

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
[Saad, C.J., and Talbot and Fort Hood, JJ.]

DANIEL ADAIR, a Taxpayer of the FITZGERALD
PUBLIC SCHOOLS; and FITZGERALD PUBLIC
SCHOOLS, a Michigan municipal corporation, et al,

Plaintiffs-Appellants,

Supreme Court No. 137424
Court of Appeals No. 230858

v

STATE OF MICHIGAN, DEPARTMENT OF
EDUCATION; DEPARTMENT OF MANAGEMENT
AND BUDGET; AND ROBERT J. KLEINE,
TREASURER OF THE STATE OF MICHIGAN,

Defendants-Appellees.

DEFENDANT-APPELLEES' BRIEF ON APPEAL
ORAL ARGUMENT REQUESTED

Michael A. Cox
Attorney General

B. Eric Restuccia (P49550)
Solicitor General
Counsel of Record

Timothy J. Haynes (P41196)
Raymond O. Howd (P37681)
Joshua S. Smith (P63349)
Assistant Attorneys General
Education & Social Services Division
Attorneys for Defendants-Appellees
PO Box 30758
Lansing, MI 48909
(517) 373-7700

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QUESTION PRESENTED FOR REVIEW

- I. **Const 1963, art 9, § 32 awards costs incurred in maintaining a suit only where a taxpayer's "suit is sustained." In the present suit, Plaintiffs raised 21 claims under several different statutes, administrative rules, and an Executive Order. This Court affirmed dismissal of every aspect of Plaintiffs' suit except for a single claim. Even if this Court, in Supreme Court Docket No. 137453, affirms the Court of Appeals' determination that Plaintiffs are entitled to declaratory relief on the single remaining claim, the question presented is:**

Whether Plaintiffs are entitled to recover the "costs incurred in maintaining" this suit pursuant to Const 1963, art 9, § 32?

INTRODUCTION

Const 1963, art 9, § 32 awards costs incurred in maintaining a suit only where a taxpayer's "suit is sustained." Despite having nearly every aspect of their lawsuit rejected by the Court of Appeals and this Court, the Plaintiffs nonetheless argue that they are entitled to attorney fees for having sustained their suit.

In its July 3, 2008 ruling, the Court of Appeals granted declaratory relief for Plaintiffs on their data-collection and reporting requirements claim. But because this claim was but one of 21 that Plaintiffs originally raised in this suit, 20 claims being dismissed, the Court of Appeals declined Plaintiffs' request to award costs and attorney fees. As the Court of Appeals correctly held, the rejection of nearly every claim made by Plaintiffs over the course of eight years of litigation means Plaintiffs did not sustain their suit under the *Headlee Amendment* and consequently are not entitled to attorney fees or any other costs.

Moreover, the Court of Appeals ruling on the sole surviving claim – which related to the record keeping requirements allegedly imposed by a single statute, MCL 388.1752, and Executive Order 2000-9 – is erroneous and is currently before this Court in Defendants' appeal in Supreme Court Docket No. 137453. Should this Court reverse the Court of Appeals in Supreme Court Docket No. 137453, the result would be that all Plaintiffs' claims have been rejected and any issue regarding costs under Const 1963, art 9, § 32 is moot.

COUNTER-STATEMENT OF PROCEEDINGS AND FACTS

Plaintiffs brought this case as an original action in the Court of Appeals on November 15, 2000. Plaintiffs' suit raised *Headlee Amendment* challenges to several sections of the Revised School Code,¹ the State School Aid Act,² the Pupil Transportation Act,³ several special education administrative rules, and Executive Order 2000-9 (Second Amended Complaint).

Plaintiffs' suit alleged claims that the State committed 21 *Headlee Amendment* violations. Count I of Plaintiffs' suit alleged eight claims that the State, by operation of law, violated the *Headlee Amendment*. Plaintiffs alleged that eight special education administrative rules increased the level of special education activities and services required to be provided by school districts (Second Amended Complaint, ¶ 15 A-H).⁴ Count II of Plaintiffs' suit alleged that the State, through the operation of MCL 380.1284, increased the level of activities or services school districts must provide by increasing the minimum hours of pupil instruction (Second Amended Complaint, ¶ 19 A-G).⁵ Count III of Plaintiffs' suit alleged 12 claims that the State violated the *Headlee Amendment*. Plaintiffs alleged that 12 statutory provisions increased the level of activities or services that school districts are required to provide without funding the necessary

¹ MCL 380.1 *et seq.*

² MCL 388.1601 *et seq.*

³ MCL 257.1801 *et seq.*

⁴ These rules are 1999 AC R 340.1721e(3), R 340.1738, R 340.1740, R 340.1744, R 340.1745, R 340.1750, and R 340.1758.

⁵ In 1978, local school districts were required to provide a minimum of 900 hours of pupil instruction a year; the statute increased this incrementally, requiring 1134 hours by 2006-2007.

increased costs of providing the activities or services (Second Amended Complaint, ¶¶ 21-23).⁶

Defendants moved for summary disposition pursuant to MCR 2.116(C)(8) , and the Court of Appeals granted the motion and dismissed Plaintiffs' suit in its entirety with prejudice.⁷ Plaintiffs applied for leave to appeal. In 2002, this Court granted that application, limiting the appeal to three issues:

(1) whether *res judicata* bars the claims of those plaintiffs who also were plaintiffs in *Durant v State of Michigan*, 456 Mich 175 (1997) [*Durant I*];

(2) whether the claims of those plaintiffs who were not parties to *Durant I* are barred because the current plaintiff school districts released or waived their current claims by adopting resolutions that conformed to MCL 388.1611f(8); and

(3) whether the Court of Appeals erred by granting summary disposition for the defendants on the recordkeeping claim that the Court determined was not barred by either *res judicata* or release.⁸

⁶ The Court of Appeals described these as (1) an annual financial records audit by a certified public accountant for intermediate school districts; (2) the instruction of students regarding dangerous communicable diseases; (3) specialized training for teachers regarding human immunodeficiency virus infection and acquired immunodeficiency syndrome; (4) the provision of a breakfast program; (5) the annual development and implementation of a three-to five-year school improvement plan [the "school improvement plan" obligation]; (6) the development of a continuing school improvement process; (7) the provision of a core academic curriculum; (8) the administration of state assessment tests to high school pupils; (9) the provision of remedial educational services and periodic retesting for pupils who fail the required assessment tests; (10) the accreditation of school buildings; (11) the provision of "learning processes" and special and sufficient assistance to each pupil in order to enable each pupil to achieve a state-endorsed diploma [the "special assistance" obligation]; (12) the provision of summer school classes for pupils who fail to meet standards for basic literacy skills or basic mathematics skills by the end of the third grade year; (13) the provision of a minimum of four days of "teacher professional development" in the 2000-01 school year and a minimum of five days in the 2001-02 school year and each subsequent school year; (14) the creation and maintenance of data on "essential student data elements" and the transmission of this data through the Internet in a standardized form to the Department of Education . . . [the "record-keeping" obligation]; and (15) the provision of compensation to school bus drivers for time spent attending various training and tests. *Adair v Michigan*, 250 Mich App 691, 699-701; 651 NW2d 393 (2002)

⁷ *Adair v Michigan*, 250 Mich App 691.

⁸ *Adair v Michigan*, 467 Mich 920; 654 NW2d 318 (2002).

This Court then affirmed the Court of Appeals' decision in part, reversed in part, and remanded.⁹ This Court found that all but three of Plaintiffs' claims were barred by *res judicata* or release because the claims were based on statutes or rules in effect during the pendency of *Durant I*,¹⁰ and were raised or could have been raised in that litigation.¹¹

With regard to the remaining three claims, this Court held that two were properly dismissed because they were beyond the scope of a *Headlee* challenge; one statute was permissive and the other did not impose any "new" or "increased" requirements on schools as a matter of law.¹²

The third and last post-*Durant I* claim involved Executive Order 2000-9, and related to the districts' claim that they would incur costs in reporting various information to the State. In addressing this claim, this Court first noted that school districts have been under a general obligation to report any and all information the State requires for a long time. But this Court held that the Court of Appeals erred in granting the State's MCR 2.116(C)(8) motion because Plaintiffs' allegation was arguably based on more than just reporting information.¹³

Consequently, given that mere data reporting is something that districts have long been required to do, and thus would have been barred under the *res judicata* analysis, this Court remanded the data reporting claim to the Court of Appeals on the basis that the claim could be construed as being something different than just a challenge to the type or amount of data districts must report.

⁹ *Adair I*, 470 Mich at 129.

¹⁰ *Durant v Michigan*, 456 Mich 175; 566 NW2d 272 (1997).

¹¹ *Adair I*, 470 Mich at 125-128.

¹² *Adair I*, 470 Mich at 130-132.

¹³ *Adair I*, 470 Mich at 129-130.

After the first remand, Defendants again moved for summary disposition, this time under MCR 2.116(C)(10) (Defendants' Motion for Summary Disposition, November 4, 2004). The Court of Appeals granted Defendants' motion, and again dismissed the Plaintiffs' complaint in its entirety.¹⁴

Plaintiffs applied for leave to appeal. (Plaintiffs' Application for Leave to Appeal, September 13, 2005). On March 8, 2006, this Court, in lieu of granting leave to appeal, vacated the opinion of the Court of Appeals and directed it to determine whether the State off-loaded its responsibilities with respect to the Center for Educational Performance and Information (CEPI) onto local school districts without providing the necessary funding.¹⁵

On April 18, 2006, the Court of Appeals appointed the Honorable Pamela Harwood to serve as Special Master to conduct fact-finding (Appellants' Appendix p. 41a, Order, April 18, 2006). It directed her to answer one question: "whether the record-keeping obligations imposed on plaintiff school districts by MCL 388.1752 and Executive Order No. 2000-9 constitute either a new activity or service or an increase in the level of a state-mandated activity or service within the meaning of Mich Const 1963, art 9, § 29's prohibition of unfunded mandates." The Special Master had to consider two factors: (1)"the extent to which plaintiffs possess and use the computer and other facilities and equipment required for plaintiffs to perform data collection, maintenance, and reporting required under the CEPI dictates for purposes unrelated to those dictates;" and (2)"the extent to which, as a result of the adoption of Proposal A, Const 1963, art 9, § 11, the state already furnishes the funding with which plaintiffs purchase such computer and other facilities and equipment."¹⁶

¹⁴*Adair v Michigan*, 267 Mich App 583; 705 NW2d 541 (2005).

¹⁵*Adair v Michigan*, 474 Mich 1073; 712 NW2d 702 (2006) (*Adair II*).

¹⁶*Adair II*, 474 Mich at 1073-1074.

On April 2, 2007, after the close of discovery, the State filed a motion for summary disposition pursuant to MCR 2.116(C)(10) (Defendants' Motion for Summary Disposition, April 2, 2007). The State contended that an essential element of a *Headlee* claim is proof that the State-mandated activity was originated without sufficient State funding after the *Headlee Amendment* was adopted, or if properly funded initially, that the mandated local role was increased by the State without State funding for the necessary increased costs. Consequently, Plaintiffs' failure to present proofs about the costs of complying with the alleged mandate showed that there is no genuine issue as to any material fact.

Defendants also argued that since the adoption of the Proposal A Amendment to Const 1963, art 9, § 11, the State furnished the funds used by school districts for general school operations. Since any costs Plaintiffs may have incurred for the alleged mandates came from the district's general operating funds, Plaintiffs cannot establish that the State has not furnished the funds for the activities at issue in this case.

Finally, Defendants argued that increases in the quantity of data that is collected and changes in the way that data is reported - the alleged mandated activities - merely continue school districts' long-standing obligation to report information to the State and, therefore, do not implicate the *Headlee Amendment*.

The Court of Appeals denied Defendants' motion for summary disposition without prejudice, recognizing that the Special Master could decide motions for summary disposition in the first instance. (Appellees' Appendix, p. 1b, Court of Appeals Order, June 13, 2007).

On June 19, 2007, following receipt of Plaintiffs' trial brief, the State filed a renewed motion for summary disposition (Defendants' Renewed Motion For Summary Disposition Based on Fatal Admissions Made in Plaintiffs' Trial Brief, June 18, 2007). Plaintiffs stated that they "did not intend to introduce evidence as to the amount by which the State is underfunding these

State required activities and services" (Appellees' Appendix, pp. 4b, Plaintiffs' Trial Brief, p. 16). Plaintiffs claimed that it was merely their burden "to establish they are incurring necessary increased costs for the activities and services that were either newly required of them since 1978 or that represent an increase in the level of activities and services required of them in 1978 and that no appropriation was made by the Michigan Legislature and disbursed to pay for those necessary increased costs."

The State's renewed motion again argued that proof of necessary increased costs is an essential element of a claim under the POUM clause of the *Headlee Amendment* (Defendants' Renewed Motion For Summary Disposition Based on Fatal Admissions Made in Plaintiffs' Trial Brief, June 18, 2007). This motion was denied without prejudice (Appellees' Appendix, p. 6b, Court of Appeals Order, June 26, 2007).

On July 17, 2007, in response to motions filed by the parties, the Special Master ruled that the relevant time period for Plaintiffs' claim was December 23, 1978, the effective date of the *Headlee Amendment*. It was further ruled that the relevant point in time for determining whether Plaintiffs' claim is barred by *res judicata* was July 31, 1997, the date of the Supreme Court's decision in *Durant I*.

On July 19, 2007, following the close of Plaintiffs' proofs, the State brought a motion for a directed verdict on the grounds that Plaintiffs' claims failed, as a matter of law, because Plaintiffs had not offered any specific proofs verifying necessary increased costs and, therefore, had failed to meet their burden of proof. The Special Master took that motion under advisement (Appellees' Appendix p. 8b; Tr., pp. 1350-1351).

On January 27, 2008, the Special Master issued an opinion, noting that there was little dispute over the facts. The dispute was over the legal conclusions, or inferences, to be drawn

from the facts. The Special Master's findings of fact are contained on pages 10–23 of the opinion (Appellants' Appendix pp. 46a; 55a-23a; Special Master's Opinion).

The Special Master concluded that (1) the record keeping requirements imposed by MCL 388.1752 and EO 2000-9 violate the POUM clause of the *Headlee Amendment* because they constitute an increase in the level of an activity beyond that required prior to 1997, the conclusion of *Durant I*; (2) despite not showing actual costs of the alleged mandates, Plaintiffs met their burden of proof with respect to the "necessary increased costs" requirement of Const 1963, art 9, § 29; and (3) the increased record keeping requirements have resulted in additional necessary costs to school districts that have not been funded by the State.

On July 3, 2008, the Court of Appeals granted a declaratory judgment in favor of Plaintiffs and denied the State's motion for summary disposition (Appellants' Appendix p. 90a, Judgment on Second Remand, July 3, 2008). The Court of Appeals adopted the Special Master's findings of fact and conclusions of law, except as specifically noted. The Court of Appeals also denied Plaintiffs request for costs:

Finally, plaintiffs request that this Court award plaintiffs their costs incurred in prosecuting this Headlee action, including an award of a reasonable attorney fee. Const 1963, art 9, § 32 governs the awarding of costs and provides:

Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this Article and, if the suit is sustained, shall receive from the applicable unit of government his costs incurred in maintaining such suit.

Although plaintiffs have sustained their claim with regard to the data-collection and reporting requirements, it must be noted that this claim is but one of many plaintiffs initially raised in this action. Plaintiffs' other claims were rejected by this Court. *Adair*, 250 Mich App 691; 651 N.W.2d 393. This Court's decision with regard to those claims was sustained by our Supreme Court. *Adair*, 470 Mich 105; 680 N.W.2d 386. Under these circumstances, plaintiffs' suit cannot be characterized as having been "sustained" within the meaning of § 32. Accordingly, we decline plaintiffs' request for attorney fees. (Appellants' Appendix, p. 98a-99a)

On August 27, 2008, the Court of Appeals issued an Order denying the State's motion for reconsideration (Appellants' Appendix p. 100a, Order, August 27, 2008).

On April 3, 2009, this Court granted leave to appeal the July 3, 2008 judgment of the Court of Appeals (Appellants' Appendix p. 101a, Order, April 3, 2009). For purposes of the Plaintiffs' application for leave to appeal in Supreme Court Docket No. 137424, leave was granted, limited to the issue of "whether plaintiffs are entitled to recover the 'costs incurred in maintaining' this suit pursuant to Const 1963, art 9, § 32."¹⁷

¹⁷ This Court also granted the State's application for leave to appeal in Supreme Court Docket No. 137453, limited to the issue of "whether the prohibition of unfunded mandates in Const 1963, art 9, § 29 requires the Plaintiffs to prove specific costs, either through the reallocation of funds or out of pocket expenses, in order to establish their entitlement to a declaratory judgment."

ARGUMENT

I. Const 1963, art 9, § 32 awards costs incurred in maintaining a suit only where a taxpayer's "suit is sustained." In the present suit, Plaintiffs raised 21 claims under several different statutes, administrative rules, and an Executive Order. This Court affirmed dismissal of every aspect of Plaintiffs' suit except for a single claim. Even if this Court, in Supreme Court Docket No. 137453, affirms the Court of Appeals' determination that Plaintiffs are entitled to declaratory relief on the single remaining claim, Plaintiffs are not entitled to recover the "costs incurred in maintaining" this suit pursuant to Const 1963, art 9, § 32.

A. Standard of Review

This case presents an issue of constitutional interpretation that this Court reviews *de novo*.¹⁸

When interpreting constitutional provisions, this Court's primary objective "is to realize the intent of the people by whom and for whom the constitution was ratified."¹⁹ In analyzing constitutional language, the first inquiry is to determine if the words have a plain meaning or are obvious on their face.²⁰ "There is a presumption that words in the Constitution have been used according to their plain, natural import, and a court is not at liberty to disregard the plain meaning of the words in order to search for some other conjectured intent."²¹ "[I]t is not to be supposed that [the people] 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."²²

¹⁸ *Goldstone v Bloomfield Twp Public Library*, 479 Mich 554, 559; 737 NW2d 476 (2007).

¹⁹ *Studier v Michigan Pub School Employees Retirement Bd*, 472 Mich 642, 652; 698 NW2d 350 (2005), quoting *Wayne Co v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004).

²⁰ *Silver Creek Drain Dist v Extrusions Division Inc*, 468 Mich 367, 374-375; 663 NW2d 436 (2003).

²¹ *Council 23 AFSCME v Wayne Co Civil Service Comm*, 32 Mich App 243, 247-248; 188 NW2d 206 (1971).

²² *Traverse City School Dist v Attorney General*, 384 Mich 390, 405; 185 NW2d 9 (1971) (citations omitted).

"[Constitutional] provisions must be interpreted within the context of the times."²³ The same general principles to be applied in construing statutes may be utilized, and govern, in the construction of the constitution.²⁴

B. Analysis

1. The Court of Appeals correctly held that a party only receives "costs" under the *Headlee Amendment* where its "suit is sustained." Since all but one of Plaintiffs' numerous claims were rejected, their suit was not sustained and they are not entitled to receive attorney fees.

In its July 3, 2008 decision, the Court of Appeals correctly determined that, under the particular facts of this case, the Plaintiffs' "suit" can hardly be characterized as having been sustained within the meaning of Const 1963, art 9, § 32. Const 1963, art 9, § 32 governs the awarding costs:

Any taxpayer of the state shall have standing to bring suit in the Michigan State Court of Appeals to enforce the provisions of Sections 25 through 31, inclusive, of this Article and, if the suit is sustained, shall receive from the applicable unit of government his costs incurred in maintaining such suit.

Thus, a taxpayer is entitled to receive costs incurred in maintaining a suit in a *Headlee Amendment* case only if the "suit is sustained." The language of § 32 is clear and unambiguous. The term "suit" is defined as "any proceeding by a party or parties against another in a court of law."²⁵ "Sustain" means "(of a court) to uphold or rule in favor of. To substantiate or corroborate."²⁶ In order to "sustain" a suit, one must "endure without giving way or yielding;" or "uphold as valid, just, or correct."²⁷

²³ *People v Neumayer*, 405 Mich 341, 365; 275 NW2d 230 (1979).

²⁴ *Board of Education v Elliott*, 319 Mich 436; 29 NW2d 902 (1947).

²⁵ *Black's Law Dictionary*, 8th Ed, p 1475.

²⁶ *Black's Law Dictionary*, 8th Ed, p 1488.

²⁷ *Random House Webster's College Dictionary* (2001), p 1320.

In this case, Plaintiffs did not sustain the proceedings against the State. The proceedings against the State, three counts alleging 21 *Headlee Amendment* violations, were not upheld as valid, just, or correct. This Court ruled in favor of the State in 20 out of 21 alleged *Headlee Amendment* violations. Under the circumstances the proceedings against the State were not upheld. Therefore, Plaintiffs' suit was not sustained and they are not entitled to the costs incurred in maintaining their suit.

Plaintiffs brought this action as an original pleading in the Court of Appeals. Plaintiffs' suit alleged eight *Headlee Amendment* violations in Count I, contending that through *seven administrative rules*, the State mandated that the school districts provide a variety of new special education activities and services, and then failed to fund those activities. In Count II, they alleged that, pursuant to *another statute*, MCL 380.1284, school districts were required to increase annually the hours of pupil instruction without increased State funding. Count III alleged 12 *Headlee Amendment* violations, contending that through *twelve statutes and an Executive Order* the State mandated local districts to provide activities and services not required in 1978, again without providing funding.

The validity of Plaintiffs' proceeding against the State was neither sustained nor corroborated. Plaintiffs' suit consisted of three counts alleging 21 *Headlee Amendment* violations. Through various motions and appeals, all but one of the claims made by Plaintiffs were rejected. Specifically, *all nine alleged violations contained in Counts I and II were rejected and 11 out of 12 alleged statutory violations in Count III were rejected*. Of 21 claimed *Headlee Amendment* violations, 20 were dismissed. The sole surviving claim related to the record keeping requirements allegedly imposed by a single statute, MCL § 388.1752, and

Executive Order 2000-9.²⁸ As such, under the circumstances, the "suit" was not "sustained" under the *Headlee Amendment*. The Court of Appeals properly recognized the difference between a sole surviving claim based on a single statute and "suit."

2. This Court did not address when a suit is sustained in the *Durant* case and *Durant* is not controlling.

The *Durant* cases that Plaintiffs rely on are inapposite and easily distinguishable from this case. First, in this Court's 1997 Supreme Court decision (*Durant I*), this Court noted that the defendants did not appeal the recommendation of the Special Master decision as it related to costs incurred up to a specific date. Accordingly, this Court did not address the specific issue of the amount of a suit that must be sustained to justify awarding costs:

The Special Master issued a decision with regard to all cost issues up to the date of his decision, June 16, 1995. The decision gave substantial relief to defendants on the issue raised. We further note that defendants did not appeal that recommendation in the Court of Appeals or here. We regard that amount as finally resolved.²⁹

Second, while the 1999 Court of Appeals *Durant* decision (*Durant II*) does allow Plaintiffs the option to tax costs and reasonable attorney fees under art 9, § 32,³⁰ this Court did not specifically analyze the term "suit" in relation to the level of Plaintiffs' success in the case. Nor did it discuss what is required to sustain a suit.

Moreover, Plaintiffs were largely successful in *Durant*, which is not the case in the present matter. As this Court noted previously in this matter, in *Durant II*, the Court of Appeals granted declaratory relief largely in the Plaintiffs' favor.³¹

²⁸ *Adair v Michigan*, 470 Mich 105; 680 NW2d 386 (2004).

²⁹ *Durant v Michigan*, 456 Mich 175, 203-204; 566 NW2d 272 (1997).

³⁰ *Durant v Michigan*, 238 Mich App 185, 221; 605 NW2d 66 (1999). As argued later, this holding was incorrect and not based on a textual analysis of Const 1963, art 9, § 32.

³¹ *Adair v Michigan*, 470 Mich 105, 114; 680 NW2d 386 (2004).

Here, however, Plaintiffs can hardly assert that they obtained relief "largely" in their favor. The State sustained its defense to the suit in 20 out of 21 claims. Plaintiffs failed to prevail on nearly every aspect of their original claims. Consequently, the success that Plaintiffs achieved in the *Durant* cases is clearly distinguishable from the failure Plaintiffs experienced in the present matter. Here, Plaintiffs' "suit" was not sustained. Accordingly, this Court should deny Plaintiff's application for leave to appeal.

CONCLUSION

Const 1963, art 9, § 32 allows a taxpayer to recover costs of maintaining a suit only where the suit is sustained. Plaintiffs' suit raised *Headlee Amendment* challenges to several sections of the Revised School Code, the State School Aid Act, the Pupil Transportation Act, several special education administrative rules, and Executive Order 2000-9. Plaintiffs' suit consisted of 21 claims that the State violated the *Headlee Amendment*. The State sustained the defense of 20 out of 21 claims. Under these circumstances, Plaintiffs' suit was not sustained within the meaning of Const 1963, art 9, § 32. Thus, the Court of Appeals correctly determined that, under the facts of this case, the Plaintiffs' "suit" cannot be characterized as having been sustained within the meaning of Const 1963, art 9, § 32.

RELIEF SOUGHT

For the reasons set forth above, Defendants/Appellees respectfully request that this Honorable Court affirm the Court of Appeals decision denying Plaintiffs/Appellants request for costs and attorney fees.

Respectfully submitted,

Michael A. Cox
Attorney General

B. Eric Restuccia (P49550)
Solicitor General
Counsel of Record

Timothy J. Haynes (P41196)
Raymond O. Howd (P37681)
Joshua S. Smith (P63349)
Assistant Attorneys General
Education & Social Services Division
Attorneys for Defendants-Appellees
PO Box 30758
Lansing, MI 48909
(517) 373-7700

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