

2005-12

STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE MICHIGAN COURT OF APPEALS
Judges Owens, P.J., and Fitzgerald and Schuette, JJ.

GEORGE H. GOLDSTONE,

Plaintiff/Appellant,

v

BLOOMFIELD TOWNSHIP PUBLIC
LIBRARY,

Defendant/Appellee.

Supreme Court No. 130150

Court of Appeals No. 262831

Oakland County Circuit
Court No. 04-060611-CZ

Robert E. Toohey (P21500)
Attorney for Plaintiff/Appellant
1790 Hammond Court
Bloomfield Hills, MI 48304
(248) 540-3330

Michael Schloff (P25393)
Co-Counsel for Defendant/Appellee
6905 Telegraph Road, Ste. 215
Bloomfield Hills, MI 48301
(248) 645-5205

Joel H. Serlin (P20224)
Barry M. Rosenbaum (P26487)
SEYBURN, KAHN, GINN, BESS & SERLIN
Attorneys for Defendant/Appellee
2000 Town Center, Ste. 1500
Southfield, MI 48075
(248) 353-7620

Stephen O. Schultz (P29084)
Stephen J. Rhodes (P40112)
FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for Amici Curiae Michigan Library
Association, Michigan Townships Association
and Michigan Municipal League
313 South Washington Square
Lansing, MI 48933
(517) 371-8100

MICHIGAN LIBRARY ASSOCIATION'S,
MICHIGAN TOWNSHIPS ASSOCIATION'S AND
MICHIGAN MUNICIPAL LEAGUE'S
AMICI CURIAE BRIEF

Dated: January 31, 2007

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JURISDICTIONAL STATEMENT

On November 8, 2005, the Michigan Court of Appeals issued *Goldstone v Bloomfield Twp Public Library*, 268 Mich App 642; 708 NW2d 740 (2005). On December 19, 2005, Plaintiff/Appellant filed a timely application for leave to appeal. On November 1, 2006, this Court issued an order granting the application and inviting the Attorney General, the Michigan Association of Counties, the Michigan Municipal League and the Michigan Library Association to file briefs amicus curiae (Appendix 121a). This Court has jurisdiction to review this case by appeal, or to take other action. MCR 7.301(A)(2); MCR 7.302(G)(1); MCR 7.316; MCR 7.317.

STATEMENT OF QUESTION PRESENTED

1. DOES DEFENDANT/APPELLEE BLOOMFIELD TOWNSHIP PUBLIC LIBRARY'S CHALLENGED LIBRARY POLICY VIOLATE CONST 1963, ART 8, §9?

Plaintiff/Appellee George Goldstone answers: Yes

Defendant/Appellee Bloomfield Township Public Library answers: No

The Oakland County Circuit Court answered: No

The Court of Appeals answered: No

Amici Curiae Michigan Library Association, Michigan Townships Association and Michigan Municipal League answer: No

INTRODUCTION

The Michigan Library Association ("MLA") is Michigan's oldest and largest library association, representing nearly 2,200 library members across the State. The Michigan Townships Association ("MTA") is a non-profit corporation with a membership consisting of more than 1,200 townships throughout Michigan. The Michigan Municipal League ("MML") is a non-profit corporation, whose membership includes over 500 Michigan cities and villages, many of which own, operate, and support public libraries. These three organizations concur in the position set forth in this brief.

Const 1963, art 8, § 9 provides that libraries shall be "available" to Michigan residents. They are. Const 1963, art 8, § 9 further provides that the "legislature shall provide for the establishment and support of public libraries". It has.¹ Const 1963, art 8, § 9 also provides that the availability of libraries shall be "under regulations adopted by the governing bodies thereof." This provision specifically authorizes the policy that Plaintiff challenges - Defendant/Appellee Bloomfield Township Public Library's (the "Library") policy of allowing non-Township residents to use the Library, but borrow books only if they live in a supporting community, either the Township or a community that has a contractual relationship with the Library. The Library's policy is consistent with the Constitution, as well as similar policies of libraries across Michigan.

This constitutional and statutory approach has expanded the availability of library services far beyond what existed when the Constitution was drafted and ratified. Libraries are the intellectual and social centers of many communities. The Legislature's creation of "district libraries" and local

¹ This is not to say that all may agree that the level of financial "support" is sufficient.

community investment in hundreds of new library facilities, services and programs have expanded the availability of library services throughout the State.

Pursuant to this well-reasoned and long-established constitutional and statutory scheme, libraries are open to all Michigan residents. The circulation of library materials (including books, DVDs, CDs, books on tape, etc) may be limited by local rules and regulations in some cases, however. It is entirely appropriate - and necessary - to allow libraries to regulate their use and specific availability, including as set forth in each library's contract(s) with surrounding communities. Absent the ability to regulate and control use, libraries would not be able make their services "available" to Michigan residents.

In this case, Plaintiff was able to borrow books from the Library until the community in which he lives, Bloomfield Hills, did not renew its contract with the Library. He then brought this litigation claiming, among other things, a constitutional right to borrow books. Plaintiff's position fails as contrary to the plain language of Const 1963, art 8, § 9, which limits "availability" in accordance with legislative enactments and local regulations. Local control was plainly contemplated by the drafters of Const 1963, art 8, § 9, and the people who ratified it. Local control, including funding contracts and borrowing limits, was expressly considered as necessary in the creation and enactment of Const 1963, art 8, § 9.

Plaintiff's position should also be rejected for the same policy reasons that shaped the constitutional language and compelled its enactment. Michigan libraries rely primarily on local funding to make library services available to Michigan residents. Some additional funding is provided by library contracts with surrounding communities. This local regulation increases the

availability of library services. Plaintiffs position, in contrast, would decrease that availability, because if any Michigan resident could borrow books from any library, then the library's ability to obtain local funding would be severely undermined. Local taxpayers are unwilling to pay to have their local libraries deliver expensive statewide services. Funding contracts would become impossible because a library could not sell, and another community would not buy, if services must be provided as a matter of law. Similarly, libraries would not be able to continue to obtain funding through local millages, since local residents would be unwilling to pay for library services that residents of neighboring communities could get at a subsidized cost. Funding makes library services "available." Plaintiff's position would undermine the ability of libraries to obtain funding, so library services would necessarily become less available. Thus, Plaintiff's position is contrary to the plain language and intent of the Constitution, and would be detrimental to Michigan's libraries and citizens. Accordingly, the MLA on behalf of its nearly 2,200 library members, the MTA on behalf of its more than 1,200 members, and the MML on behalf of its over 500 members, respectfully request that this Court affirm the Court of Appeals' decision.

STATEMENT OF FACTS

The MLA, MTA and MML support the Library's position and concur in the Counter-Statement of Facts set forth in its Brief on Appeal. The MLA, MTA and MML also adopt by reference the facts set forth in the Oakland County Circuit Court's Summary Disposition Opinion and Order (Appendix 67a-72a) and the Court of Appeals' opinion. *Goldstone v Bloomfield Twp Public Library*, 268 Mich App 642; 708 NW2d 740 (2005) (Slip Opinion at Appendix 73a-81a).

STANDARD OF REVIEW

Constitutional construction is subject to review *de novo*. *Wayne County v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004). The same standard applies to other issues of law. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991). In *Hathcock, supra*, this Court explained:

“The primary objective in interpreting a constitutional provision is to determine the text’s original meaning to the ratifiers, the people, at the time of ratification. This rule of “common understanding” has been described by Justice Cooley in this way:

“A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. “For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.”

“In short, the primary objective of constitutional interpretation is to realize the intent of the people by whom and for whom the constitution was ratified.” 471 Mich at 468 (footnotes omitted).

ARGUMENT

I. **THE CIRCUIT COURT AND COURT OF APPEALS CORRECTLY RULED THAT THE LIBRARY'S CHALLENGED POLICY IS IN ACCORD WITH CONST 1963, ART 8 § 9.**

Const 1963, art 8, § 9 states:

“The legislature shall provide for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed in the several counties, townships and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law.”
(emphasis added).

Plaintiff bases his position on the emphasized provision but, tellingly, never quotes it in full. He also focuses on the second ("shall be available") clause without regard to its context, which is between the initial ("legislature shall provide") clause and the final ("regulations") clause. The three clauses are stated together and must be read together, as a whole. *In re Lapeer County Clerk*, 469 Mich 146, 156; 665 NW2d 452 (2003) ("every provision must be interpreted in light of the document as a whole, and no provision should be construed to nullify or impair another"). In contrast, Plaintiff asks this Court to (1) ignore and thereby nullify the first clause; (2) isolate and thereby misconstrue the second clause to provide that there is a primary "constitutional right to borrow books"; and (3) impair the third clause by relegating it to merely providing for the payment of a "borrowing fee," which if imposed "must be reasonably related to costs and value" (e.g., Plaintiff's brief on appeal, pp 5, 6, 8, 15).

The Circuit Court and Court of Appeals correctly rejected Plaintiff's claims as a matter of law.² Plaintiff's proposed result is also contrary to well-established history and well-functioning practice, under which library funding contracts have helped library services to become increasingly "available" to Michigan's citizens. This Court should decline Plaintiff's invitation to judicially create a requirement that was never intended by the drafters and ratifiers of the Constitution, and which would be counter-productive to the very goals that Plaintiff purports to support.

A. The Library's Challenged Practice is Supported by Well-Established History.

As indicated above, the primary objective in interpreting a constitutional provision is to determine the text's original meaning to the ratifiers, the people, at the time of ratification. *Hathcock*, *supra*, 471 Mich at 468. The Court may also look to the purpose sought to be accomplished and the circumstances leading to the provision's adoption. *Kearney v Board of State Auditors*, 189 Mich 666, 673; 155 NW 510 (1915). The "Address to the People" and the convention debates may be consulted to determine the meaning and intent of Constitutional language. *In re Lapeer County Clerk*, *supra*, 469 Mich at 156; *Regents of the University of Michigan v Michigan*, 395 Mich 52; 235 NW2d 1 (1975).

Const 1963, art 8, § 9 revised Const 1908, art 11, § 14. The 1908 Constitution unrealistically, and unsuccessfully, sought to require a library in every community. The 1963

² Plaintiff's various arguments have been unclear, unsupported, and somewhat inconsistent throughout these proceedings. The MLA, MTA and MML now address some of Plaintiff's latest propositions. The MLA's, MTA's and MML's failure to address any position asserted by Plaintiff should not be deemed to constitute an acceptance of that position, or a concession that it is, or was, properly before this or any other Court. See generally, MCR 7.302(G)(4); *Gross v General Motors Corp*, 448 Mich 147, 161-62, n 8; 528 NW2d 707 (1995) ("Failure to properly brief an issue on appeal constitutes abandonment of the question").

Constitution recognized that library services could best be provided by preserving local libraries and allowing them to expand their services through local rules. The Address to the People explained:

"This is a revision of Sec. 14, Article XI, of the present constitution which decrees that 'the legislature shall provide by law for the establishment of at least one library in each township and city.' This has never been adhered to as a matter of practice.

"The proposed new language emphasizes that 'public' libraries will be 'available' to residents without fixing how or where libraries shall be organized. Reasonable rules for the use and control of their facilities may be adopted by the governing bodies of the libraries." 2 Official Record, Constitution Convention 1961, p 3397 (copy attached at Tab 1).

The Constitutional Convention debates similarly reflect that Const 1963, art 8, § 9 did not provide a constitutional right to borrow books, as Plaintiff proposes. Instead, the provision was designed to broadly support the availability of libraries, while leaving the nature of that availability to local control. The committee on education's initial proposal did not include specific language on local control, yet the committee clearly intended it, explaining:

"The present language emphasizes that 'public' libraries will be 'available' to residents without fixing how or where the libraries themselves shall be organized. *The committee presumes that legislation may be written so that each library may make reasonable rules for the use and control of its books.*

"Under this proposal present libraries will be retained. But to make libraries more available to the people, their services may be expanded *through cooperation, consolidation, branches and bookmobiles.*" 1 Official Record, Constitutional Convention 1961, p 822 (emphasis provided) (Appendix 10a).

Delegate Leibrand offered an amendment to delete the phrase "which shall be available to all residents of the state" because he was concerned that the new language might be interpreted unwisely and contrary to its intent (as Plaintiff now proposes):

“Mr. Chairman and fellow delegates, I rise to speak to the purpose of this amendment. By implication at least, the phrase, ‘which shall be available to all residents of the state’ means to me that the service of any library shall be available, free, to all residents of the state, or at least be available to everyone on the same terms as offered to the residents of the municipality which operates the library. Now, I feel that this may very well place an undue burden upon existing libraries.

“I don’t think any library would object to permitting a tourist or a traveling salesman to come into its reading room and look at a magazine or two, but the business of providing full time library service, with the circulation of books, is, as I say, an undue burden.

“So, I feel that there is a danger in the language that I seek to delete.”
(*Id.* at 834; Appendix 22a).

Delegate Bentley replied that the "committee [on education] believed that this provision should be in this respect as broad and general in scope as possible" and that "obviously we recognize that there must be qualifications, there must be reservations, there must be individual problems that must be met." (*Id.* at 835; Appendix 23a). Delegate Andrus added: "One of the first problems that came up was, people said, 'we don't want to have to pay for our library and then have other people use it.' We don't mean that by this language." *Id.*

Plaintiff essentially challenges the ability of libraries to have funding contracts with surrounding communities. The Constitutional Convention debates specifically addressed this topic,

and resolved it contrary to Plaintiff's position. Delegate Leibrand expressed concern, as a member of the board of trustees of the Bay City public libraries, because municipalities adjoining Bay City wanted free library service (*Id* at 834; Appendix 22a). He noted that some of the municipalities had entered into contracts, and was concerned that there would be no ability to obtain a contract if free service were required (*Id* at 835; Appendix 23a). Delegates Andrus and Follo responded that the provision said "available," not "free," and that there was no sound basis for a contrary position. *Id.*

Delegate Leibrand specifically inquired whether libraries could continue to make contracts with other municipalities. Delegate Bentley replied that there was no intent to change the existing ability of libraries to make such contracts. *Id.* He explained that the "committee on education felt that a broad, general statement of encouraging the extension of library services throughout the state to all of its residents, through various media, would be helpful, useful and timely to place in the constitution," but "so far as working out the rules for individual libraries to govern the use and control of their books, the committee felt that this matter was and should be statutory." *Id.* He added that the provision for availability would not enable a person to demand library services contrary to local library regulations. (*Id* at 836; Appendix 24a).

Despite the above-described intent of the committee on education's original proposal, Delegates Higgs and Dehnke shared Delegate Leibrand's concern that the proposal's language might be misinterpreted. Accordingly, Delegate Dehnke presented an amendment to add "under reasonable regulations" to follow "which shall be available to all residents of the state. Delegate Leibrand withdrew his amendment to delete the latter phrase. Delegate Kuhn opposed the amendment,

asserting that the committee's intent was already clear, and explaining that local regulations, including library funding contracts with other communities, would remain permissible:

"Just because we say it is available doesn't mean there are no standards . . .

"I would like to answer Judge Leibbrand's questions. Can he make these contracts? The answer is yes, without question he can make these contracts. We are not changing any of that. We don't want anybody to think we are. The fact that we say they shall be available to the people of the state of Michigan is just a broad, general statement." (*Id* at 836; Appendix 24a, emphasis added).

Despite the delegates' clear intent with respect to the proposal, as well as their desire to minimize constitutional language, they adopted the "under reasonable regulations" amendment in an abundance of caution and to provide guidance to any court. (*Id* at 836-37; Appendix 24a-25a).

The committee on style and drafting struck "reasonable" and added, "adopted by the governing bodies thereof." Delegate Bentley described, and Delegate Gadolo confirmed, that the intent of these final changes was to expressly permit local regulations, particularly with respect to book borrowing by a resident of another community (such as Plaintiff):

"the intent of the committee on style and drafting would be that local governing bodies of these various public libraries would be able to pass reasonable regulations regarding the accessibility and the availability of their individual libraries to residents of the state; **particularly, I suppose, in cases where the applicant for a book or a periodical was not an immediate resident of the locality.**" 2 Official Record, Constitutional Convention 1961, p 2561 (emphasis added, copy attached at Tab 2).

The completed Const 1963, art 8, § 9 was then presented to the people, with the Address to the People (relevantly quoted above) reflecting the same intent for local governing bodies of libraries to adopt "reasonable rules for the use and control of their facilities." Thus, there is no merit in

Plaintiff's assertion of a constitutional right to borrow books. Instead, the delegates to the constitutional convention repeatedly and expressly rejected the position that Plaintiff asserts. Moreover, they recognized the dangers of such a misinterpretation of the Constitution, and therefore expressly limited the general statement of "availability," to be "under regulations adopted by the governing bodies" of libraries.³

The Court of Appeals correctly rejected Plaintiff's position, explaining that it was contrary to Const 1963, art 8, § 9's language:

"The specific language of Const 1963, art 8, § 9, reveals a clear intent that libraries 'be available to all residents of the state . . . But this mandate is not without restrictions in that libraries are authorized to impose 'regulations adopted by the governing bodies thereof.' Thus, a library is imbued with the discretion to adopt regulations pertaining to the library's governance, functioning, and management of its resources. This language does not coincide with plaintiff's interpretation of the provision to mean unfettered or free access." Goldstone, supra, 268 Mich App at 647.

The Court of Appeals also thoroughly analyzed the history of Const 1963, art 8, § 9 (essentially set forth above) and properly rejected Plaintiff's position as unsupported. *Goldstone*, *supra*, 268 Mich App at 649-52. The Circuit Court similarly relied on this history in rejecting Plaintiff's challenge to the Library's policy, explaining:

"After careful review of the circumstances surrounding the adoption of Article 8, § 9, the Court finds that it did not vest the citizens of

³ There is no merit nor relevance in Plaintiff's attempt to re-write history based on the recent assertions of two delegates regarding what they allegedly recall intending or understanding over 40 years ago. See generally, in the analogous context of statutory construction, *Fowler v Doan*, 261 Mich App 595, 601; 683 NW2d 682 (2004) ("the post passage remarks of a legislator represent only to personal views of that legislator and are not entitled to any weight"); *City of Williamston v Wheatfield Twp*, 142 Mich App 714, 719; 370 NW2d 325 (1985) ("We do not consider affidavits of individual legislators to be evidence of legislative intent in drafting legislation").

Michigan with new constitutional rights. It is clear that the delegates only intended to provide communities with an alternative to building their own libraries. They did not intend to take from local libraries the right to control the circulation of their materials.

* * *

"Therefore, the Court finds that "available" as used in Article 8, § 9 means access that is subject to the regulation of the library's governing body. In this case, Defendant has decided to issue borrowing privileges to nonresidents only pursuant to a contract with the nonresident's community. The Court finds that this decision is not unconstitutional under Article 8, § 9 of the Michigan Constitution." (Appendix 70a-71a).

The Oakland Circuit Court and Court of Appeals properly rejected Plaintiff's position as contrary to Const 1963, art 8, § 9's language, history and intent. There is absolutely no historical basis nor legal merit in Plaintiff's invitation for this Court to judicially re-write the Constitution.

B. Plaintiff's Position Should Also be Rejected as a Matter of Public Policy Because it Threatens to Make Libraries Less Available.

Michigan libraries are now open and accessible to Michigan's citizens, just as the drafters and ratifiers of the Constitution intended. Indeed, the well-reasoned constitutional language has led to the increased availability of libraries through the creation of more and better libraries, as well as the provision of increased services to Michigan's citizens. The system works. Plaintiff proposes, perhaps unwittingly, to break it.

To appreciate the practical significance of this case, the Court must recognize that libraries are not, as Plaintiff suggests, just buildings with dusty shelves containing books to be borrowed. Instead, Michigan's libraries are on the cutting edge of technology and the information-based

economy. Perhaps most significantly at this time, Michigan libraries are closing the "digital divide" by providing access to the internet and electronic database for everyone. For example:

- Michigan public libraries have over 8,202 computers available for public use, thereby providing access, as well as instruction, to everyone from children to senior citizens.⁴
- All Michigan public libraries are connected to the internet. These libraries provide the primary means of free internet access for people who do not have an internet connection at home, work or school.
- Through Michigan's eLibrary ("MeL"), Michigan residents now have a 24-hour virtual library with material for all ages, including over 40 databases and content from 15,000 electronic books, indexing for 45,000 publications, 9,000 full-text journals and over 130 full-text newspapers not available through Google or other online searches. Plaintiff has access to this virtual library from his home, or from any library in Michigan with his driver's license.⁵
- Libraries are at the cutting edge of governmental resource sharing, creating efficiencies in the provision of information, and saving taxpayer dollars.

Michigan's libraries also provide services that are critical to educating our children and keeping our citizens informed. For example:

⁴ See, for example, the photograph of students working on computers at the Jackson Library, and the photograph of a senior citizen who thought of his library as the first place to get help with new technology, and received instruction on how to use his laptop computer, attached as Tab 3.

⁵ See, for example, the photographs of the Village of Vernon's library, attached at Tab 4.

- Libraries play a critical role in disseminating early literacy information to parents, and offer significant teaching programs such as Every Child Ready to Read Workshops for toddlers, story hour for pre-K children, and book clubs for elementary school children. Over 71% of programming in public libraries is dedicated to children/youth. In 2004, libraries educated 1.6 million people with Children's Programming.⁶
- Michigan's public libraries serve as the library for many of Michigan's charter schools and home-schooling families.
- Demand for library services is increasing as we transition to a knowledge-based economy. Circulation of library materials in Michigan increased by 24% from 1999 to 2004 as Michigan's citizens depend more on their libraries for information.
- Reference Librarians in Michigan's public libraries provide services including answering more than 7.6 million reference questions a year.⁷

Michigan's libraries are also essential to Michigan's economic development. For example:

- Libraries provide business professionals, entrepreneurs, small business owners, and job hunters with 24/7 free computer access to business databases and reference materials on a variety of topics including human resources, business planning,

⁶ See, for example, the photograph of a celebration of 1,000 page challenge winners in a summer reading program, attached at Tab 5.

⁷ See, for example, the photograph of a reference librarian teaching a class how to use the MeL online virtual library, attached at Tab 6.

demographic and marketing information, competitive analyses, trade/industry information, and client research.

- Many libraries have Small Business Development Centers, business collections and Business Librarians.
- Libraries offer business seminars and partner with their local Chambers of Commerce and retired business professionals to provide business services.

Plaintiff's position boils down to the proposition that all libraries must provide all services that he wants on his terms. Plaintiff claims that this would make libraries more "available," but in reality Plaintiff proposes a "tragedy of the commons" scenario. Libraries provide valuable services, but if individuals are able to maximize their use of those services while minimizing or avoiding their payment for them, as Plaintiff proposes, then those services will not continue.

If the law were changed to conform to Plaintiff's position, then the ability of Michigan's libraries to make their services "available" to Michigan residents would be undermined because actual "availability" depends on the interest of a community and the community's willingness to fund. Libraries depend primarily on millages approved by local taxpayers, which are dependent on libraries also obtaining some funding through contracts with surrounding communities. Plaintiff inaccurately indicates that the MLA supports his position because the MLA has sought increased state funding for libraries (Plaintiff's brief on appeal, p 17). To the contrary, while the MLA recognizes that increased state funding would benefit libraries, the MLA also recognizes that the funding does not currently exist. Presently, the sources of library funding in Michigan are approximately 96.5% local (primarily library millages approved by voters, but also including penal

fines and contract fees); 3.5% state; and 0.1% federal. Without a substantial increase in state funding, the continuing "availability" of libraries depends on local funding.

The delegates to the Constitutional Convention specifically recognized that library funding contracts must be maintained, and developed language for Const 1963, art 8, § 9 to preclude exactly what Plaintiff proposes. As Delegates Leibrand and Andrus observed, local taxpayers are unwilling to pay subsidies to have their local libraries provide services to non-residents (Appendix 22a, 23a). The delegates were aware of funding contracts, and expressly intended that they be allowed to continue (Appendix 23a, 24a). These fundamental observations and intentions shaped our Constitution over 40 years ago, and remain critically important today. Library funding contracts continue to be essential so that libraries can make their services "available" to Michigan residents. As a practical matter, a library would not be able to obtain a funding contract, or local millage support, to provide services if the library were required to provide those services as Plaintiff proposes. Without funding, library services cannot continue to be "available." Therefore, MLA urges this Court to reject Plaintiff's position, and uphold Michigan's long-established and properly-functioning system of local libraries.

Plaintiff's suggestion that libraries can be alternatively funded through fees charged for individual non-resident library cards is specious, at best, and would likely be disastrous if it were ever implemented without significant additional state funding or other mechanism(s) to offset the resulting revenue shortfall.⁸ The Delegates and the People never intended to require such alternative

⁸ The State Aid to Public Libraries Act, 1977 PA 89, MCL 397.551 et seq., permits, but does not require, libraries to charge nonresident borrowing fees to individuals residing outside the service

funding. More than 40 years have passed since our Constitution was adopted - years which have seen library services expanded to be more "available" than ever before to Michigan's citizens. There is no sound basis for this Court to even consider judicially re-writing the Constitution to include a requirement that threatens to undermine the foundations of Michigan's successful library system.

Plaintiff simply assumes that the present level of library services would continue to be available, or could be expanded, without regard to the need to actually obtain funding to pay for those services. Consider, for example, Plaintiff's claim that the Library's apparent cost per residential unit is \$280, which would be higher without non-resident funding via contract (Plaintiff's brief on appeal, p 4). If, for purposes of illustration, the same \$280 were to be charged to non-residents, then a certain number of non-residents would have to actually pay that amount in order to provide a certain level of funding to the Library ([paying non-residents] x \$280 = [total funding]). Plainly, however, many non-residents would be unwilling to pay \$280 for a non-resident library card. If the focus is expanded beyond the affluent area where Plaintiff lives, then plainly many Michigan citizens would also be unable to pay to support library services. Thus, although Plaintiff claims to seek increased "availability" of library services, his proposal would actually reduce library services by

area. Those fees may include "indirect" costs, and therefore are not limited to mere book-borrowing costs as Plaintiff suggests. MCL 397.561a provides:

"A library *may* charge nonresident borrowing fees to a person residing outside of the library's service area, including a person residing within the cooperative library's service area to which that library is assigned, if the fee does not exceed the costs incurred by the library in making borrowing privileges available to nonresidents including, but not limited to, the costs, direct and indirect, of issuing a library card, facilitating the return of loaned materials, and the attendant cost of administration" (emphasis provided).

reducing the funding that libraries need to provide them. If "availability" were dependent on expensive, individual library cards, then Michigan's public libraries would be transformed into essentially private book rental repositories for those able to purchase a card. Moreover, Plaintiff's proposal threatens a spiral of escalating costs and decreasing services. Without individuals willing or able to pay for services, there would be (A) higher costs per individual (due to fewer people over whom to spread costs) and/or (B) decreased services (to decrease costs), which in turn would lead to even fewer individuals willing or able to pay the higher costs and/or receive the reduced services, and so forth.

Plaintiff even recognizes that "there are several important reasons for a library service agreement. All people in the community are included, especially those who might not request an individual card if required to pay for it from their own limited funds. Also lump sum payments under a library service agreement allow more stability and predictability of income and expense, important financial factors to both the library and the community in planning their annual budgets." (Plaintiff's brief on appeal, p 25).

It is also important to keep in mind that the third ("regulations") clause of Const 1963, art 8, § 9 broadly allows local libraries to control their materials. Library services contracts are a well-established means by which individual libraries, in accordance with local conditions, maintain that control by facilitating the library's ability to ensure that lent materials are returned, and that enforcement mechanisms are procedurally manageable.⁹

⁹ Manageability includes considerations such as the library's proximity to the borrower. A contract between a library and an adjacent municipality can account for the likelihood and ease of materials being returned by, or recovered from, nearby residents. Attempting to account for such matters on an

There is no relevance in Plaintiff's protest that: "There is no statewide uniformity" (Plaintiff's brief on appeal, p 6). The Constitution does not mandate that the same books or services shall be provided in all libraries across Michigan. Instead, the Constitution provides for local control. This makes perfect sense because there are significant differences among Michigan's communities, including the amount of resources that they are willing and able to devote to their respective libraries. Plainly, an urban community will have different priorities and abilities than a sparsely-populated rural community. Michigan's Constitution recognizes these differences in local conditions, and wisely provides for local regulations that have preserved and enhanced Michigan's libraries so that they are more "available" today than ever before.¹⁰

C. The Legislature Fulfilled its Constitutional Mandate Through Statutes that Confirm that Local Libraries Have the Right to Control the Circulation of Their Materials.

Plaintiff asserts that this Court should not interpret Const 1963, art 8, § 9 in light of statutes that were enacted subsequently (brief on appeal, pp 31-33). Plaintiff's assertion is part of his flawed attempt to convince this Court to carve the second clause out of Const 1963, art 8, § 9, and misconstrue it without regard to context or effect. The statutes are relevant because Const 1963, art

individual basis across Michigan would likely require safeguards similar to those used for credit cards. Further, libraries are nonprofit, and would have fewer resources to make "available" if they were forced to institute cost accounting systems to track costs for each service provided to nonresidents, as Plaintiff proposes.

¹⁰ Plaintiff acknowledges that he has a non-resident library card from the Pontiac Public Library (Plaintiff's brief on appeal, p 2). In addition, Plaintiff's "home library" is the Oakland County Library. When state funding is calculated, it goes to that library, where Plaintiff can get a library card and borrow books. Plaintiff also has other options such as getting a non-resident library card from the Troy Library, for \$200, through which Plaintiff could have access to all libraries in the Suburban Library Cooperative, including book borrowing privileges. Thus, Plaintiff has access to multiple libraries that provide services in accordance with local conditions and funding.

8, § 9 directed the Legislature to “provide for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof.” The Legislature has fulfilled this directive through statutes making library services available all Michigan residents.

The debates at the Constitutional Convention (discussed above) reflect the delegates' knowledge of existing contracts and an intent to maintain the then-existing ability of libraries to enter contracts with surrounding communities (e.g., Appendix 24a). The ability of libraries to enter into funding contracts was well-established before the Constitutional Convention. For example, the City, Village and Township Libraries Act, 1877 PA 164, MCL 397.201 *et seq*, specifically provides for a municipality (such as Bloomfield Hills, where Plaintiff lives) to obtain library services through a contract with an adjacent municipality (such as Bloomfield Township, where the Library is located):

“Notwithstanding a contrary city, village or township charter provision, a township, village or city adjacent to a township, village, or city that supports a free public circulating library and reading room under this act may contract for the use of library services with that adjacent township, village, or city” MCL 397.213(1).

* * *

“Notwithstanding any contrary provision in a township, city, or village charter, the library board of directors of a township, city, or village supporting and maintaining a free public circulating library and reading room under this act, or under any special act, may enter into a contract with another township, city, or village to permit the residents of that other township, city, or village the full use of the library and reading room, upon terms and conditions to be agreed upon between the library board of directors and the legislative body of the other township, city, or village . . .” MCL 397.214 (2).

The County Libraries Act, 1917 PA 138, MCL 397. 301 *et seq*, similarly authorizes contracts for library services, and includes provisions to pay for those services:

“The board of supervisors of any county shall have the power to establish a public library free for the use of the inhabitants of such county and they may contract for the use, for such purposes, of a public library already established within the county, with the body having control of such library, to furnish library service to the people of the county under such terms and conditions as may be stated in such contract. The amount agreed to be paid for such service under such contract and the amount which the board may appropriate for the purpose of establishing and maintaining a public library shall be a charge upon the county and the board may annually levy a tax on the taxable property of the county, to be levied and collected in like manner as other taxes in said county and paid to the county treasurer of said county and to be known as the library fund.” MCL 397.301

* * *

“Any county possessing a county library or any board of trustees of a regional library may enter into a contract with 1 or more counties, townships, villages, cities and/or other municipalities to secure to the residents of such municipality such library service as may be agreed upon, and the money received for the furnishing of such service shall be deposited to the credit of the library fund. Any municipality contracting for such library service shall have the power to levy a library tax in the same manner and amount as authorized in section 1 hereof for the purpose of paying therefore. Any municipality contracting for such library service may at any time establish a public library free for the use of its inhabitants, whereupon its contract for said service may be continued or terminated on such terms as may be agreed upon between the parties thereto.” MCL 397.305.¹¹

The Regional Libraries Act, 1931 PA 250, MCL 397.151 *et seq*, authorizes libraries to enter into contracts to provide service to nonresidents:

“The board of trustees of each regional library so established shall have the following powers:

¹¹ See also, MCL 397.214(1) with respect to a township library fund.

* * *

(f) To enter into contracts to receive service from or give service to libraries within or without the region and to give service to municipalities without the region which have no libraries.” MCL 397.155.

The Public Libraries Act, 1952 PA 52, MCL 397.471 *et seq*, provides for libraries to efficiently extend library services through contracts with other libraries and with municipalities, which pay for those services:

“The officers, agency or other authority charged by law with the maintenance and operation of any library for general public use *may enter into and perform contracts or arrangements with the officers, agency or other authority likewise charged in respect of any other such library for cooperation and coordination in the maintenance and operation of the libraries to avoid unnecessary duplication and at the same time promote the widest public use of books, manuscripts and other materials and facilities* and bring about the supplementing of the 1 library by the other, which may include the accumulating of books, manuscripts and other materials and facilities, to whichever library belonging, of the same general nature or pertaining to the same general subject in such library as will best facilitate access thereto and promote the best use thereof by the members of the public desiring so to do.

“The officers, agencies or other authorities, jointly or severally, *may enter into contracts or arrangements* to make available to political subdivisions of the state, including school districts, otherwise authorized by law to maintain libraries, such library services and facilities as will promote the widest public use of books and avoid unnecessary duplication and expense.” MCL 397.471

* * *

“Such contracts and arrangements may be made between and among any number of such libraries. Any library supported in whole or in part by taxes or other public funds or competent in law to be so supported shall be eligible to be included in any such contract or arrangement by whatever authority such library may be maintained and operated. Residents of the territory subject to taxation for support of any library entering into any such contracts or arrangements shall have such rights and privileges in the use of the respective libraries

entering into like contracts and arrangements as shall be provided therein. If the expenditures generally of such library shall by the law under which maintained and operated be subject to being budgeted and approved, any expenditure by such library required for carrying out any such contract or arrangement shall be likewise so subject.

“The provisions hereof shall be broadly and liberally construed and applied and any provision in any contract or arrangement reasonably tending to effectuate in any part the intents and purposes hereof shall be deemed within the authority hereby granted. Any political subdivision of the state, including school districts, now or hereafter authorized by law to establish or maintain libraries or library services, may enter into contracts or arrangements for library services and facilities provided in [MCL 397.471] and provide for the payments of obligations arising from such contracts or arrangements by resolution of the legislative body of the political subdivision or school district or in any other manner provided by law.” MCL 397.472.

In the year following the adoption of the 1963 Constitution, the Legislature enacted the Distribution of Penal Fines to Public Libraries Act, 1964 PA 59, MCL 397.31 *et seq*, which authorizes library services contracts and allocates penal fine monies (which help to fund libraries), based on the existence of those contracts:

“In any county where there is no public library, or in any county within the boundaries of which there are municipalities which have not established public library service or which do not maintain public libraries, the county board of supervisors shall appoint a county library board to receive the per capita portion of penal fine moneys to be allocated for such areas ... *The board may contract with a qualified public library, within or without the county, to provide public library service for all residents of the county without legal access to a public library.*” MCL 397.33 (emphasis provided).

* * *

“If any municipality within a county has not established a public library *but is contracting for public library service with the governing body of a legally established public library*, it is entitled to receive its per capita share of the penal fine moneys the same as if it had a legally established public library. The moneys shall be used for the provision of public library service for all residents of the municipality. MCL 397.35 (emphasis provided).

The State Aid to Public Libraries Act, 1977 PA 89, MCL 397.551 *et seq*, provides for library services contracts:

“The cooperative [library] board shall do all of the following:

(g) Enter into contracts to receive service from or give service to libraries in the state, including public, school, academic, cooperative, or special libraries, and political subdivisions of the state.” MCL 397.558(2)(g).

Most recently, the District Library Establishment Act, 1989 PA 24, MCL 397.172 *et seq*, similarly authorizes libraries to enter into contracts to provide service to nonresidents:

“A [district library] board may do 1 or more of the following:

(g) Enter into a contract to receive library-related service from or give library-related service to a library or a municipality within or without the district.” MCL 397.182.

Through these 4 pre-1963 Acts and 3 post-1963 Acts, the Legislature has (1) maintained the ability of libraries to provide services through contracts with municipalities, and for municipalities to pay for those services (as the delegates to the Constitution Convention intended), and (2) fulfilled its constitutional directive to make library services available, through additional contractual and funding provisions that foster cooperation and coordination among libraries and municipalities. It bears emphasis that all of the Acts discussed above include mechanisms for a library to provide services to nonresidents by contract with that nonresident’s municipality. Radically changing the established law to conform to Plaintiff’s position would effectively make each of these statutory provisions void, because (as the delegates to the Constitutional Convention recognized), nobody would enter into a contract to pay for library services if the services must be provided in any event.

CONCLUSION AND RELIEF REQUESTED

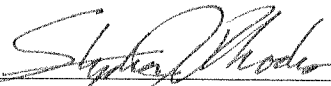
Public libraries are available to all Michigan residents under Const 1963, art 8, § 9. Plaintiff has access to any library in the State of Michigan, but that access is subject to the library's regulations. There is no merit in Plaintiff's assertion of a constitutional right to borrow books, since the Constitution plainly states that libraries shall be available "under regulations adopted by the governing bodies thereof." The Oakland Circuit Court and Court of Appeals correctly held that the Library's policy is in accord with Const 1963, art 8, § 9's plain language, as well as the intent of people who ratified it. The delegates to the Constitutional Convention specifically considered the possibility of Plaintiff's misinterpretation, and revised the Constitutional language to expressly preclude the position that Plaintiff asserts.

Plaintiff's proposal to change the law is also contrary to well-established and essential public policy. Libraries need the ability to enter into contracts with municipalities in order to obtain funding that is necessary to make library services "available" to Michigan residents. If local funding for libraries is undermined, as Plaintiff essentially proposes, then availability would be reduced due to the resulting revenue shortfall. Significant additional state funding or other mechanism(s) would be required to replace the lost revenue and maintain the current level of availability. Therefore, we respectfully request that this Court affirm the Oakland Circuit Court's and Court of Appeals' decisions.

Respectfully submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for the Michigan Library
Association, Michigan Townships Association
and Michigan Municipal League
as Amici Curiae

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By: 

Stephen O. Schultz (P29084)
Stephen J. Rhodes (P40112)
313 S. Washington Square
Lansing, Michigan 48933
(517) 371-8100