TO: Government Law Section Council

FROM: Eric D. Williams, GLS Amicus Committee Chair

DATE: June 24, 2025

RE: *Update on GLS Amicus Actions since May of 2024*

MEMORANDUM

The Government Law Section received ten direct, or indirect, requests for amicus curiae briefs from May 1st, 2024 through June 24th, 2025. Of these ten requests, the GLS Council authorized amicus curiae briefs in 5 of the cases, 4 of which were submitted jointly with the MML.

Title*: Heos v City of East Lansing , MSC #165763*

Status: No GLS amicus brief authorized.

Summary: The Plaintiff/Appellant Heos, individually and on behalf of all others similarly situated, alleged that the City's utility franchise fees, which the providers then passed through to the citizens, were unauthorized taxes in violation of the Headlee Amendment, the Foote Act, and the equal protection clause. The Court of Appeals' reversed and remanded for entry of an order granting summary disposition in favor of the City of East Lansing on all counts. The COA ruled that Plaintiff was not a taxpayer of said fee, therefore the Headlee claim was barred by the statute of limitations and the equitable claims premised on MCL 141.91 were likewise time-barred.

The Amicus Committee considered an amicus brief in *Heos* on May 9th, 2024. Although the Committee recommended that the GLS Council authorize an amicus brief, the Council voted not to participate unless leave was granted. After Justice Bernstein mentioned his interest in the *Heos* case during the 2024 summer conference, the Amicus Committee reconsidered on July 12th, 2024, and recommended that the GLS Council not authorize joint participation in the MML's amicus brief.

Appellate Court decision: The Michigan Supreme Court reversed the judgment of the Court of Appeals, finding that the plaintiff is a tax payer and the City's franchise

fee is a tax, and denied plaintiff's application for leave to appeal in all other respects, remanding to the trial court for further proceedings. Opinion and Order attached, Appendix A.

Title*: Midwest Valve and Fitting v City of Detroit, MSC #165726*

Status: GLS amicus brief authorized, written by Steve Joppich, and filed on July 22, 2024.

Summary: The Appellant Midwest Valve alleged that the City of Detroit's "fire inspection charges" were in violation of the Headlee amendment, the equal protection clause, the city ordinance, the Prohibited Taxes by Cities and Villages Act, and generally unreasonable and unjustly enriching to the City.

The Amicus Committee considered the request for an amicus brief in *Midwest Valve* on May 9th, 2024, and recommended that the GLS Council authorize an amicus brief. Steve Joppich authored the joint MML/GLS/MTA amicus brief filed on July 22nd, 2024; copy attached, Appendix B1.

Appellate Court decision: On December 26, 2024, the Supreme Court affirmed the judgment of the Court of Appeals in favor of Defendant/Appellee City of Detroit, and clarified that the COA incorrectly relied on the fact that plaintiff received a permit and was not legally prohibited from occupying the property and running a business as a benefit received from the charges that distinguished the fee from a tax. Appendix B2. On January 31, 2025, the Supreme Court denied plaintiff's motion for reconsideration. Appendix B3.

Title*: Mars Herbs LLC et al v Leoni Township, COA #370648*

Status: No GLS amicus brief authorized.

Summary: On April 24th, 2024, the Appellee/Leoni Township attorney Cullen Harkness, notified the MAMA listserv of the Plaintiffs' recently filed claim of appeal in the Court of Appeals. Plaintiff/Appellant Mars Herbs alleged that the governing law over the cultivation of marihuana was the Michigan Right to Farm Act, resulting in preemption of the MMFLA, the MRTMA, and local zoning ordinances, making the Township's ordinance a violation of the RTFA by requiring such cultivation to occur in industrial zones rather than agricultural zones. Audrey Forbush forwarded the notice to the Amicus Committee Chair, who requested the Township attorney provide materials for GLS review. The Appellants brief was provided on September 5th, 2024, and the Appellee's brief was provided on September 18th, 2024.

There was no formal amicus request, but on October 4th, 2024, the Amicus Committee Chair reviewed the materials and sent them to Chris Forsyth and Gerry Fisher with a note that the Chair did not see a need for a GLS amicus at this point, but that could change if the COA reversed the lower court's dismissal of the Plaintiff/Appellants' case. The MTA filed an amicus curiae brief written by Robert Thall on November 12, 2024, and afterwards (March 19, 2025) Mars Herbs stipulated to withdraw the appeal.

Appellate Court decision: COA issued an order dismissing appeal on the parties' stipulation on March 21, 2025 (Appendix C).

Title: *Smith v County of Wayne, U.S. Court of Appeals, Sixth Circuit #24-1688*

Status: No GLS amicus brief authorized.

Summary: Plaintiff/Appellant Smith brought a complaint against Wayne County, one of its assistant prosecutors, and multiple members of the local police department alleging violations of rights by the defendants' actions to fabricate evidence and falsely convict him for the 1994 murder of Kenneth Hayes.

The Amicus Committee considered a request for amicus support on November 22nd, 2024, and recommended that the GLS Council not authorize an amicus brief for three primary reasons: (1) the difficulty to argue absolute immunity for prosecutorial misconduct involving the intentional solicitation and presentation of false testimony to obtain a wrongful conviction and incarceration, (2) the narrow focus of the release or waiver of governmental immunity by Wayne County is not a good fit for the broad approach of an amicus brief, and (3) absolute immunity for prosecuting attorneys might be addressed better by PAAM, MAC, or one of the municipal liability pools.

Appellate Court decision: This case remains pending before the 6th Federal Circuit Court.

Title: *Michigan Association of Home Builders et al v City of Troy, MSC #167832*

Status: GLS amicus brief authorized, written by Soni Mithani, and filed on January 30th, 2025.

Summary: The City of Troy appealed the construction of the Stille-Derossett-Hale Single State Construction Code Act (specifically MCL 125.1522(1)) by the trial court and the Court of Appeals limiting building permit fees only to those costs directly performed by the enforcing agency building department personnel, and finding

building permit fees in excess of direct costs to be a tax subject to the Headlee Amendment, and plaintiff had standing to bring the Headlee challenge.

The Amicus Committee considered a request for amicus support on December 6, 2024, recommended amicus support, and the GLS Council authorized an amicus brief in cooperation with the MML LDF Board, which already authorized Soni Mithani to write the amicus brief, which was filed on January 20th, 2025, Appendix D.

Appellate Court decision: The case remains pending before the Supreme Court.

Title: *Exclusive Capital Partners v City of Royal Oak, MSC #168243*

Status: GLS amicus brief authorized, written by Jacquelyn Klima, and filed on April 28th, 2025.

Summary: The Amicus Committee considered a request for amicus support in *Exclusive Capital Partners* on March 8, 2025. Plaintiff marijuana retailers challenged the City of Royal Oak's recreational marijuana licensing ordinance, alleging that it violates the school buffer and competitive process requirements of the Michigan Regulation and Taxation of Marihuana Act (MRTMA), MCL 333.27951 *et seq*. In addition to several constitutional claims, plaintiffs also alleged that the City Commission unlawfully designated its authority to grant or deny licenses under the ordinance to the City Manager, in violation of the Open Meetings Act (OMA), MCL 15.261 *et seq*. The trial court granted the City's (C)(8) and (10) motion for summary disposition, dismissing all claims against the City. The Court of Appeals affirmed the trial court's ruling in part and reversed the trial court's dismissal of the OMA issue, finding that the City Manager violated the Act. The City filed an application for leave to appeal to the Supreme Court on April 8, 2025. The GLS Council authorized an amicus brief in support of the City of Royal Oak on March 8, 2025, and the Michigan Municipal League's Legal Defense Fund Board authorized a joint brief with GLS on March 10, 2025. The amicus brief was written and filed by Jacquelyn Klima on April 28, 2025, and accepted for filing by the Court on April 30, 2025. Appendix E.

Appellate Court decision: The case remains pending before the Supreme Court. The City of Royal Oak filed a Reply in support of its application for leave to appeal on May 19, 2025.

Title: *Quakenbush v Brooks Township, COA #373986*

Status: GLS amicus brief authorized, written by Gerald Fisher and Eric Williams, and filed June 20th, 2025.

Summary: The Amicus Committee considered a request for amicus support in *Quakenbush* on April 12, 2025. Plaintiffs purchased a large parcel of land in Newaygo County for the purposes of operating a "green cemetery." With no existing public or private cemetery in Brooks Township, the Township adopted a regulatory ordinance and a zoning ordinance amendment that prohibit the establishment and operation of all cemeteries within its boundaries. Plaintiffs sued the Township, alleging that the ordinances violate their rights to due process and to engage in a lawful business under Art 1 §§ 17 and 23 of the Michigan Constitution of 1963. The trial court denied the Township's (C)(8) motion for summary disposition, and entered an order granting summary disposition in favor of Plaintiffs, finding both ordinances unconstitutional as an "all out ban" on cemeteries. The Township filed its claim of appeal on January 8, 2025 (COA No. 373986). The GLS Council authorized an amicus brief in support of the Township to explain the correct legal standards for the plaintiffs' constitutional claims, and clarify the presumption of (regulatory and zoning) ordinance validity. The Michigan Municipal League's Legal Defense Fund Board authorized a joint amicus brief with the GLS on April 15, 2025, which was written by Gerald Fisher and Eric Williams, and filed on June 20, 2025. Appendix F.

Appellate Court decision: The case remains pending before the Court of Appeals.

Title*: Zezula v Independence Township, MSC #168483*

Status: GLS amicus brief authorized, written by Mary Massaron.

Summary: The Amicus Committee considered a request for amicus support in *Zezula* on May 3, 2025. Plaintiff suffered a sewage overflow in his basement after the defendant excavator struck an underground pipe on his neighbor's property. After the plaintiff filed suit against his neighbor and her excavator, the excavator filed a notice of nonparty at fault naming Independence Township and later alleged the Township failed to properly mark its facilities as required by the MISS DIG Act, MCL 460.721 *et seq*. The Township argued that the Government Tort Liability Act (GTLA), MCL 691.1401 *et seq*, barred Zezula's claim under the MISS DIG Act. The trial court and Court of Appeals (in a 2-1 decision) ruled that the grant of governmental immunity in the GTLA does not extend to claims under the MISS DIG Act, and that the Township may be held liable. After the denial of its motion for reconsideration, the Township filed an application for leave to appeal to the Supreme Court on May 7, 2025 (MSC No. 168483). The GLS Council voted to authorize an amicus curiae brief in support of Independence Township to overturn the "bad law" in the COA opinion erroneously weakening governmental immunity under the GTLA. The GLS Council asked Mary Massaron to write the amicus brief, which is expected to be filed on or before June 30, 2025.

Appellate Court decision: The case remains pending before the Supreme Court.

Title*: Irwin et al v City of Cedar Springs, COA #375596*

Status: GLS amicus brief with MML recommended by the Amicus Committee.

Summary: The Amicus Committee considered a request for amicus support of the City of Cedar Springs on June 20, 2025. Plaintiffs alleged that a wastewater treatment plant operated by the City of Cedar Springs unlawfully contaminated their properties with PFAS and resulted in inverse condemnation. The parties filed competing motions for summary disposition under MCR 2.116(C)(10). The circuit court denied the plaintiffs' motion and granted the City's motion, finding that Plaintiffs failed to prove both elements of inverse condemnation: (1) that the governmental unit abused its legitimate powers by taking affirmative action aimed directly at the plaintiff's property, which (2) caused the decline of the plaintiff's property value, or the permanent deprivation of their property. Plaintiffs filed their claim of appeal on May 13, 2025 (COA No. 375596), and the parties have not yet filed their briefs. On June 20th, 2025, the Amicus Committee recommended that the GLS Council authorize an amicus curiae brief in conjunction with MML, which will be considered by the Council on June 27, 2025.

Appellate Court decision: This case remains pending before the Court of Appeals.

Title*: Wayne County Board of Commissioners v Robert Davis, COA #374890*

Status: GLS amicus brief requested, and not recommended by the Amicus Committee.

Summary: The Amicus Committee considered a request for amicus support in *Davis* on June 20, 2025. The defendant is a frequent FOIA litigant, who filed seven lawsuits against the Wayne County Board of Commissioners (WCBC) between 2023 and 2024. The WCBC filed a motion for administrative superintending power and control, requesting that the chief judge of the trial court prohibit Davis from filing FOIA requests with, and lawsuits against, the WCBC and its agents or representatives. Davis moved for summary disposition under MCR 2.116(C)(4), (7) and (8), arguing that the case was not properly before the chief judge and that the issue was barred by *res judicata*. The chief judge granted the relief requested by the WCBC in part, imposing several "prefiling restrictions" on Davis to limit his frivolous suits against the WCBC. The chief judge denied the WCBC's request to prohibit Davis from filing FOIA requests with the WCBC, for which there is no legal authority in the FOIA statute. Davis filed a claim of appeal on March 20, 2025 (COA No. 374890). The parties have yet to file their briefs on appeal. The Amicus

Committee recommended that no amicus brief be authorized, and the GLS Council will consider the request at its meeting on June 27, 2025.

Appellate Court response: This case remains pending before the Court of Appeals.

All amicus curiae briefs filed on behalf of the GLS, and the related opinions and orders by the Supreme Court and Court of Appeals are available through the electronic Appendix to this Memorandum, which can be accessed at:

https://www.dropbox.com/scl/fo/auam1ddj3znat70yfdl8a/ANv0WOqiAGD_XRDnOUjkG5s?rlkey=f1aum5wvt34i00baz1chsj10f&st=06u6lieg&dl=0.

Eric D. Williams