STATE OF MICHIGAN
COURT OF CLAIMS

CITY OF DETROIT POLICE & FIRE RETIREE HEALTH CARE TRUST, *et al.*,

Plaintiffs,

v.

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY, *et al.*,

Defendants.

No. 24-0097-MM

Hon. Christopher P. Yates

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PLAINTIFFS'
12/13/2024 MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF RESPONDING TO THE AMICUS BRIEF FILED BY MACKINAC CENTER LEGAL FOUNDATION

Plaintiffs City of Detroit Police and Fire Retiree Health Care Trust, Retired Detroit Police and Fire Fighters Association, and City of Detroit General Retiree Health Care Trust respectfully request leave to respond to the Mackinac Center for Public Policy's amicus brief.

Consistent with Local Rule 2.119(A)(2), Plaintiffs sought concurrence from the Mackinac Center, which does not oppose the relief requested.

Respectfully submitted,

BUTZEL

Dated: December 13, 2024

/s/

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Defendants contend that this action must be dismissed for lack of standing. They argue that the Union VEBA is the ***only*** entity qualified to apply for and receive the §1010(8) grant funds. Defendants are wrong for multiple reasons, as explained in Plaintiffs' brief opposing summary disposition. MSD Resp., at 11-18. One reason relevant here is that the Defendants' preferred reading of the statute would create a serious constitutional infirmity as it would render §1010(8) an impermissible private appropriation because it was enacted without the required two-thirds vote. *Id.*, at 17 n 5 ("[S]uch a reading would make Section 1010(8) an unconstitutional private appropriation in violation of Const 1963, art 4, §30."). Plaintiffs have offered a better reading of the statute that gives effect to the plain meaning of the text without creating the constitutional concerns inherent in Defendants' reading. *Id.*, at 11-18. And, if "there are two reasonable ways of interpreting [a statute]," courts "should choose the interpretation that renders the statute constitutional." *People v Skinner*, 502 Mich 89, 111 (2018).

The Mackinac Center Legal Foundation's amicus brief amplifies the constitutional concerns lurking in Defendants' interpretation. As it explains, Article IV, Sections 29 and 30 of Michigan's Constitution prohibits "local" or "special" acts and appropriations for "private purposes" that are passed by less than two-thirds of the Legislature:

> The legislature shall pass no local or special act in any case where a general act can be made applicable, and whether a general act can be made applicable shall be a judicial question. No local or special act shall take effect until approved by two-thirds of the members elected to and serving in each house and by a majority of the electors voting thereon in the district affected. [Const 1963, art 4, §29 (excerpt).]
>
> The assent of two-thirds of the members elected to and serving in each house of the legislature shall be required for the appropriation of public money or property for local or private purposes. [Const 1963, art 4, §30.]

Brief of Amicus Curiae 6. Because the 2024 General Appropriations Act was not passed with two-thirds assent, it violates these constitutional provisions if it is read to be a special act or private appropriation.

Caselaw has not clearly addressed the differences between special, local, and private acts (nor does the Mackinac Center in its amicus brief), but a clear throughline can be found differentiating the various concepts. If an act addresses governmental entities such as municipalities, courts ask if it is "local." See, *e.g.*, *Houston v Governor*, 491 Mich 876, 880–881 (2012) (concluding that an act was general, not local, because it could apply to multiple municipalities); *State v Wayne Co Clerk*, 466 Mich 640, 642 (2002) (concluding that an act was local because it could only apply to a single municipality by its triggering date). But if an act addresses private entities, courts ask if it is "private" or "special." See *Grebner v State*, 480 Mich 939, 940 (2007) (holding that "[i]f an appropriation predominantly serves a public purpose, it is not an appropriation for a private purpose" even if "certain individuals benefit from the appropriation" (citation omitted)); *Rohan v Detroit Racing Ass'n*, 314 Mich 326, 350 (1946) ("[A] statute relating to particular persons or things of a class is special."); *GMC v Dep't of Treas*, 290 Mich App 355, 378–380 (2010) (concluding that an act was not "special" because it could apply to more entities than GMC alone). Here, §1010(8) is addressed to private entities. Therefore, the question to be asked is whether, under either of the parties' interpretations, §1010(8) is a "special" or "private" act under Const 1963, art 4, §§ 29–30.

Special acts are those that apply to only specified, private entities. In contrast to "general acts," which pertain to "persons or things as a class," a statute "relating to *particular* persons or things of a class is special." *Rohan*, 314 Mich at 350. Defendants contend that the Union VEBA was the ***only*** entity eligible to receive the VEBA grant funds. MSD Brief, at 1. Under that reading, §1010(8) does not apply to a class. Instead, it would establish a grant fund for a single entity, making it a quintessential "special" act. So, if this Court agrees with Defendants that the Union VEBA is the ***only*** VEBA eligible to receive Section 1010(8)'s grant funds, it would also ***necessarily*** have to conclude that Section 1010(8) is an unconstitutional special act.

On the other hand, Plaintiffs' reading creates no such constitutional infirmity. Under their reading, §1010(8) is not a special act because it establishes a grant fund open to an entire class: ***all*** Detroit VEBAs "formed during the city's bankruptcy" that had their members' benefits "reduced because of the city's bankruptcy." 2023 PA 119, art 9, part 2, § 1010(8). Plaintiffs are among that class and therefore eligible to apply for and receive the grant funds. MSD Resp., at 10–14, 19–23. Because §1010(8) applies to an entire class of VEBAs (namely, both Plaintiffs), not just a single VEBA, it is not a special act. See *Rohan*, 314 Mich at 350.

Although the Mackinac Center helpfully highlights the potential constitutional problems inherent in Defendants' interpretation of §1010(8), it makes a subtle but significant mistake in its application of these principles to the facts of the instant case. It suggests that Section 1010(8) is an unconstitutional special act because "the legislature used the population-count method here to specify that it [§1010(8)] *was for Detroit*, as no other city in Michigan has a population greater than 600,000 and had filed bankruptcy." Amicus Brief, at 21 (emphasis added). That's not quite right. Section 1010(8) is directed to private entities ("voluntary employee benefit association[s]"), not municipalities. Municipal population-count is relevant only insofar as it defines the class of private entities eligible for the appropriation. As already discussed, there are multiple Detroit-based VEBAs (private entities) that presently qualify under the plain terms of §1010(8). In addition, an appropriation designed to mitigate the effects of the Detroit bankruptcy is better characterized as public in nature. The "grand bargain" that paved the way for Detroit to exit bankruptcy was struck to avoid the loss of cultural treasures held by the Detroit Institute of Arts, to avoid the risk that other Michigan communities' access to the bond market would be impaired, and to reduce the harm to Detroit's pensioners. Although §1010(8) comes many

years later, it is best understood as an continuation of the state's effort to further mitigate the ongoing effects of the city's bankruptcy.[1]

Defendants' reading of §1010(8) would render it unconstitutional—a point first raised by Plaintiffs and now confirmed by the Mackinac Center. Plaintiffs, however, offer an interpretation that is consistent with the Constitution and their theory of the case. The Court should therefore reject Defendants' reading of §1010(8) and deny their motion for summary disposition.

[1] The Mackinac Center's arguments may carry more force when applied to other, similarly structured appropriations in the 2024 General Appropriations Act that are unrelated to the bankruptcy. Plaintiffs have not, however, brought a taxpayer action alleging violation of Article 4, §§ 29 or 30, under MCL 600.2041(3) and MCR 2.201, so those appropriations and the general constitutionality of the Act are not before the Court. Even so, the Legislature would be wise to take the Mackinac Center's arguments seriously when enacting future appropriations acts.

Respectfully submitted,

BUTZEL

Dated: December 13, 2024

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