

# Headlee Amendment Enforcement:

Taxpayers for Michigan Const. Govt.

v.

State of Michigan



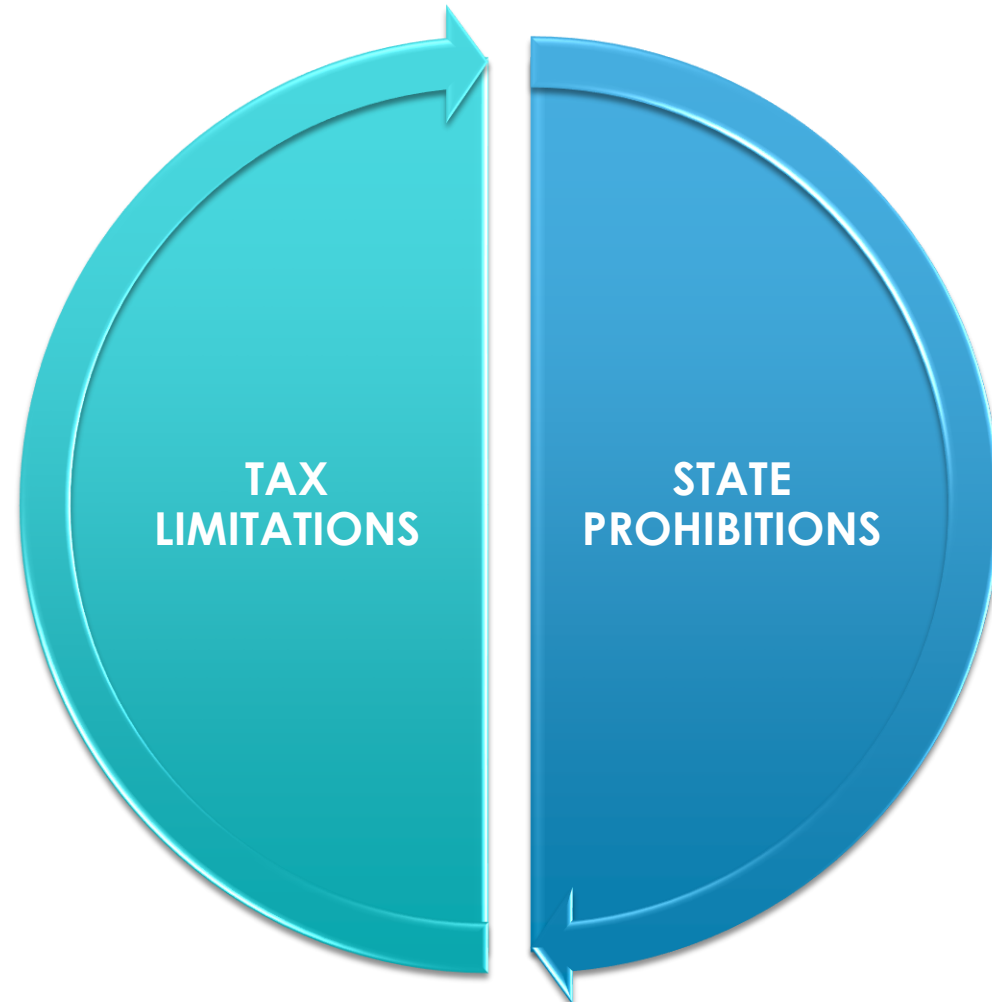
JOHN C. PHILO

SUGAR LAW CENTER FOR ECONOMIC & SOCIAL JUSTICE

DETROIT, MI

Headlee  
Amendment

Local  
Governments



# Headlee Amendments

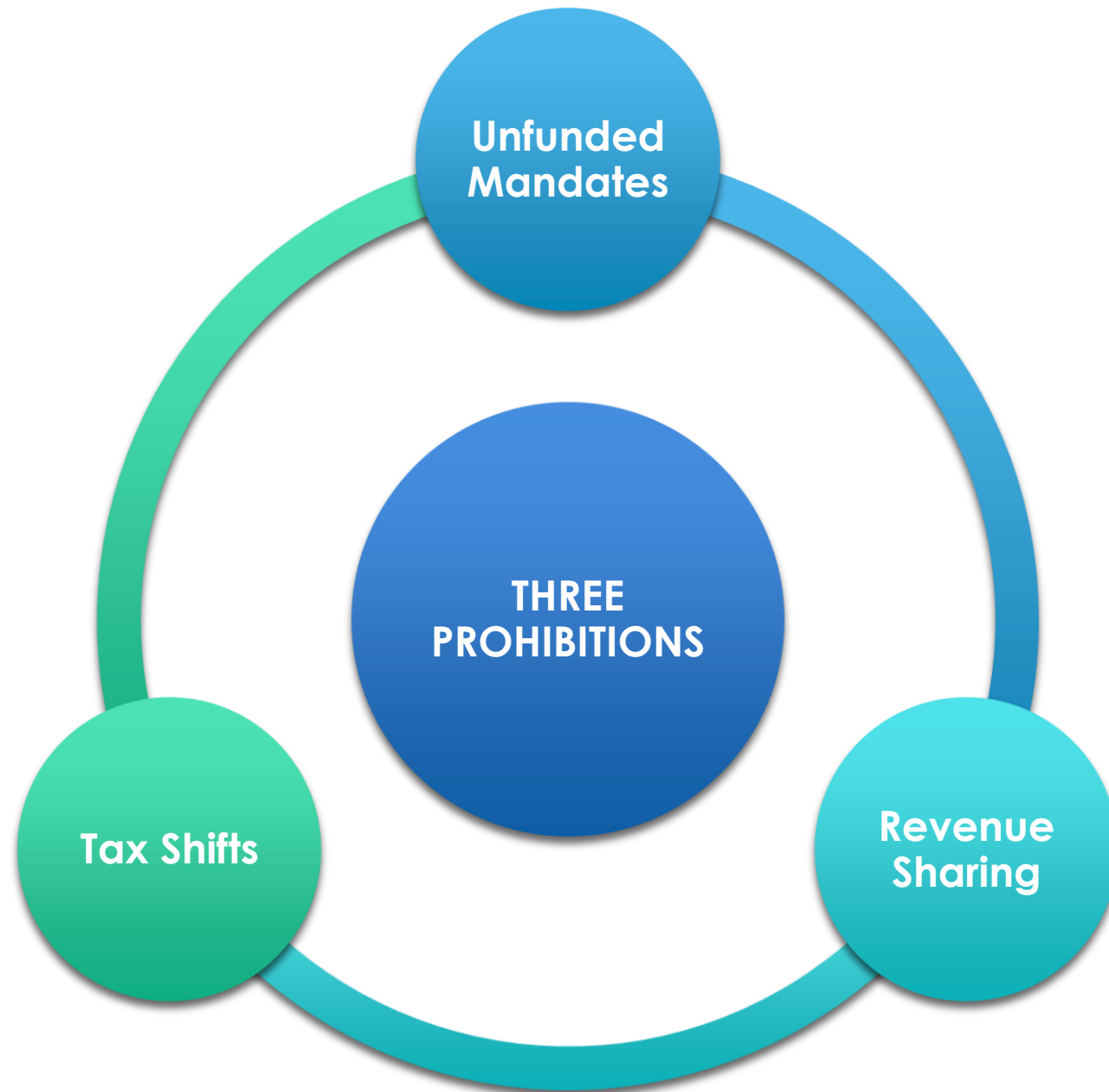
## Local Governments

### Tax Limitations

- ▶ **Article IX § 25**
  - ▶ Local taxes capped, voter approval to exceed
- ▶ **Article IX § 31**
  - ▶ Prohibition on any new tax not authorized by law/charter in 1978 without voter approval
  - ▶ Prohibition from increasing the rate of an existing tax above 1978 rate without voter approval
  - ▶ Limitations on broadening base of existing tax/assessed property value increases

### State Prohibitions

- ▶ **Article IX § 25**
  - ▶ Prohibition on unfunded state mandates
  - ▶ State prohibited from reducing the proportion of state spending in the form of aid paid to local governments
  - ▶ State prohibited from shifting the tax burden to local government
- ▶ **Article IX § 29**
  - ▶ Prohibition against reducing the state financed proportion of the necessary costs of any existing activity required of Local Government by state law
  - ▶ Prohibition on unfunded state mandates
- ▶ **Article IX § 30**
  - ▶ Proportion on reducing state payments to all units of Local Government, taken as a group, below the proportion existing in 1978-79



# State Prohibitions:

## Unfunded State Mandates

**§ 25 Voter approval of increased local taxes; prohibition of state financing without direct voter approval; implementation of section.**

Sec. 25.

Property taxes and other local taxes and state taxation without direct voter approval. The state is prohibited from state financing, from reducing the proportion of state share of the burden to local government. A provision for emergency indebtedness is guaranteed. Implementation of this section.

“...The state is prohibited from requiring any new or expanded activities by local governments without full state financing...”

Article IX § 25

**§ 29 State financing of activities or services required of local government by state law.**

Sec. 29.

The state is hereby prohibited from reducing the state share of the costs required of units of Local Government by state law. Any increase beyond that required by existing law shall not be required unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs...

“...state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of Local Government ...”

Article IX § 29

“...A new activity ... or an increase in the level of any activity or service ... shall not be required ... of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs...”

Article IX § 29

# State Prohibitions:

## Preservation of Revenue Sharing

**§ 25 Voter approval of increased local taxes; prohibitions; emergency conditions; repayment of bonded indebtedness guaranteed; implementation of section.**

Sec. 25.

Property taxes and other local taxes shall not be increased without direct voter approval. The state, in its role of state financing, from reducing the burden to local government. A guarantee of bonded indebtedness is guaranteed. Im

“...The state is prohibited ... from reducing the proportion of state spending in the form of aid to local governments ...”

Article IX § 25

ified herein  
without full  
the tax  
bonded  
e.

**§ 30 Reduction of state spending paid to units of local government.**

Sec. 30.

The proportion of total state spending paid to all units of local government, taken as a group, shall not be reduced below that proportion in effect in fiscal year

“The proportion of total state spending paid to all units of Local Government, taken as a group, shall not be reduced below that proportion in effect in fiscal year 1978-79.”

Article IX § 30

uced below that

# Shifting The Tax Burden to Local Government

Sec. 25.

Property taxes and other local taxes and state taxation and spending may not be increased above the limitations specified herein without direct voter approval. The state is prohibited from requiring any new or expanded activities by local governments without full state financial burden and debt.

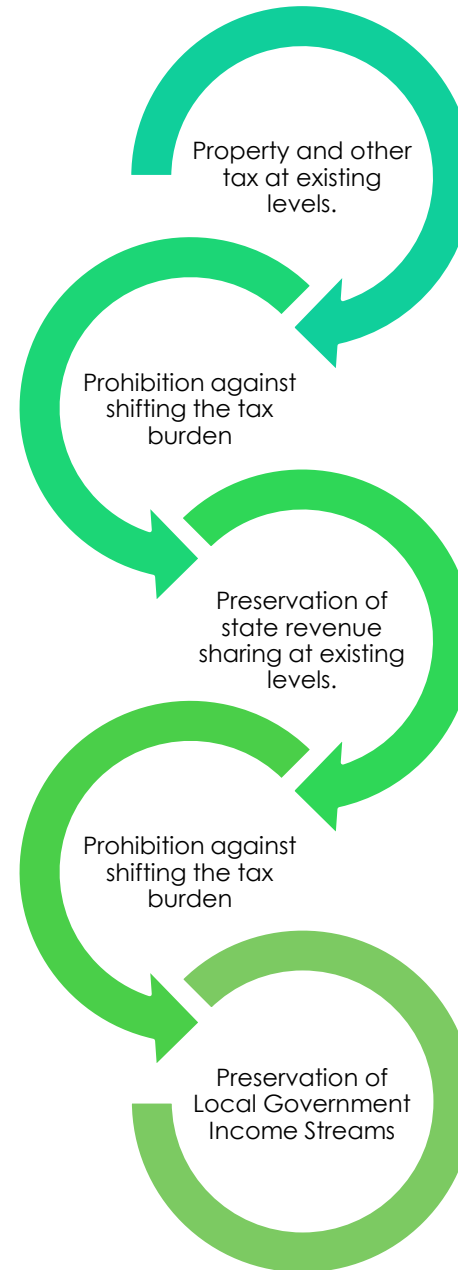
“... The state is prohibited ...  
from shifting the tax burden to  
local government ...”

Article IX § 25

# Headlee Amendment

## Local Governments

### Balanced Framework





### Own Source Revenue: Michigan Municipalities

	2002	2007	2012
Own Source Revenue (millions)	\$5,564	\$6,693	\$6,288

### Federal Revenue: Michigan Municipalities

	2002	2007	2012
Federal Revenue (millions)	\$608	\$479	\$670

### Municipal General Revenue, 2002-2012

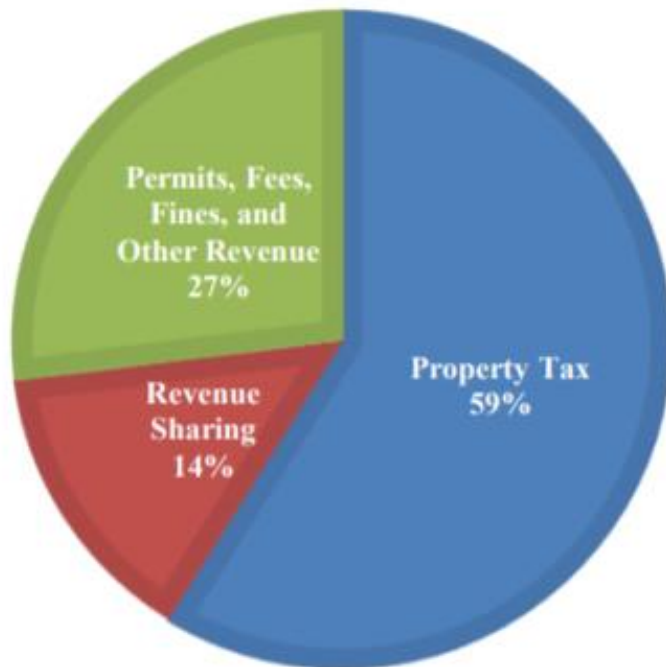
	Michigan	Ohio	United States
Change 2002 to 2012	-8.5%	25.4%	48.9%
National Rank	50th	49th	

### State Revenue: Michigan Municipalities

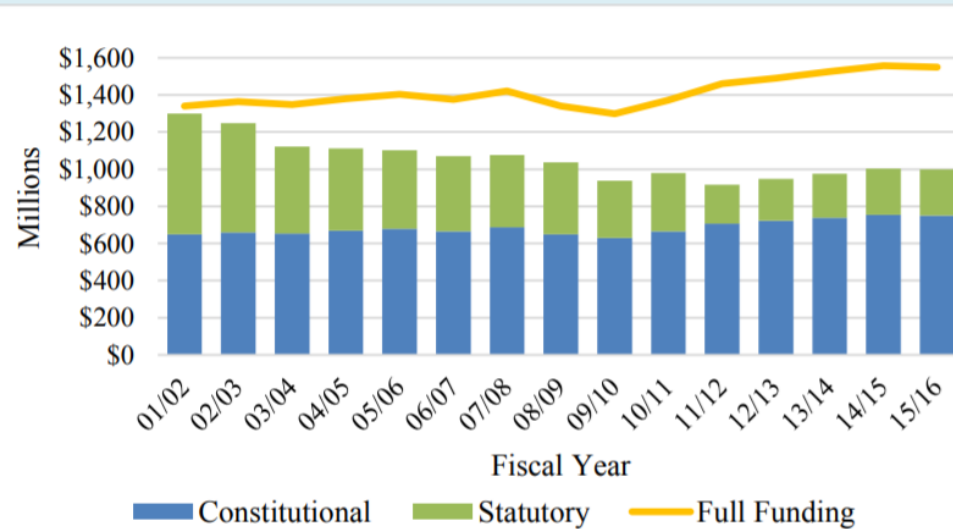
	2002	2007	2012
State Revenue (millions)	\$3,098	\$1,563	\$1,333
	2002-2007	2007-2012	2002-2012
Change MI	-49.6%	-14.7%	-57.0%
Change US	16.1%	6.6%	23.8%
National Rank	50	43	50

## MUNICIPAL GENERAL REVENUE BY SOURCE (2014)

\*EXCLUDES INCOME TAX CITIES



## Total Revenue Sharing to Cities, Villages, and Townships



Statutory revenue sharing is estimated to be \$585 million below the full funding of the statutory dedication. Since Proposal A in 1994, the cumulative amount of cuts to statutory revenue sharing for cities, villages, and townships is estimated to be **more than \$5.5 billion.**

# John Mogk

Professor, Wayne State University, Law School

Nick Guttman



Bob Sedler



Tracy Peters



# TPMCG v. State of Michigan

## ▶ Article IX § 30

The **proportion of total state spending paid** to all units of Local Government, taken as a group, **shall not be reduced below that proportion in effect in fiscal year 1978-79.**

# TPMCG v. State of Michigan

- ▶ Annually constitutional proportion is determined by:

**NUMERATOR**

(Total State Spending Paid to Local  
Units of Gov't in the form of Aid)

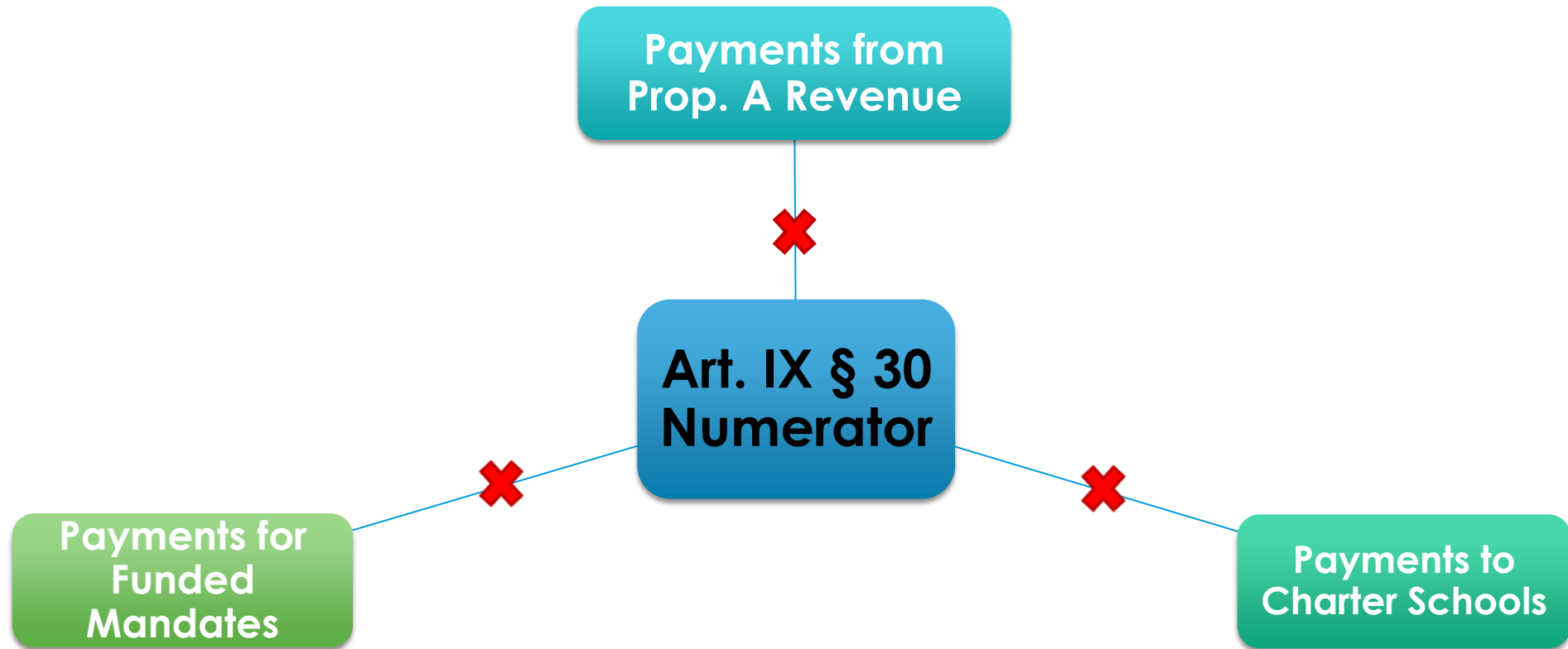
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**DENOMINATOR**

(Total State Spending from  
State Sources)

$\geq 48.97\%$

# TPMCG v. State of Michigan



## Payments from Prop. A Revenue

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.

- ▶ **When included in the numerator**, payments from Prop. A revenue are an impermissible tax shift, prohibited by Art. IX, § 25

## Payments from Prop. A Revenue

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.

### DRAFTERS NOTES

#### Section 25

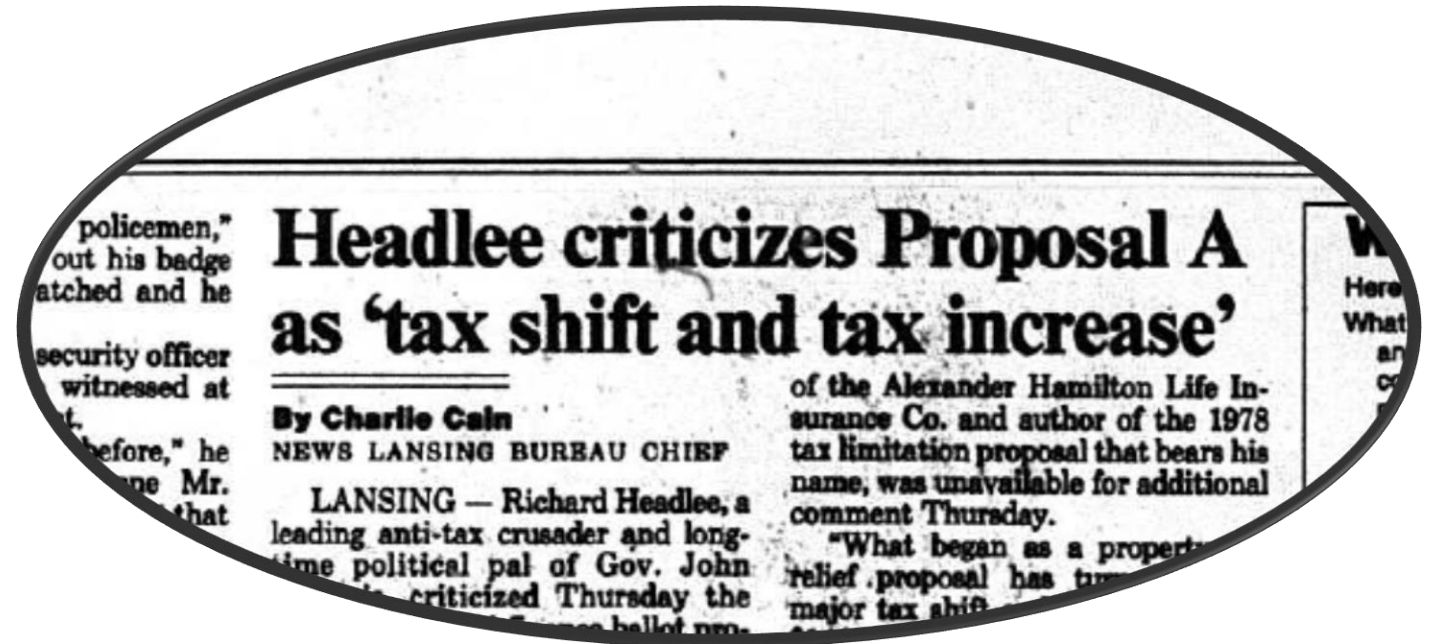
Section 25 **specifically prohibits** the state **from circumventing the intent** of the amendment **by shifting tax burdens** from the state to local governmental levels.

**Any action** by the state **which would result, directly or indirectly, in increased local taxation through a shift** in funding responsibility **is clearly prohibited by this Section.**



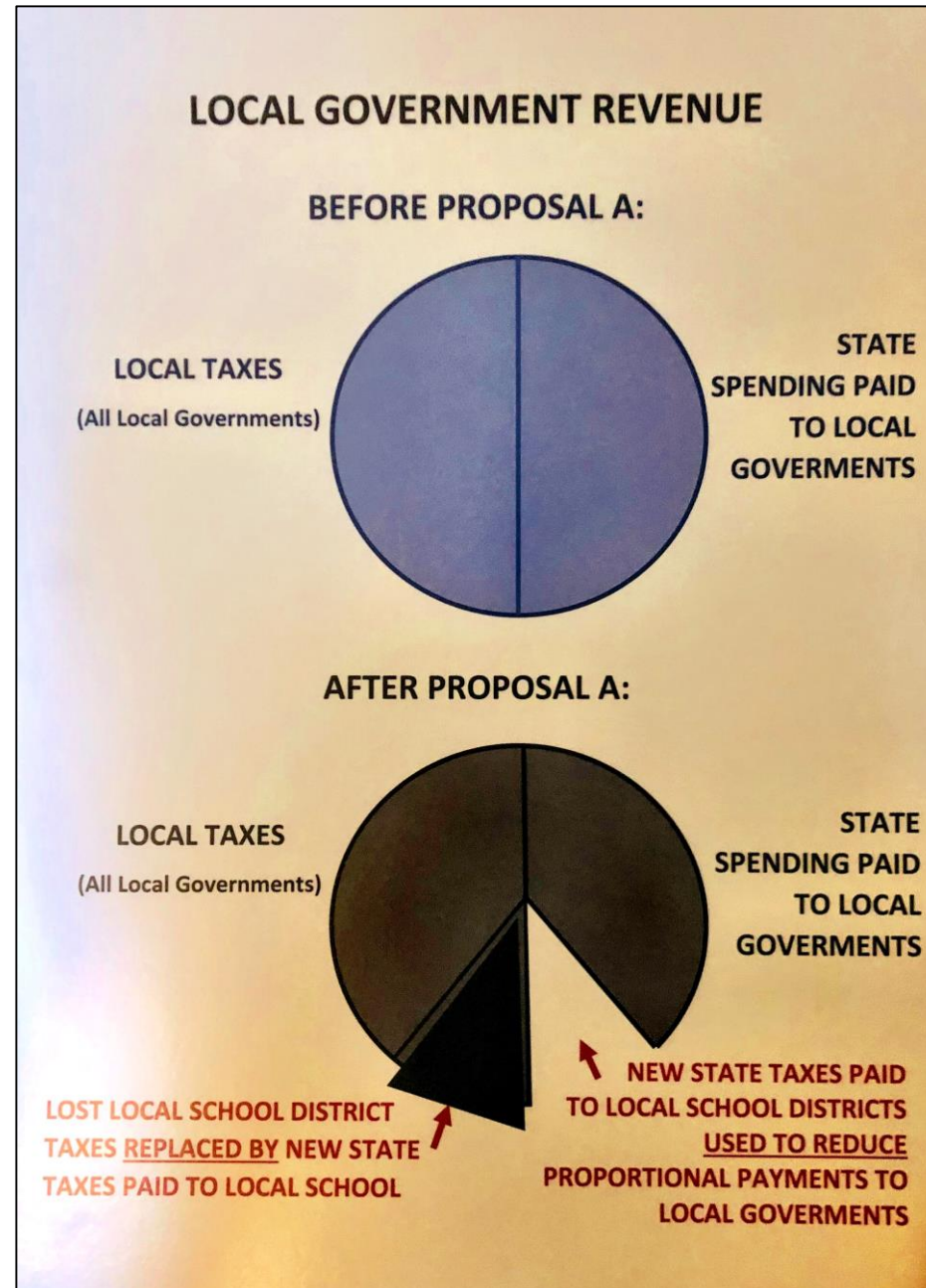
## Payments from Prop. A Revenue

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.



# Payments from Prop. A Revenue

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.



## Payments to Charter Schools

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.

- ▶ **State pending included in the numerator**, can only include payments to units of local government. Art. IX, § 30
- ▶ Charter schools **are not units of local government** as defined by Art. IX, § 33

## Payments to Charter Schools

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.

Sec. 33.

**“Local Government”** means **any political subdivision** of the state, **including**, but not restricted to, **school districts**, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government.

## Payments to Charter Schools

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.

- ▶ Charter schools, by law, are *required to be private nonprofit corporations*. MCL 380.502
- ▶ A constitution is made for the people and by the people. The interpretation that should be given it is that ... **most obvious to the common understanding** [at the time it was ratified] - Justice Thomas Cooley

## Payments to Fund State Mandates

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.

- ▶ **When included in the numerator**, payments to fund new state mandates (after 1978) defeat the purpose of Art. IX, § 29 and Art. IX, § 30

# Payments to Fund State Mandates

Cannot be included within  
the numerator for determining  
the Article IX § 30  
constitutional proportion.

## DRAFTERS NOTES

### Section 29

This section requires **reimbursements** to local units for necessary **new costs for all state mandates** ... The state is **prohibited from reducing the state financed proportion of specific existing activities or services** below the proportion funded by the state in the base year.

### Section 30

**Additional or expanded activities mandated by the state**, as described in Section 29 would tend to **increase the proportion of total state spending paid** to local government above that level in effect when the section becomes effective.



# Annual Report of Funded State Mandates

MCL 21.235.

21.235 Disbursements to local units of government; appropriation; purpose; schedule of estimated payments; duty of governor; prorating amount appropriated; supplemental appropriation; administration of act; personnel; guidelines; forms.

\* \* \*

(3) The governor **shall** include in a **report ... those amounts ... [of] disbursements to each local unit of government for the necessary cost of each state requirement for that fiscal year and the total amount of state disbursements required for all local units of government.**

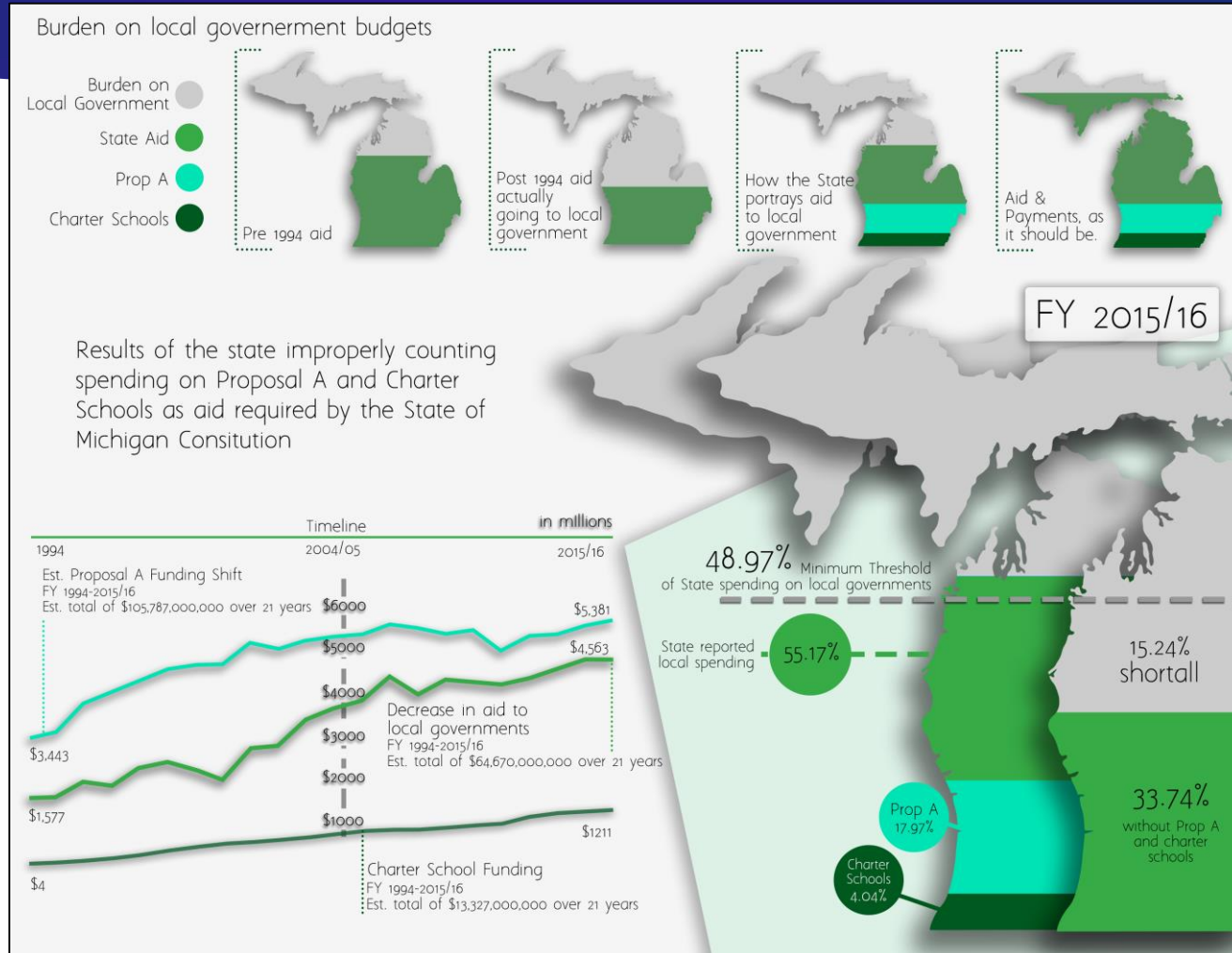


# Shortfall in Art. IX §30 Payments

**TABLE D: SHORTFALLS IN ADJUSTED STATE PAYMENTS INCREASE SINCE PROPOSAL A**

	State Source Spending <u>(millions)</u>	Local Payments <u>(millions)</u>	Required Payments 48.97% <u>(millions)</u>	Percent <u>Total</u>	Est. Proposal A Funding Shift <u>(millions)</u>	Charter Schools <u>(millions)</u>	Adjusted Local Spending <u>(millions)</u>	Percent Adjusted State Spending	Shortfall in Local Payments <u>(millions)</u>
<b>FY 2015-16</b>	\$29,943	\$16,692	\$14,663	55.75%	\$5,381	\$1,211	\$10,100	33.7%	(\$4,563)
<b>FY 2014-15</b>	\$29,524	\$16,313	\$14,458	55.25%	\$5,375	\$1,181	\$9,757	33.0%	(\$4,701)
<b>FY 2013-14</b>	\$28,301	\$15,701	\$13,859	55.48%	\$5,368	\$1,144	\$9,189	32.5%	(\$4,670)
<b>FY 2012-13</b>	\$27,313	\$15,369	\$13,375	56.27%	\$5,334	\$1,053	\$8,981	32.9%	(\$4,394)

# Shortfall in Art. IX §30 Payments



# Court of Appeals: State Mandates

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STATE OF MICHIGAN  
COURT OF APPEALS

TAXPAYERS FOR MICHIGAN  
CONSTITUTIONAL GOVERNMENT, STEVE  
DUCHANE, RANDALL BLUM, and SARA  
KANDEL,

Plaintiffs,

v

STATE OF MICHIGAN, DEPARTMENT OF  
TECHNOLOGY, MANAGEMENT AND  
BUDGET and OFFICE OF AUDITOR  
GENERAL,

Defendants.

FOR PUBLICATION  
July 30, 2019  
9:00 a.m.

No. 334663  
Original Action

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

BORRELLO, P.J

Taxpayer-plaintiffs bring this original action to enforce § 30 of the Headlee Amendment<sup>1</sup>, which prohibits the State from reducing the total of state spending paid to all units of local government, taken as a whole, below that proportion in effect in fiscal year 1978-1979. Const 1963, art 9, § 30. The parties agree that the proportion of state spending to be paid to all units of local government taken collectively under § 30 is 48.97 percent. They disagree, however, with

<sup>1</sup> Plaintiffs also seek to enforce § 25 of the Headlee Amendment, Const 1963, art 9, § 25. However, § 25 of the Headlee Amendment is an introductory paragraph to the Amendment that summarizes the revenue and tax limits imposed on the State and local governments by the other provisions of the Amendment. *Durant v State of Michigan*, 456 Mich 176, 182-183; 566 NW2d 272 (1997); *Waterford School District v State Board of Education (After Remand)*, 130 Mich App 614, 620; 344 NW2d 19 (1983), aff'd 424 Mich 364 (1985). The introductory sentences found in § 25 are not intended "to be given the substantive effect of creating specific rights and duties." *Waterford School District*, 130 Mich App at 620.

**“[W]e grant summary disposition to plaintiff’s on Count IV and declare that pursuant to §29, funding for new or increased state mandates may not be counted for purposes of §30. Finally, we grant mandamus relief and direct the State, and its officers and departments, to comply with the reporting and disclosure requirements of MCL 21.235(3) and MCL 21.241.”**

# Court of Appeals: State Mandates

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**“If state spending to fund new state-mandates under § 29 may be included in the State’s calculation of the proportion ... under § 30, then § 29 state funding for new mandates would supplant state spending intended for local use and, thereby, allow funding for new mandates to serve two conflicting purposes, i.e., to fund new state mandates as well as to the 1978-1979 level of state funding to local governments. This double-duty would force units of local government to choose between cutting services or raising taxes to make up for the funds lost to pay for the necessary costs of new mandates. Such a result is at odds with ... the Headlee Amendment.”**

# Court of Appeals: Prop. A Revenue

“[T]he voters intended, as revealed in the plain language of § 30, that the State be free from time to time to rebalance how § 30 revenue sharing is distributed among “all units of Local Government, taken as a group” so long as the overall proportion of funding remains at the constitutionally-mandated level. The inclusion of Proposal A funding in § 30 spending reflects a constitutionally sanctioned rebalancing of the distribution of that revenue sharing.”

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COURT OF APPEALS

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DUCHANE, RANDALL BLUM, and SARA  
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TECHNOLOGY, MANAGEMENT AND  
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GENERAL,

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# Court of Appeals: Charter Schools

**“We conclude, however, that state funding of PSAs constitutes funding of a local unit of local government for the purpose of calculating state aid under the Headlee Amendment.”**

- **“in light of the Revised School Code, MCL 380.1 et seq., which provides that “[a] public school academy ... is a school district for purposes of section 11 of article IX of the state constitution of 1963”; and**
- **“the School Aid Act, MCL 388.1601 et seq., includes PSAs in the definition of “district.””**

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## STATE OF MICHIGAN COURT OF APPEALS

PLAINTIFFS FOR MICHIGAN  
CONSTITUTIONAL GOVERNMENT, STEVE  
BLUM, RANDALL BLUM, and SARA

Plaintiffs,

FOR PUBLICATION  
July 30, 2019  
9:00 a.m.

No. 334663  
Original Action

STATE OF MICHIGAN, DEPARTMENT OF  
BUDGET, MANAGEMENT AND  
FINANCE, and OFFICE OF AUDITOR  
GENERAL

Defendants.

BORRELLO, P.J., and METER and SHAPIRO, JJ.

O, P.J.

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Plaintiffs also seek to enforce § 25 of the Headlee Amendment, Const 1963, art 9, § 25. Section 25 of the Headlee Amendment is an introductory paragraph to the Amendment that sets the revenue and tax limits imposed on the State and local governments by the other provisions of the Amendment. *Durant v State of Michigan*, 456 Mich 176, 182-183; 566 NW2d 777 (1997); *Waterford School District v State Board of Education (After Remand)*, 130 Mich App 620; 344 NW2d 19 (1983), aff’d 424 Mich 364 (1985). The introductory sentences found in § 25 are not intended “to be given the substantive effect of creating specific rights and duties.” *Waterford School District*, 130 Mich App at 620.



# Court of Appeals Concurrence: Charter Schools

**“I would find that a Public School Academy (PSA) is neither a “political subdivision of the state,” generally, nor a “school district,” specifically, within the meaning of § 33 and, thus, is not a species of local government for purposes of § 30.”**

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COURT OF APPEALS

TAXPAYERS FOR MICHIGAN  
CONSTITUTIONAL GOVERNMENT, STEVE  
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STATE OF MICHIGAN, DEPARTMENT OF  
TECHNOLOGY, MANAGEMENT AND  
BUDGET and OFFICE OF AUDITOR  
GENERAL,

Defendants.

FOR PUBLICATION  
July 30, 2019

No. 334663  
Original Action

Before: BORRELLO, P.J., and METER and SHAPIRO, JJ.

METER, J. (*concurring in part/dissenting in part*).

I concur with the majority of my colleagues’ well-reasoned analysis. I dissent, however, from the majority’s analysis of Count II of plaintiffs’ complaint. As noted in the majority opinion, Const 1963, art 9, § 30 provides that the “proportion of total state spending paid to all units of Local Government, taken as a group, shall not be reduced below that proportion in effect in fiscal year 1978-79.” The term “Local Government” is defined by Const 1963, art 9, § 33 as “any political subdivision of the state, including, but not restricted to, school districts, cities, villages, townships, charter townships, counties, charter counties, authorities created by the state, and authorities created by other units of local government.” I would find that a Public School Academy (PSA) is neither a “political subdivision of the state,” generally, nor a “school district,” specifically, within the meaning of § 33 and, thus, is not a species of local government for purposes of § 30. Because a PSA is not a species of local government, state spending paid to a PSA is not state spending paid to a unit of local government and § 33 bars the state from classifying it as such.

# Paquin v City of St Ignace: Charter Schools

\_ Mich \_ (July 8, 2019)

**“Nowhere in our Constitution does it state that local-government equivalency suffices; the provision simply states “local . . . government.” It is thus irrelevant to note all of the functions that the Tribe provides that are similar to that of, for example, the city of St. Ignace—that the two entities function similarly in some respects does not make them the same.”**

Michigan Supreme Court  
Lansing, Michigan

OPINION

Chief Justice:  
Bridget M. McCormack

Justices:  
Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh

Chief Justice Pro Tem:  
David F. Viviano

FILED July 8, 2019

STATE OF MICHIGAN  
SUPREME COURT

FRED PAQUIN,  
Plaintiff-Appellant,  
v  
CITY OF ST. IGNACE,  
and Defendant-Appellee,  
ATTORNEY GENERAL,  
Intervening Appellee.

No. 156823

BEFORE THE ENTIRE BENCH  
BERNSTEIN, J.

This case requires us to examine the language of our state Constitution; specifically, we are concerned with whether a tribal government constitutes “local . . . government” under Const 1963, art 11, § 8. We hold that it does not. Accordingly, we reverse the





Current Status