

STATE OF MICHIGAN  
COURT OF CLAIMS

---

MACKINAC CENTER FOR PUBLIC POLICY,  
a domestic nonprofit corporation,

Plaintiff,

v

DEPARTMENT OF LABOR AND ECONOMIC  
OPPORTUNITY,  
a state government entity

Defendant,

and

THE PEOPLE OF THE STATE OF MICHIGAN,

Intervening Defendant.

---

MACKINAC CENTER LEGAL  
FOUNDATION

Patrick J. Wright (P54052)

Derk A. Wilcox (P66177)

140 West Main Street

Midland, MI 48640

(989) 631-0900

[wright@mackinac.org](mailto:wright@mackinac.org)

[wilcox@mackinac.org](mailto:wilcox@mackinac.org)

*Attorneys for Plaintiff*

Christopher W. Braverman (P70025)

Sandra A. Karpinsky (P87720)

Adam R. de Bear (P80242)

Assistant Attorneys General

Department of Attorney General

Labor Division

P.O. Box 30736

Lansing, MI 48909

(517) 335-7641

[Bravermanc@michigan.gov](mailto:Bravermanc@michigan.gov)

[karpinskys@michigan.gov](mailto:karpinskys@michigan.gov)

[debeara@michigan.gov](mailto:debeara@michigan.gov)

*Attorneys for Defendant*

No. 25-000082-MM

Hon. Brock A. Swartzle

**PLAINTIFF'S  
09/10/2025 REPLY  
BRIEF**

---

Kyla L. Barranco (P81082)  
Rebecca A. Aboona (P81977)  
Assistant Attorneys General  
Solicitor General's Division  
P.O. Box 30312  
Lansing MI, 48909  
(517) 335-7628  
[BarrancoK@michigan.gov](mailto:BarrancoK@michigan.gov)  
[AboonaR1@michigan.gov](mailto:AboonaR1@michigan.gov)  
*Attorneys for Intervening Defendant*

---

**PLAINTIFF'S 09/10/2025 REPLY BRIEF TO INTERVENING DEFENDANT  
STATE OF MICHIGAN'S RESPONSE IN SUPPORT OF PLAINTIFF'S  
5/20/2025 MOTION FOR PRELIMINARY INJUNCTION**

**\*ORAL ARGUMENT REQUESTED\***

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

I. Both disputed appropriations violate Const 1963, art 4, § 30 as local purpose appropriations without a 2/3rds vote of each legislative chamber..... 1

II. The Jimmy John’s Field appropriation violates Const 1963, art 4, § 30 as a private purpose appropriation without a 2/3rds vote of each legislative chamber..... 4

RELIEF REQUESTED..... 5

**TABLE OF AUTHORITIES**

**CASES**

*Advisory Op on the Const of PA 1966, No 346*, 380 Mich 554 (1968) ..... 5

*Houston v Governor*, 491 Mich 876 (2012)..... 3

*Loomis v Rogers*, 197 Mich 265 (1917)..... 2

*Moreton v Haggerty*, 240 Mich 584 (1927)..... 1, 2, 3

*Oakland Schools Bd or Educ v Porter*, 392 Mich 613 (1974)..... 3

*State v Wayne Cnty Clerk*, 466 Mich 640 (2002) ..... 3

*Wayne Cnty v Hathcock*, 471 Mich 445 (2004)..... 4

**CONSTITUTIONAL PROVISIONS**

Const 1908, art 5, § 24 ..... 1

Const 1908, art 8, § 26 ..... 2

Const 1963, art 4, § 30 ..... 1, 5

**I. Both disputed appropriations violate Const 1963, art 4, § 30 as local purpose appropriations without a 2/3rds vote of each legislative chamber.**

The State of Michigan begins its substantive analysis of Section 30 by misconstruing *Moreton v Haggerty*, 240 Mich 584 (1927), and converting that Court’s test examining whether a statute is applied to “a limited area” or “to the entirety of the state” to an assessment that questions whether tourists might visit a locale. It cites an Attorney General Opinion, OAG 1983-1984, No 6225 (May 7, 1984), to support its contention that availability to tourists prevents an appropriation from being designated as for a local purpose. The State of Michigan then applies its limitless tourist-can-reach-it exemption to contend that both the Lansing (Jackson Field) and Utica (Jimmy John’s Field) stadiums are not local-purpose appropriations. Application of the proper *Moreton* test shows both appropriations are for local purposes.

In *Moreton*, a statute that authorized collection of a gasoline tax and placement of the funds into a “state highway fund.” *Moreton*, 240 Mich at 586. The statute set forth a formula by which those funds would be distributed by a “schedule.” *Id.* Portions of this schedule allowed payments to “county treasurers” based on the amount gathered on a separate vehicular weight tax. *Id.* at 587. Another portion of the schedule paid cities or villages a sum based on the number of miles of “state trunk line highways” within their jurisdiction. *Id.* The payments to the counties, cities, and villages were challenged under Const 1908, art 5, § 24, the analogue to Const 1963, art 4, § 30.

The Michigan Supreme Court set forth the issue:

The act is a highway finance measure. It provides that the tax collected shall be deposited to the credit of the state highway fund, and appropriated from that fund for certain purposes, one of which is the payment of specified amounts to the several counties of the state which are to be expended for the construction and maintenance of highways, ‘under the supervision of the state administrative board, in accordance with the highway laws.’ Is this an appropriation for local purposes within the meaning of the Constitution?

*Moreton*, 240 Mich at 588.

The *Moreton* Court cited *Loomis v Rogers*, 197 Mich 265 (1917), for the proposition that “While yet recognizing local interest in and a reasonable local control over highways, the present constitution makes plain that their improvement for public travel is not to be regarded as solely and exclusively a matter of local concern, but of general public general public interest and state-wide importance.” *Moreton*, 240 Mich at 589; see, Const 1908, art 8, § 26 (stating in part: “The legislature may by general law provide for the laying out, construction, improvement and maintenance of highways, bridges and culverts by counties, districts and townships; and may authorize counties or districts to take charge and control of any highways within their limits for such purposes.”).

Having indirectly recognized that as a matter of constitutional text, highways were a state interest, Michigan Supreme Court then stated:

And this interest of the state at large in the building of highways is not now merely an incidental and remote public interest. Under present conditions, **it is such a direct and substantial interest as to divest a state appropriation for a county highway of its local character.** To say that a highway appropriation is for local purposes means that it is for the benefit of the locality where it is expended. The purpose of these appropriations is, not for the benefit of certain localities, but for the state at large.

But probably the most convincing reason **why the appropriations in question are not for local purposes is that the act does not in form or in fact apply to any one particular locality. It is made to operate in the same way on every section of the state. It is not directed to one county, but to every county. It is a general statute enacted for a statewide purpose.** The extent of the territory to which it is applied, whether to a limited area or to the entire territory of the state, would seem to furnish a reasonably accurate test as to whether it is for general or local purposes.

*Id.* at 589 (emphasis added).

The State of Michigan ignores the indirect reference to the 1908 provision and instead latches onto that portion of *Loomis* citing “local interest in” highways. From that, the State of

Michigan seeks to contend that any local interest can be transformed into a state one. It then cites Attorney General Opinion 6225 to claim that tourism is a state interest and any appropriation for a tourist attraction is a state interest.

The State of Michigan cites no case law for its one-tourist test. Nor does it sufficiently address the *Moreton* requirement that the appropriation statute not “apply to any one particular locality.” The State of Michigan does assert “The Jackson Field appropriation . . . is directed at a baseball stadium (not a city) that attracts fans and host events for people across the State.” State of Michigan 9/3/25 Response at 11. But this is foreclosed by *State v Wayne County Clerk*, 466 Mich 640 (2002) and *Houston v Governor*, 491 Mich 876 (2012) and *Houston’s* requirement that general, as opposed to local statutes, be open-ended and not closed-ended. Appropriation statutes are closed-ended due to their limitation to a single fiscal year. *Oakland Schools Bd or Educ v Porter*, 392 Mich 613, 620-21 (1974).

The State of Michigan complains “under that logic, every provision in every omnibus budget would qualify as local in nature.” State of Michigan 9/3/25 Response at 12. That is incorrect. Appropriations to state entities would be allowed. Appropriations that meet the *Moreton* test of operating in the same way on every section of the state would be valid. But local appropriations that the Legislature attempts to disguise through population descriptors like those at issue here would not be. These appropriations could still issue – if, and only if, they meet the supermajority voting requirement of Const 1963, art 4, § 30.<sup>1</sup>

---

<sup>1</sup> The State of Michigan makes a passing reference to the idea that appropriations made for local purposes can only refer to local government. State of Michigan 9/3/25 Response at 19. Thus, it implies that the Jimmy John’s appropriation can only be considered for whether it is for a private  
(Note continued on next page.)

**II. The Jimmy John’s Field appropriation violates Const 1963, art 4, § 30 as a private purpose appropriation without a 2/3rds vote of each legislative chamber.**

The State of Michigan argument is largely made based on a few fleeting citations to post-Constitutional Conventional cases that were in Plaintiff’s preliminary injunction brief and that are faulty and unpersuasive for the reasons set forth there. Entirely undiscussed is whether the State of Michigan accepts the *Wayne County v Hathcock*, 471 Mich 445 (2004) framework for interpreting constitutional terms of art. Also, no analysis is provided to the thorough history of the rejection of economic development at the 1961 Constitutional Convention nor to the near century of case law that proceeded that convention rejecting economic development as a public purpose.

Instead, the State of Michigan tries to concoct a new public purpose – the creation of “recreational and family-and community-oriented events for Michiganders.” State of Michigan 9/3/25 Response at 13. The State of Michigan claims that this purpose distinguishes *Advisory Opinion on the Constitutionality of PA 1966, No 346*, 380 Mich 554 (1968), which banned direct expenditures to private entities where the supermajority voting requirement of Const 1963, art 4,

---

purpose under Section 30. The State of Michigan offers no argument or constitutional history in support of this assertion.

The Legislature was clearly aiming the appropriation at a particular place in a particular locale, which is improper under the *Moreton* test.

It appears that the Legislature is at least concerned that an appropriation to a private entity can be tested as being either a local purpose or private purpose. If not, there would be no need for the population-threshold subterfuge for any private appropriation. The receiving entity could just be overtly named – here, Jimmy John’s Field – and the analysis of whether the appropriation was for a private purpose could precede without the need to pull census tables.

Regardless, even if the Jimmy John’s Field appropriation cannot be tested as a local purpose, it is for a private purpose and still violates Const 1963, art 4, § 30.

§ 30 was not met. The State of Michigan claims the purpose there – aiding the construction of private housing for low-and-middle-income dwellers was “too tenuous,” but that its community-orientated-events justification meets a public purpose. Both fail as they principally provide aid to private entities. Such aid is not absolutely prohibited in the State of Michigan, but since the passage of the 1850 Constitution, has required a supermajority legislative vote – which was not met in regard to the Jimmy John’s Field appropriation.

**RELIEF REQUESTED**

For the reasons stated above and in its May 20, 2025 brief in support of its preliminary injunction request, Plaintiff requests that this Court enter a preliminary injunction order prohibiting the Department from disbursing any additional funds appropriated to the grants challenged herein.

Respectfully Submitted,

/s/ Patrick J. Wright

Patrick J. Wright (P54052)

Attorney for Mackinac Center for Public Policy

Date: September 10, 2025