

TO: Government Law Section Amicus Committee

FROM: Eric D. Williams

DATE: 06/___/2024

RE: Update on GLS Amicus Committee Actions Since June 2023

MEMORANDUM

GLS was invited or permitted to submit amicus curiae briefs in 5 cases since June 24, 2023. Of those 5 cases, the Government Law Selection approved and completed the submission of 2 amicus briefs jointly with the Michigan Municipal League:

Jostock v Mayfield Township and **A2B Properties**, in which the Supreme Court invited the MTA, MML, GLS, and the Real Property Law Section to file amicus briefs answering (1) whether MCL 125.3405 allows for uses not otherwise authorized in a particular zone; (2) what mechanism was used to authorize the current use as a dragway, and whether that mechanism is available to authorize or expand the use of the appellant's property; (3) whether operation of the dragway is an authorized use under C-2; and (4) whether the township's conditional rezoning of the appellant's property is valid under MCL 125.3405. GLS answered: (1) No (2) Nonconforming use and Conditional Rezoning Agreement (3) No (4) Yes; validity should be determined by the Township Zoning Board of Appeals. Oral argument was heard on **Jostock v Mayfield** on April 17th. The Court has not decided on the case yet.

Sakorafos v Lyon Township and **Dandy Acres**, in which the Supreme Court granted a joint motion filed by GLS and MML to submit an amicus brief supporting neither party, but instead asking the Supreme Court to vacate certain language from the

Court of Appeals' opinion that allows for private citizens to establish standing to bring a public nuisance action by using the aggrieved party status rather than the special damages standard. GLS and MML argued that the Supreme Court should reclarify that private citizens must establish special damages that differ in kind and degree from others in the community in order to have standing to bring a public nuisance action. The amicus brief was accepted for filing by the MSC on April 3, 2024.

GLS may join the MML in authoring an amicus brief in **Midwest Valve & Fitting Company v City of Detroit**, a case revolving around whether certain challenged annual charges billed by the City of Detroit violate: (1) the Headlee Amendment; and/or (2) the Prohibited Taxes by Cities and Villages Act, MCL 141.91. GLS, MML, MTA, and MI Realtors were invited by the Court to file amicus briefs. Appellant's brief was filed on May 19, 2024, Appellee's brief was due June 9 but has not yet been filed; amicus briefs are due 21 days after the Appellee's brief is filed.

GLS has not acted on the Order inviting interested parties to file amicus briefs in **Heos v City of East Lansing**, another case revolving around an alleged Headlee Amendment violation. This case was brought by a citizen of East Lansing, on behalf of all others similarly situated, alleging certain fees on a utility bill to be a tax that was not voted on by the citizens. The Supreme Court has invited interested parties to file amicus briefs addressing: (1) the criteria for determining when a pass-through fee imposed by a local government on a business or utility should be considered a tax paid by a customer; (2) whether, in the context of a utility rate, a utility customer may challenge an improper pass-through fee as an improper rate in an action against the utility; (3) if so, what effect,

if any, the availability of that challenge has on the analysis and governing timelines for a customer pursuing recovery from a local government of an improper fee paid to the utility; (4) what authority provides the plaintiff with standing to pursue recovery of an improper tax under MCL 141.91; and (5) whether there is case law supporting the plaintiff's argument that the six-year period in MCL 600.5813 applies to his MCL 141.91 claims, and if there is any case law supporting a different period of limitations. The MSC ordered supplemental briefs by the parties. Appellant's supplemental brief was filed on June 6, Appellee's brief is due June 27, and amicus briefs are due 21 days after Appellee's brief is filed.

On May 29, 2024, the Michigan Supreme Court invited the Michigan Townships Association and GLS to file amicus briefs in the case of **Village of Kalkaska v Michigan Municipal League Liability and Property Pool**. The Village of Kalkaska implemented a lifetime benefits program for its employees in 1996 and discontinued the program in 2015 by way of a resolution. The employees whose benefits were discontinued sued the Village for breach of contract and the Village sued the MMLLPP for failing to cover the judgment and settlement costs. At issue in this case is (1) whether the insurance policy provides coverage for the claims at issue that arose from the appellee's 2014 Resolution Discontinuing Trust and Agency Fund and Retirees' Health Insurance; and (2) whether the Court of Appeals correctly reversed and remanded for entry of judgment for the appellee. Supplemental briefs were requested by the MSC on May 29, 2024 but neither party has filed a supplemental brief yet.

Copies of the Supreme Court Orders and the GLS amicus briefs are attached.

GLS authorized an amicus brief in **Pinewood Circle v City of Romulus**, an appeal from the MTT, but GLS's participation was not relayed to the author and GLS was not included as an amici. The amicus brief was filed jointly by the MTA and the MML on March 13th.

Cullen Harkness, Albion City Attorney and member of the MAMA listserv, mentioned **Mars Herbs LLC et al v Leoni Township** as a potential amicus brief that will address whether the Right to Farm Act preempts a Township's Zoning Ordinance under the MMFLA and MRTMA. The Court has not issued an Order for briefs in this case.

GLS Meetings:

March 2, 2024 - GLS authorized participation in Pinewood Circle amicus brief

February 9, 2024 - GLS authorized participation in Sakorafos amicus brief

January 6, 2024 - GLS authorized participation in Jostock amicus brief