioners may levy.

Counties are required by statute to determine the annual budget each year. MCL 141.436. The determination of the annual budget is a legislative process and necessitates many policy determinations. Counties are required to pass an annual budget, known as the general appropriations act, for both the general fund and each of the special revenue funds. *Id.* The chief administrative officer of the county prepares a recommended budget and sends it to the county board for approval. MCL 141.434. In preparing and approving the budget, the officer and board determine what services the county will provide and at what levels to provide them. *Id.* Based on that determination, the counties determine what budget will allow for those services to be provided at those levels.

Once the budget is set, the "legislative body [of the counties] *shall* determine the amount of money to be raised by taxation necessary to defray the expenditures and meet the liabilities of the local unit for the ensuing fiscal year, *shall* order that money to be raised by taxation, *within* statutory and charter limitations, and *shall* cause the money raised by taxation to be paid into the

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funds of the local unit." MCL 141.436(6) (emphasis added). Section 16[6] clearly mandates that the "legislative body" of the local unit, or in this case, the Hillsdale County Board of Commissioners, is to determine the amount to levy each year. It also clearly states that this determination must fall within statutory and charter limitations. In the instant case, the senior services millage would be one such statutory limitation that the amount levied must fall within.

If this Court granted plaintiff-appellants the relief they request, this entire statutorily-mandated process would be turned on its head. The court would essentially be amending section 16 of Act 2 of 1968, in particular subsection 6. It would then read (amended language in italics):

> 16[6]: The legislative body shall ~~determine the amount of money to be raised by taxation necessary to defray the expenditures and meet the liabilities of the local unit for the ensuing fiscal year~~ *levy the maximum voter-approved millages*, shall order ~~that money~~ *the maximum voter-approved millages* to be raised by taxation, within statutory and charter limitations, and shall cause the money raised by taxation to be paid into the funds of the local unit.

This changes the entire budgeting process and turns it on its head.

Currently, the process is as such:

What services do we want to provide and at what levels do we want to provide them?	→	How much money will we need to provide those services at those levels?	→	How much will we need to levy (within limits) to raise that amount of money?

This process allows for legislative and policy determinations, as well as economic fluctuations. With the current process, the county can take into consideration the economic stability of its taxpayers, the financial health of the county, and fluctuations in property valuations within the county upon which values millages are levied. The process essentially limits or even eliminates the possibility of waste, as the county will only levy the amounts necessary to provide the services deemed necessary for the year at those levels deemed appropriate.

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On the other hand, if the Court mandates the full-voter-approved amount be levied each year, it would not only tie public officials' hands and take away the county's discretion for policy-making, but also reverse the budgeting process and potentially create waste. The process would become:

What are the maximum voter-approved millages to be levied?	→	How much money will we raise from levying the maximum millages?	→	On what services, and at what level, shall we spend all the money raised?	→	What do we do with any excess money raised?

The last box in this process constitutes the potential waste. This backwards process allows no room for discretion if the county taxpayers are facing economic hardship, and would benefit from a smaller levy. It also results in either extraneous funds (which might be better served in taxpayer pockets) or wasteful spending just to use up those funds.

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B. Duty to Provide Funding for Senior Services is Self-Imposed, thus Discretion on how to Provide Funds for Senior Services Remains With the County

The duty to provide for senior services is neither mandated by the federal or the state government. It is a locally mandated one, mandated only through the actions of the local government. In other words, Hillsdale County's duty to provide funds for senior services is self-imposed. Hillsdale County's board of commissioners proposed and voters approved a millage to raise money to provide services for seniors.

The board of commissioners determines what ballot measures to send to the voters for approval. It stands to reason, then, that the same (or subsequent) board of commissioners also has the ability to determine any amendments to those ballot measures. This discretion lies within the county board of commissioners. The 2008 millage for senior services was approved through 2022, a 14-year term. County services, service levels, and budgets, however, are determined on an annual basis. It makes little sense that a discretionary determination of an annual budget

would necessitate voter approval if that amount fell within the limit of the full millage approved by the voters. The plain language of the ballot proposal shows that the millage approved was a maximum: "Shall the **limitation** on the amount of taxes … be increased for said County by 0.5 mill…?" The 2008 Ballot Proposal (Appellants' Appendix p 45a) (emphasis added). If it were a set amount, rather than just a cap, there would be no need for the word "limitation."

Voters elect the board of commissioners to represent their interests in county matters. Voters also approved a millage cap. It is the board of commissioners' duty to determine how much to levy each year within that cap. To prevent them from fulfilling their duty and mandating a full levy would require the board to exercise their discretion through more wasteful measures: having to conduct annual elections for voters to approve the appropriate millage rates to support their annual budgets. It would be a tremendous waste of resources to require a board of commissioners to seek voter approval every year for a specific amount of taxes to levy (within the voter-authorized millage) for each and every tax-payer funded service.

If applied to all municipalities and taxing units, including cities, townships, villages, and school districts, the result would be economically and practically unsustainable. This would infringe on their legislative powers and taxing units would no longer maintain their statutorily-given discretion to determine annual budgets and tax rates. Tax rates would essentially have to be approved annually by voters, and each taxing unit would potentially be subject to a court-mandated levy.

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CONCLUSION AND RELIEF REQUESTED

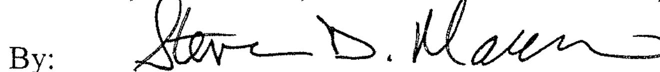
This appeal involves an issue of great significance to the jurisprudence of this State and to every local governmental entity in Michigan. Local governments have long practiced their discretion in determining the annual budgets necessary for their purposes. This discretion was granted to them by the state legislature. Giving the Court the authority to mandate a levy effectively removes the county board of commissioners' right to this discretion, and violates the separation of powers doctrine.

The county and other taxing units have statutorily granted discretion to determine annual budgets and tax rates. Affirming the trial court's decision and granting Plaintiff-Appellants' requested relief would result in tremendous waste. For these taxing units to have to return to voters annually for approval of their annual budget determinations would be a waste of taxpayer time and money to cover the costs of running such voting sessions.

For the reasons set forth above, Amici Curiae respectfully request that this Court deny Plaintiff-Appellant's requested relief and hold that the courts lack authority in cases such as this to compel a municipality through mandamus to levy a tax.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: 

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