STATE OF MICHIGAN
IN THE SUPREME COURT

GEORGE H. GOLDSTONE,

Plaintiff-Appellant,

v

BLOOMFIELD TOWNSHIP PUBLIC LIBRARY.

Defendant-Appellee.

_____/

Supreme Court Case No: 130150

Court of Appeals Case No: 262831

LC No: 04-060611 CZ
Oakland County Circuit Court

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BRIEF OF AMICUS CURIAE
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STATEMENT OF BASIS OF JURISDICTION

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 April 7, 2006, this Court issued an order directing the parties to file supplemental briefs and inviting the Michigan Municipal League and Michigan Library Association to file briefs amicus curiae, limited to the issue of whether Defendant/Appellee Bloomfield Township Public Library's policy is a violation of Const 1963, art 8, § 9. 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).

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STATEMENT OF QUESTIONS INVOLVED

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

Plaintiff/Appellant 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
Amicus Curiae Michigan Municipal League answers	No

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STATEMENT OF FACTS

The Michigan Municipal League adopts the Counter-Statement of Facts set forth in Defendant Appellee's Brief in Opposition to Appellant's Application for Leave to Appeal, the facts set forth in the trial court's Summary Disposition Opinion and Order, and the facts in the Court of Appeals' Opinion.

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INTRODUCTION AND SUMMARY

INTRODUCTION

The Michigan Municipal League (MML) submits this brief in response to the Court's invitation to do so in the Court's order dated April 7, 2006. The Michigan Municipal League is a non-profit Michigan corporation whose purpose is the improvement of municipal government and administration. Its membership includes more than five hundred (500) Michigan cities and villages. Many of its members own, operate, and support public libraries. Among its members are three hundred eighty-three (383) cities and villages who are also members of the Michigan Municipal League Defense Fund, which the Michigan Municipal League operates through a Board of Directors. An important purpose of the Legal Defense Fund is to represent and protect the interests of its members by filing *amicus curiae* briefs in cases involving important issues of statewide concern to Michigan cities and villages. The MML would like to express its appreciation to the Court for extending an invitation to submit a brief in this matter and the MML hopes its brief will assist the Court in considering the issue and reaching a decision.

SUMMARY

Defendant/Appellee's challenged library policy does not violate Article 8, § 9. Article 8, § 9 is, by its terms, not self-executing. Article 8, § 9 directs the legislature to establish a system of libraries which will be available to all residents of the state. Thus, Article 8, § 9 must be executed through implementing legislation. There is no statute that prohibits a library from denying borrowing privileges to a non-resident who lives in a

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jurisdiction that does not have a contract with the library. If Plaintiff/Appellant believes that the Legislature has failed to implement Article 8, § 9 through appropriate legislation, and that failure permits (or does not prohibit) a library policy which Plaintiff/Appellant believes violates Article 8, § 9, Plaintiff/Appellant's remedy is with the Legislature, not the courts. The courts are barred by the doctrine of the separation of powers as set forth in Article 3, Section 2, from implementing Article 8, § 9. The courts have no authority to implement a provision of the Constitution which has been expressly left to the Legislature to implement. For this reason, Plaintiff/Appellant has failed to state a claim upon which relief can be granted.

ARGUMENT

DEFENDANT/APPELLEE BLOOMFIELD TOWNSHIP PUBLIC LIBRARY'S CHALLENGED POLICY DOES NOT VIOLATE CONST 1963, ART 8, § 9.

1. Article 8, Section 9 is not self-executing; therefore, it must be implementation by legislation.

The challenged policy of Defendant/Appellee Bloomfield Township Library (the "Library") does not violate Const 1963, art 8, § 9. Simply put, Article 8, § 9 directs the Legislature to take certain action regarding public libraries. Specifically, it provides in pertinent part:

> 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.

Article 8, § 9 expresses a principle, e.g., that the Legislature has the constitutional responsibility to establish and support a system of public libraries that will be available to all residents of the state – under regulations adopted by the governing bodies of the libraries.

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The Parties and Amicus Curiae Michigan Library Association have briefed for this Court in detail the issue of the intent of voters in approving Article 8, § 9. Much of that briefing involves the interpretation of the minutes of the Official Record of the Constitutional Convention. Amicus MML does not believe it can provide the Court with any additional argument or consideration regarding the intent of the voters in adopting Article 8, § 9 that has not already been presented to the Court by the Parties and Amicus.

However, Amicus MML believes that the dispositive issue in this case is not the intent of the voters in approving Article 8, § 9; rather, the dispositive issue is whether or not Article 8, § 9 is self-executing. If Article 8, § 9 is not self-executing, it really doesn't matter (for the purposes of this case) what the voters intended, because there is no remedy in the courts for Plaintiff/Appellant. The provision must be implemented by the Legislature.

> Since a constitutional provision which depends upon legislative action for its effectiveness is ipso facto not self-executing, it follows that in determining whether a provision is self-executing, the question in every case is whether the language of a constitutional provision is addressed to the courts or to the legislature. 16 AM Jur 2d, §103, p 491

Article 8, § 9 is expressly addressed to the Legislature, not the courts. It states, in pertinent part, "The Legislature shall provide for the establishment and support of public libraries . . . ." This, obviously, means that the principle expressed in Article 8, § 9, must be implemented by the Legislature through legislation. See *Musselman v Governor*, 448 Mich 503, 523; 533 NW2d 237 (1995) (a constitutional amendment is not self-executing when it merely indicates principles and does not set forth the rules by which those principles may be given the force of law.)

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2. This Court cannot grant the relief requested by Plaintiff/Appellant without usurping the role of the Legislature as directed in Article 8, § 9, and without violating the doctrine of the separation of powers as stated in Article 3, § 2.

Plaintiff/Appellant is asking this Court to do something which the Constitution directs the Legislature to do. For this Court to do what Plaintiff/Appellant is requesting (implement by judicial decision the principle stated in Article 8, § 9 as Plaintiff/Appellant interprets it) would be a clear usurpation by this Court of the Legislature's role in this matter as directed in the Constitution.

> Constitutional provisions to the effect that laws may be passed by the legislature for particular purposes are not self-executing; and a provision that the legislature should make suitable provisions for carrying a constitutional amendment into effect is obviously addressed to the legislature and is indicative of the intention that such amendment should not become effective until made so by an act of the legislature. 16 Am Jur 2d, § 103, p 491.

Additionally, if the legislature fails to implement the principle by legislation, there is no judicial remedy.

> Even if a constitutional provision contains a mandatory requirement that the legislature adopt a particular provision, <u>there is no remedy if the legislature fails to obey such constitutional mandate</u>. But the command of a constitutional provision which is not self-executing remains in force, even though it is for the legislature to choose the time and form for carrying out the command. 16 Am Jur 2d, § 103, p 487-88. (emphasis added)

The courts are not empowered to assume implementing responsibility when the Constitution directs implementing responsibility to the Legislature, even where the Legislature has failed to act as directed.

> There may be some concern that the Legislature may not act quickly or at all, but that surely is not a proper basis for this Court acting in the name of the Legislature. <u>People v Gilbert,</u> 414 Mich 191 (1982).

The doctrine of the separation of powers mandates that the courts not take action

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in this matter. The doctrine of the separation of powers is set forth in Article 3, § 2:

> 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.

Article 8, § 9 expressly directs the Legislature to provide for the system of public libraries that will be available to all residents of the state. Article 3, § 2 prohibits the courts from exercising the authority vested in the Legislature. Currently, there is no statute which prohibits a library from denying borrowing privileges to a non-resident who lives in a jurisdiction that does not have a contract with the library. This Court cannot grant the relief that Plaintiff/Appellant is requesting because to do so would violate Article 3, § 2 as it would constitute this Court exercising "powers properly belonging to another branch" of government.

This Court has repeatedly over the years acknowledged and adhered to the principle of the separation of powers.

> A fundamental principle scrupulously observed by the courts is to the effect that the judiciary may not encroach upon the functions of the legislature. Bartkowiak v Board of Sup'rs of Wayne County, (1954) 341 Mich 333, 343.

And, more recently:

> In the final analysis, the constitutional responsibility of the judiciary is to act in accordance with the constitution and its system of separated powers, by exercising the judicial power and only the judicial power. National Wildlife Federation, *et al* v Cleveland Cliffs Iron Company, *et al,* (2004) 471 Mich 608, 636.

The doctrine of the separation of powers precludes the courts from acting in this matter.

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CONCLUSION

Article 8, § 9 wisely left it up to the Legislature (the direct representatives of the people) to implement the principle that the state shall have a public library system "which shall be available to all residents of the state." Plaintiff/Appellant claims that this means that every resident of the state should be able to borrow books from any library in the state. Perhaps it means that; perhaps it doesn't. The point in this case is that the courts are not empowered to make that determination by implementing this provision. Rather, it is for the Legislature. If the Legislature has not fulfilled a constitutional mandate as interpreted by Plaintiff/Appellant, Plaintiff/Appellant needs to take that up with the Legislature, not the courts. In essence, Plaintiff/Appellant has failed to state a claim upon which relief can be granted in this case because only by violating Article 3, § 2 (and the direction in Article 8, § 9) can this Court grant the relief requested by Plaintiff/Appellant.

RELIEF REQUESTED

For the reasons set forth above, Amicus MML respectfully requests this Court deny Plaintiff/Appellant's Application for Leave to Appeal.

Dated: June 20, 2006

Respectfully submitted,

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