STATE OF MICHIGAN

IN THE SUPREME COURT

(On Appeal from the Michigan Court of Appeals)

EDITH KYSER,

Plaintiff-Appellee,

-vs-

KASSON TOWNSHIP,

Defendant-Appellant.
_____/

Supreme Court No. 136680

Court of Appeals No. 272516

L.C. No. 04-006531-CZ

CORRECTED BRIEF OF MICHIGAN MUNICIPAL LEAGUE AND MICHIGAN MUNICIPAL LEAGUE LIABILITY & PROPERTY POOL AS AMICI CURIAE IN SUPPORT OF DEFENDANT-APPELLANT KASSON TOWNSHIP

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STATEMENT OF APPELLATE JURISDICTION

On May 6, 2008, the Court of Appeals issued an opinion affirming the circuit court's order permitting Edith Kyser to mine gravel on her property and enjoining Kasson Township from interfering with the gravel-mining operation, notwithstanding a township zoning ordinance that "purported to disallow gravel mining on plaintiff's land." *Kyser v Kasson Twp*, 278 Mich App 743; 755 NW2d 190 (2008). On April 29, 2009, this Court granted leave to appeal. Pursuant to MCR 7.301 and MCR 7.302, jurisdiction in this Court is therefore proper.

STATEMENT OF QUESTIONS PRESENTED

I.

WHETHER THE "NO VERY SERIOUS CONSEQUENCES" RULE OF *SILVA v ADA TOWNSHIP* WAS SUPERCEDED BY THE ENACTMENT OF 1978 PA 637, MCL 125.297a (NOW RECODIFIED IN NEARLY IDENTICAL LANGUAGE AS MCL 125.3207)?

Defendant-Appellant Kasson Township answers "Yes."

Plaintiff-Appellee Edith Kyser answers "No."

The Leelanau County Circuit Court would presumably answer "No."

The Court of Appeals would presumably answer "No."

Amici Curiae the Michigan Municipal League and Michigan Municipal League Liability & Property Pool answers "Yes."

II.

WHETHER THE "NO VERY SERIOUS CONSEQUENCES" RULE VIOLATES THE SEPARATION OF POWERS DOCTRINE BY PROVIDING ENHANCED JUDICIAL REVIEW OF LOCAL ZONING DECISIONS?

Defendant-Appellant Kasson Township answers "Yes."

Plaintiff-Appellee Edith Kyser answers "No."

The Leelanau County Circuit Court would presumably answer "No."

The Court of Appeals would presumably answer "No."

Amici Curiae the Michigan Municipal League and Michigan Municipal League Liability & Property Pool answers "Yes."

III.

WHETHER THE "NO VERY SERIOUS CONSEQUENCES" RULE IMPERMISSIBLY SHIFTS THE BURDEN OF PROOF ONTO THE LOCAL GOVERNMENT TO DEFEND ITS ZONING POLICY?

Defendant-Appellant Kasson Township answers "Yes."

Plaintiff-Appellee Edith Kyser answers "No."

The Leelanau County Circuit Court would presumably answer "No."

The Court of Appeals would presumably answer "No."

Amici Curiae the Michigan Municipal League and Michigan Municipal League Liability & Property Pool answers "Yes."

ARGUMENT I

THE "NO VERY SERIOUS CONSEQUENCES" RULE OF *SILVA V ADA TOWNSHIP* WAS SUPERCEDED BY THE ENACTMENT OF 1978 PA 637, MCL 125.297A (NOW RECODIFIED IN NEARLY IDENTICAL LANGUAGE AS MCL 125.3207).

A. Michigan courts afford de novo review of a question of statutory interpretation.

This Court review questions of law involving statutory interpretation de novo. *Taylor v Smithkline Beecham Corp*, 468 Mich 1; 658 NW2d 127 (2003).

B. The Michigan Legislature is empowered to enact statutes that supercede common law doctrines.

Legislative supremacy, as a doctrine of statutory interpretation, is grounded in the notion that, except when exercising the power of judicial review, courts are subordinate to legislatures. See Richard Posner, Law and Literature: A Misunderstood Relation 240, 252-53 (1988) (the judiciary must search for the intent of the legislature in statutory interpretation); Aleinikoff, *Updating Statutory Interpretation,* 87 Mich L Rev 20, 22 (1988) (describing as "archaeological" statutory interpretation that seeks to fulfill the intent of the drafting legislature). State courts have the authority as part of their exercise of the "judicial power" to create, modify, or abrogate common law doctrines, which are subject to legislative modification. Const 1963, art 3, § 7. See also, *Wold Architects & Engineers v Strat*, 474 Mich 223, 223-234; 713 NW2d 750 (2006) ("The common law, which has been adopted as part of our jurisprudence, remains in force until amended or repealed"). In line with this general proposition, the Michigan Legislature has the power to supercede or override common law rules or tests by statute. See e.g., *Hoste v Shanty Creek Management, Inc*, 459 Mich 561; 592 NW2d 360 (1999) (statute overrode use of common law economic realities test because statute included some but not all of factors).

This Court has taught that "[w]hether a statutory scheme preempts, changes, or amends the common law is a question of legislative intent." 477 Mich at 223-234. In construing the language of a statute, courts must keep in mind that "the Legislature is deemed to act with an understanding of common law in existence before the legislation was enacted." *Nation v WDE Electric Co*, 454 Mich 489, 494; 563 NW2d 233 (1997). Under Michigan jurisprudence, where a statute sets forth comprehensive provisions, the Legislature will generally be found to have intended that the statute supersede and replace the common law dealing with the subject matter. *Wold Architects & Engineers, supra,* at 223-234. In other words, when a comprehensive statute "prescribes in detail a course of conduct to pursue and the parties and things affected, and designates specific limitations and exceptions," the Legislature will generally "be found to have intended that the statute supersede and replace the common law dealing with the subject matter." *Wold Architects & Engineers*, *supra* at 233. "A self-contained measure ... carefully balanced in a fair and reasonable manner," suggests that the Legislature intended to supercede the common law. See generally, *Millross v Plunkett Hollow Golf Club*, 429 Mich 178, 184-187; 413 NW2d 17 (1987) (determining that the Legislature abrogated common law claims having a basis in breach of a duty subject to the dramshop act).

C. The Michigan Legislature's comprehensive zoning scheme governs land uses involving natural resources, controls exclusionary zoning, and fails to include any language reflecting that sand and gravel are a favored use or adopting the "no very serious consequences" test.

The Michigan Legislature superceded the common law "no very serious consequences" rule of *Silva v Township of Ada*, 416 Mich 153; 330 NW2d 663 (1982), when it enacted the exclusionary zoning statute in Michigan, PA 1978, No. 638, effective March 1, 1979, now codified in substantially similar form in the Michigan Zoning

Enabling Act, MCL 125.3207. This conclusion can be seen in both the fact that the statute specifically included a new basis for challenging a zoning ordinance or regulation – that it is exclusionary – and in the fact that the statute is part of a comprehensive regulatory scheme with careful and balanced provisions governing land use authority and regulation.

The Zoning Enabling Act contains a comprehensive scheme for governing the exercise of a local government's land use and zoning powers. The statute empowers local governments to:

> provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote the public health, safety, and welfare.

MCL 125.3201. This provision evidences the comprehensive nature of the legislative scheme. The statute vests power over the location of residence and other uses in local government through their power to adopt zoning regulations. The statute also allows local authorities to regulate the uses of land to meet the need for natural resources. This provision makes clear that local legislative bodies are empowered to adopt zoning regulations that ensure that appropriate uses are situated in appropriate locations, and that this is done to further the public health, safety, and welfare, with a specific mention of the

citizens' needs for natural resources. *Id.* When the Legislature enacted the Zoning Enabling Act, it contemplated that the local government legislative bodies would enact zoning ordinances to regulate land uses of all kinds, including those for extraction of sand or gravel. And it did so with the directive that the local government legislative body regulate to meet the needs of the state's citizens for uses of all types including recreation, residences, and natural resources. This makes sense because many land uses, while important to meeting the citizens' needs, are incompatible with other land use. The process of zoning established by the Legislature allows local governments to weigh and balance these sometimes conflicting needs and then to direct land use development in a particular location based on policy decisions.

This comprehensive zoning scheme specifically defines the rights and obligations of the local government's legislative body to enact ordinances of various kinds to satisfy these objectives. MCL 125.3202. MCL 125.3207 also bars local zoning bodies from enacting ordinances:

> having the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.

MCL 125.3207. The Legislature delegated power to local governments to ensure compatible uses, taking into account the needs of citizens of the state for many different things including recreation, housing, energy, and public services. When it did so, the Legislature established specific standards to govern this use of legislative power, including a prohibition on exclusionary zoning unless one of two conditions apply. A use

> Mary L R 211 (1989) citing 7 F. Thorpe, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America* 1687 (1909).]

Like the United States Constitution, and many other state constitutions, the Michigan Constitution establishes three distinct departments of government and grants to each the responsibility for exercising one of the three major types of governmental power. Compare US Const, Art I, § 1; Art II, § 2; Art III, § 1 with Const 1963, art 4, § 1; art 5, § 1; art 6, § 1; and art 3, § 4. Michigan's Constitution also requires that the powers be separately exercised by the distinct branches of government. Const 1963, art 3, § 2.

Madison observed that the jurisdiction to be given to the federal courts should be limited to matters of a "judiciary nature." 2 *Records of the Federal Convention of 1787*, at 430 (Max Ferrand ed 1966). This limitation inhered in the distinction between judicial power on the one hand, and executive or legislative power on the other. Judicial power was inherently limited because "courts could not act on their own initiative but only at the request of a party in a public 'judicial' proceeding ... and judges had the authority to expound existing law, not to make new law." Robert J. Pushaw, *Justiciability and Separation of Powers: A Neo-Federalist Approach*, 81 Cornell L R 393, 426-427 (1996). The Framers "deliberately excluded judges from compulsory participation in making or executing federal law." Pushaw citing 2 Jonathon Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 514 (1901).

Michigan's Constitution embodies a bedrock separation-of-powers principle that prevents courts from undertaking tasks assigned to the political branches of government. Const 1963, art 6, vests the judicial power in the courts. It provides:

> The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

The Michigan Constitution vests the executive power in the governor. Const 1963, art 5, § 1. And it vests the legislative power in a senate and a house of representatives. Const 1963, art 4, § 1. After having vested each branch of government with different powers, the Michigan Constitution expressly directs that the powers of the legislature, the executive, and the judiciary should be separate. Const 1963, art 3, § 2. Underscoring the importance that the drafters placed on the separation of powers, the Michigan Constitution explicitly prohibits any person exercising the powers of one branch from exercising those properly belonging to another branch. The text provides:

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

The constitutional constraints upon the judiciary's powers to render decisions about executive or legislative actions are significant protections in our system of government. Adopting judicial rules that override decisions made by the political branches is therefore problematic, except where those decisions cannot be squared with a constitutional or statutory provision that is controlling.

The Michigan Legislature has delegated the power to regulate land use to local governments by enacting the Zoning Enabling Act, 1921 PA 207. And since then the Legislature has consistently maintained a comprehensive legislative scheme that vests the

power to control community development in the hands of the people to be exercised through their municipal government. See generally, *Pere Marquette R Co v Muskegon Twp Bd*, 298 Mich 31, 36; 298 NW 393 (1941); *Brae Burn, Inc v Bloomfield Hills*, 350 Mich 425, 431; 86 NW2d 166 (1957).

Since the time of Alexis De Toqueville and before, a part of the unique genius of the American system of government is the important role given to local government. See Alexis De Toqueville, *Democracy in America*, Volume 1, pp 74-76, 112-119, 302-304, 310, 313-332 (F Bowen ed, 1863, revised and edited). As De Toqueville pointed out, the partisans of centralization claim that a central government can better "administer the affairs of each locality better than the citizens could for themselves." But such a system lodges decision making far from the reach of the citizens, and impairs their ability to democratically govern themselves. *Id.* Michigan's constitutional and statutory history confirm that the drafters of the Michigan Constitution and the legislators who enacted numerous statutes pertaining to local governments, have sought to create a vibrant and significant role for the entities governing at the local level.

The issues raised in this appeal must be viewed within this context. *Sweatt v Dep't of Corrections*, 468 Mich 172, 179; 661 NW2d 201(2003). Kyser Township seeks to vindicate important principles of local control that are embodied in Michigan's constitution, have repeatedly been enacted into statutes dealing with zoning and land use, and should be respected.

This Court has long embraced a rule of constitutional construction requiring the Court, if possible, to avoid an interpretation that creates a constitutional invalidity. *Council No 11, Am Federation of State, County and Municipal Emp (AFSCME), AFL-*

CIO v Michigan Civil Service Commission, 408 Mich 385, 405; 292 NW2d 442 (1980); *Traverse City School Dist v Attorney General*, 384 Mich 390, 405-406; 185 NW2d 9, 14 (1971), citing *Marbury v Madison*, 5 US 137, 175; 2 L Ed 60 (1803) ("If any other construction would render the clause inoperative, that is an additional reason for rejecting such other construction"). If there is any doubt about the correct interpretation of legislative intent in light of the Zoning Enabling Act and its exclusionary zoning provision, this Court should avoid the potential constitutional issue presented here by abrogating *Silva*. A fair reading of the statute reveals that the Legislature did not intend to engraft the "no very serious consequences" rule onto its comprehensive scheme for zoning and land use regulation or to adopt the rule as a test for exclusionary zoning. Since the Legislature, directly or through powers delegated to local governments, has the authority to establish policy in this area, this Court should defer to the Legislature's enactments.

This approach is particularly wise given the difficulties of judicial policy-making. When discussing public policy and the formulation of a rule of law, one judge and scholar explained:

> When a case is decided on the ground of public policy, without the benefit of a legislative or constitutional declaration, or even the presence of a statute from which an inference can be fairly drawn, the court necessarily depends on its own sense of community values.

Justice James D. Hopkins, *Public Policy and the Formulation of a Rule of Law*, 37 Brooklyn L Rev 323, 325-336 (1971) reprinted in Robert A. Lefler, Appellate Judicial Opinions, pp 5-6 (1974). According to Hopkins, "if public policy is ever to be used as a

ground for judicial decision, then it must be justified by recourse to an analysis of the reasons which are the foundation for the policy." *Id.*

The policy justification for the "no very serious consequences" rule does not justify recourse to it. First, as Judge Ryan observed in dissent in *Silva*, the "supposed 'rule' favoring the removal of natural resources unless 'very serious consequences' would result was merely obiter dictum in each" of the earlier decisions that applied it. 416 Mich at 164 citing *Certain-teed Products Corp v Paris Twp*, 351 Mich 434; 88 NW2d 705 (1958) and *North Muskegon v Miller*, 249 Mich 52; 227 NW 743 (1929). Judge Ryan pointed out that "the dictum embodies the public policy of 1929 and 1958, not 1982." Judge Ryan explained that the public policy rationale of those earlier times no longer was accepted:

> We have long since abandoned the illusion that our scarce natural resources are infinite and renewable and therefore should be quickly exploited to the fullest extent.

Judge Ryan's point is well-taken today and may be augmented by examining the comprehensive laws that have been enacted addressing environmental protection. Those laws similarly confirm that the public policy of today differs dramatically from that accepted by the Court when it adopted the "no very serious consequences" rule. Conservation of such natural resources is a public policy embedded in the multiple statutes that exist today to protect the environment. The public policy underlying the rule is also flawed because, contrary to the situation in *North Muskegon, supra,* and the other authorities from which the "no very serious consequences " rule sprang, no question of a taking exists on these facts. As Judge Davis pointed out in his partial concurrence and partial dissent, the decision "was at the time viewed as merely setting forth a rule of

reasonableness, and was cited as such in an official note accompanying 1929 CL 2633." 278 Mich at 206. The Supreme Court later cited *North Muskegon* for this rule as part of the decision in *Brae Burn, Inc, supra,* at 431, extolling the importance of judicial deference to the decisions of the local zoning authorities. As Judge Ryan argued, the dicta in these early decisions should never have been elevated to a rule that essentially obliterates the normal presumption of validity in zoning ordinances. *Silva, supra,* at 165.

Finally, the public policy rationale for the rule is not sound because it invites a land use regulation process that will result in the too-easy approval of gravel extraction and other natural resource land uses (such as wind or solar farms). As Judge Davis pointed out that "the gravel district was formed to prevent precisely what the trial court found would occur – uncontrolled intrusion of mining into any part of the township that would support it, irrespective of the consequences of the community." 278 Mich App at 774. The danger of over-riding critical local efforts to guide local growth and assure compatible land use development by ad hoc judicially-made zoning decisions is not hypothetical. It is a danger than can impede the planning efforts of the local government as well as its attempts to balance conflicting needs. Judge Davis's partial concurrence and partial dissent offers an illustration in this case of the very real problems that can be caused. 279 Mich App at 765-66. Requiring the judiciary to routinely second-guess the policy decisions of the local government on the placement of uses relating to natural resource use will undermine important local government interests and decisions, will foster litigation by those wanting to use land in a manner that is incompatible with surrounding land uses, and will result in a hodgepodge of uses designed by courts on an

ad hoc basis as a result of litigation rather than through a comprehensive public process of land use planning and zoning laws.

Silva embraced a broad rule that has been applied to dramatically alter a legislatively-enacted policy of vesting control of local land use decisions within the hands of the people through their municipal governments. This legislative policy in turn allows those local governments to adopt policies regarding land use development in their locality, balancing the conflicting needs and desires of citizens as part of the calculus. Grave constitutional questions arise from transferring this legislative policy-making authority to the courts in the absence of any legislative directive. This Court can and should avoid those issues by overruling *Silva* on the grounds that it was abrogated by the enactment of the Zoning Enabling Act.

ARGUMENT III

THE "NO VERY SERIOUS CONSEQUENCES" RULE IMPERMISSIBLY SHIFTS THE BURDEN OF PROOF ONTO THE LOCAL GOVERNMENT TO DEFEND ITS ZONING POLICY.

A. Michigan courts review of a question of statutory interpretation de novo and afford a strong presumption of constitutionality to ordinances that have been duly enacted by a local government.

This Court reviews de novo questions of law involving statutory interpretation. *Taylor v Smithkline Beecham Corp*, 468 Mich 1; 658 NW2d 127 (2003). Constitutional challenges are also reviewed de novo. *Wayne Co v Hathcock*, 471 Mich 445, 455; 684 NW2d 765 (2004). The statute at issue is reviewed pursuant to the rational basis test, which does not examine "the wisdom, need, or appropriateness of the legislation." *Muskegon Area Rental Ass'n v City of Muskegon*, 465 Mich 456, 464; 636 NW2d 751 (2001). Furthermore, it does not test whether a classification is made with mathematical nicety or whether some inequity is placed into practice. *Id.* Rather, the only inquiry or test is "whether the legislation is reasonably related to a legitimate governmental purpose." *TIG Ins Co, supra,* at 557. An ordinance under constitutional review is upheld "'if the legislative judgment is supported by any set of facts, known or reasonably assumed, even if the facts are subject to debate.' " *Id.*, quoting *Crego v Coleman*, 463 Mich 248, 260; 615 NW2d 218 (2000). A challenge to the rational basis of the statute "'must overcome the presumption that the statute is constitutional.'" *Muskegon*, *supra* at 464, quoting *TIG*, supra at 557-558. To succeed in having legislation stricken, the petitioner must establish that the legislation is based on reasons totally unrelated to the state's goals. *Id.* This burden is extremely high because the challenger must negate every conceivable basis that would support the legislation. *Id.* This deference effectuates the

separation of powers and insures that the judiciary is not impinging on the legislative sphere or imposing its own policy choices under the guise of judicial review

B. The "no very serious consequences" doctrine impermissibly shifts the burden of proof by obligating the local government to demonstrate that its zoning enactment is valid.

The "no very serious consequences" doctrine has its origins in decisions from Michigan appellate courts dealing with challenges to the exclusion of "favored" uses from a municipality. See e.g., *Bristow v City of Woodhaven*, 35 Mich App 205; 192 NW2d 322 (1971). In *Silva, supra,* this Court considered "the standard for determining the validity of zoning which prevents the extraction of natural resources." 416 Mich at 156. The *Silva* court held that special treatment that is "a more rigorous standard of reasonableness" should be applied "when the zoning would prevent the extraction of natural resources." 416 Mich at 158-59. The "more rigorous" standard involved looking at whether "no very serious consequences" would stem from the mining of the natural resources.

This shifting burden of proof is inconsistent with Michigan courts' well-accepted and strong presumption that zoning regulations are valid. See *Kirk v Tyrone Twp,* 398 Mich 429, 439; 247 NW2d 848 (1976); *Kropf v City of Sterling Heights*, 391 Mich 139; 215 NW2d 179 (1974). Indeed, the Court of Appeals in *Silva* concluded that *Kirk* and *Kropf*'s statement of the standard of review had implicitly overruled the "no very serious consequences" doctrine that had been announced in *Bristow*. In dissent from the four person majority's re-articulation of the "no very serious consequences" doctrine, Judge Ryan insisted that the Court could not reconcile it with the standard adopted in those cases explaining:

> While not purporting to overrule the above-cited cases, my brother's opinion effectively does so by holding, for the first time, "that zoning regulations which prevent the extraction of natural resources are invalid unless 'very serious consequences' will result from the proposed extraction". This holding reverses the presumption of validity accorded zoning ordinances and creates a "preferred use" doctrine in favor of removing natural resources, contrary to our decision in Kropf, supra , which specifically abolished the preferred use doctrine. Therefore, I cannot join my brother's opinion.

416 Mich at 165. Judge Ryan pointed out that the prior articulation of the "no very serious consequences" language had been obiter dictum and was therefore not controlling as the Bristow court had erroneously concluded:

> Even a cursory examination of this Court's opinions in *Certain-teed Products Corp v Paris Twp*, 351 Mich 434, 88 NW2d 705 (1958), and *City of North Muskegon v Miller*, 249 Mich 52, 227 NW 743 (1929), reveals that the supposed 'rule' favoring the removal of natural resources unless 'very serious consequences" would result was merely obiter dictum in each case. In *Miller*, *supra* , the Court affirmed an injunction against oil drilling under a city ordinance requiring a drilling permit; therefore, the supposed policy in favor of exploiting natural resources was not followed in that case. In *Certain-teed* the Court reversed the law case based on the zoning ordinance, but remanded the chancery case in contemplation of continuing judicial supervision and control over the mining project; the plaintiffs in that suit were not given carte blanche to develop natural resources, and the Court's opinion explicitly contemplated that in the future an injunction shutting down the mining operation might be proper.

Id. Judge Ryan criticized the elevation of this obiter dictum to a holding because it was based on a long-since discredited public policy:

> It is particularly inappropriate to elevate dictum to holding when the dictum embodies the public policy of 1929 and 1958, not 1982. We have long since abandoned the illusion that our scarce natural resources are infinite and renewable and therefore should be quickly exploited to the fullest

> extent. See *Michigan Oil Co v Natural Resources Comm*, 406 Mich 1; 276 NW2d 141 (1979); MCL § 691.1201 et seq; MSA § 14.528(201) et seq.

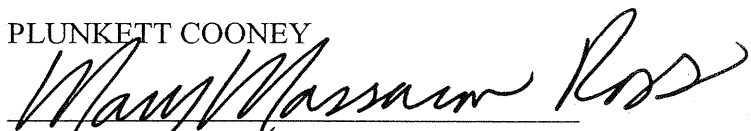
Id.

Judge Ryan's analysis was correct. The "no very serious consequences" doctrine fundamentally shifts the burden of proof in cases involving the extraction of natural resources on the basis of obiter dictum in *Bristow*. Moreover, the "public policy" on which the rule was grounded that is not found in any statutory pronouncement or other proper source of "policy" and had been discredited at the time it was embraced. That policy, whatever its merits as to oil, has now been expanded to encompass all natural resources including those that are not scarce, such as gravel or sand or wind. This Court has long deferred to coordinate branches of government – and does so by affording a presumption of validity to zoning regulations enacted in accord with delegated police powers. It should squarely reject the *Silva* rule which is inconsistent with this body of law.

RELIEF

WHEREFORE, Michigan Municipal League and Michigan Municipal League Liability & Property Pool, as Amici Curiae, respectfully request this Court to reverse the judgment of the lower courts, squarely overrule the *Silva* "no very serious consequences" Rule, and adopt such other relief as is warranted.

PLUNKETT COONEY

By: 

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PROOF OF SERVICE

MARJORIE E. RENAUD, states that on September 1, 2009, two (2) copies of the Corrected Brief of Michigan Municipal League and Michigan Municipal League Liability & Property Pool as Amici Curiae in Support of Defendant-Appellant Kasson Township and Proof of Service, was served on:

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by depositing same in the United States mail with postage fully prepaid.

Marjorie E. Renaud
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