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The Michigan Education Association does not have standing under either MCL 600.2041(3) or MCR 2.201(B)(4) to bring this suit.

STATEMENT OF QUESTIONS INVOLVED

I. MCL 600.2041(3) and MCR 2.201(B)(4) both provide that a nonprofit corporation organized for civic, protective, or improvement purposes has standing to challenge an illegal expenditure of state funds. But under the Michigan nonprofit corporation act, nonprofit corporations are not allowed to act for the pecuniary gain of their members. Clearly, the Michigan Education Association (MEA), a teachers union, seeks to increase the salaries and job benefits of its members. In the instant case, does the MEA have standing under either the statute or the court rule?

Amicus curiae's answer: No.

Plaintiff-appellant's (MEA's) answer: Yes.

Defendant-appellees' answer: Unknown.

II. In *Council of Organizations and Others for Education about Parochiad, Inc v Governor*, 455 Mich 557; 556 NW2d 208 (1997), the Michigan Supreme Court held that charter schools were constitutional, since they were subject to public control. After that case was decided, MCL 380.1475 was enacted, which allowed federal tribally controlled community college boards to open charter schools if they were willing to submit to the same level of public control. Are the charter schools that are authorized by such boards "public schools" that are entitled to receive public funding?

Amicus curiae's answer: Yes.

Plaintiff-appellant's (MEA's) answer: No.

Defendant-appellees' answer: Yes.

STATEMENT OF FACTS

Two issues face this Court: (1) whether plaintiff-appellant Michigan Education Association (MEA) has standing to challenge the public school status of charter schools authorized by Bay Mills Community College (BMCC); and (2) if the MEA has standing, whether the BMCC's charter schools are public schools and thereby entitled to state funding.

The MEA is a Michigan teachers union. Public school academies, commonly called "charter schools," were authorized in 1993 PA 362. Almost immediately, the MEA and others brought an unsuccessful challenge to the constitutionality of that act in *Council of Organizations and Others for Education about Parochiad, Inc v Governor*, 455 Mich 557; 556 NW2d 208 (1997). Having thus failed to close all charter schools, the MEA thereafter filed the instant case seeking to close the BMCC's charter schools. According to the BMCC's Web site, 32 charter schools are currently operating under charters granted by the college, and these schools educate about 7,400 students, 53 percent of whom are minorities.[1]

There are currently about 227 charter schools in Michigan. In 2004, about 62 percent of the students attending these charter schools were minorities, compared to 26 percent of students at conventional public schools. Michigan Dep't of Education Report to the Legislature on Public School Academies 2003-2004 at 11. The charter schools had a much higher proportion of students eligible for the federal

[1] Information on the number of BMCC charter schools is taken from the BMCC Web site at http://www.bmcc.org/charter_docs/index.html. (After arriving at this Web page, click the "About Charter" tab.)

lunch program. *Id*. Generally, the charter schools' scores on the Michigan Educational Assessment Program tests either met or slightly exceeded the scores of their "host districts."[2] *Id*. at 13. In 2004, Michigan charter schools served around 74,000 students, or 4.5 percent of all Michigan students. *Id*.

Significantly, the number of charter schools increased by 11 percent between the 2002-2003 and 2003-2004 school years. Previously, the annual increase had been slight, because the number of charter schools authorized by state universities (the most frequent authorizers of charter schools) had reached a statutory cap of 150. But in 2000, the Legislature enacted MCL 380.1475, which allowed federal tribally controlled community college boards to open charter schools. As with other charter school authorizers — state universities, state community colleges, local school districts, and intermediate school districts — these tribal community colleges were allowed to authorize charter schools within their own districts of operation. The BMCC's college charter indicates that its district of operation includes not just the Bay Mills tribe's reservation in Chippewa County, but rather "the State of Michigan." June 25, 1984 Charter of the Bay Mills Community College at art. 11.[3]

In December 2000, BMCC authorized charter schools in Pontiac and Bay City. In September 2001, then-Attorney General Jennifer Granholm issued an opinion indicating that tribal community colleges could open charter schools anywhere within their districts, the geographical boundaries of which are defined

[2] A "host district" is a common term for the conventional public school district in which a charter school is geographically located.

[3] This document may be found at Exhibit G in the summary disposition brief filed with the trial court by the intervening defendant-appellee Coalition for Educational Choice.

by the tribal community college charter.[4] According to the BMCC Web site, nine charter schools authorized by the college opened in the 2003-2004 school year. The BMCC's authorization of charter schools statewide thus threatened to render the university cap irrelevant to limiting the total number of charter schools in Michigan.

In 2001 and 2002, Lu Battaglieri, then president of the MEA, participated in the "McPherson Commission," which had been created by the state Legislature to review all aspects of charter schools. The McPherson Commission suggested two significant changes to the statutory restriction placed on the number of charter schools. First, the commission recommended increasing the cap on university-authorized charter schools. Second, it also recommended that charter schools authorized by BMCC be included within the university cap. These two suggestions from the McPherson Commission were incorporated into the proposed 2001 House Bill 4800, which the MEA publicly supported.[5] In May 2002, the bill was defeated.

According to the BMCC Web site, the college authorized 17 charter schools that began operations in the 2004-2005 school year. The MEA filed suit in 2005.

[4] The opinion was issued in response to a request from several Michigan legislators.

[5] The cap on university-authorized charter schools remains at 150. Under 2001 House Bill 4800, the cap would have increased to 250 in 2002. Subject to some geographical limitations, the cap could have increased 10 percent each year thereafter.

The MEA's complaint contained four counts (only the third count, which alleges that the BMCC charter schools are not public schools, is at issue here).[6] All of the defendant-appellees quickly identified standing as an issue. They alleged that the MEA did not meet the constitutional-standing test of *National Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608; 684 NW2d 800 (2004), which requires a party to show that it has suffered "an injury in fact" — i.e., a nonspeculative, significant injury that occurred as a result of the action in question. Further, the defendant-appellees argued that the Legislature could not through statute (in this case, MCL 600.2041(3)) provide standing to parties who do not meet the constitutional requirement, and that the courts could not do so through a court rule, MCR 2.201(B)(4), either. In turn, the MEA argued that it met the constitutional test, and that even it did not, it did have standing under MCL 600.2041(3) and MCR 2.201(B)(4), neither of which requires a party to show an "injury in fact."

Since the statutory and court rule requirements for standing will likely be dispositive here, excerpts from Lu Battaglieri's deposition are set forth below in order to highlight the MEA's concerns as an organization. Mr. Battaglieri is former president of the MEA, and he testified as follows:

[6] One of the counts that is no longer at issue is count two, which was an allegation that BMCC was not permitted to contract with a private entity to assist in the oversight of the charter schools BMCC authorized. As will be seen below, while the MEA did not appeal the trial court's finding that the union lacked standing to make this claim, the MEA tries to incorporate the same argument into count three, which was the only claim that the trial court found the MEA had standing to bring.

> Q: So the more money a public school receives, the more potentially the incomes of your members and the dues that they pay to you increase; correct?
>
> A: I think I might phrase it differently in my own words. The more money that's taken out of the available pie, out of the $12.5 billion for K-12 education, the more of that money that goes to parochial, sectarian, or illegal schools, the less is available for my members. . . .
>
> . . .
>
> Q: To a certain extent, at least, the more money available to K-12 districts, the more money goes into your union's coffers; correct?
>
> A: The more money coming to K-12, the more is available for all districts to do all of things they spend money on, including my members' wages and staff salaries.

August 11, 2005, Deposition of Lu Battaglieri at 51-53.

At the December 5, 2005, hearings on the parties' cross-motions for summary disposition, Ingham Circuit Judge Joyce Draganchuk held that the MEA lacked constitutional standing on all four counts, since it could not show that it had suffered a specific injury in fact, but that the MEA had standing on the third count under the statute and the court rule. Judge Draganchuk ruled that it was proper for the Legislature to enact standing requirements that are less strict than the constitutional requirements, and that a plaintiff that meets these relaxed standards could bring a suit. Turning then to the merits of count three, Judge Draganchuk held that the BMCC charter schools were no different than the charter schools approved in the *Council of Organizations* case, and that the MEA's arguments were therefore foreclosed by the ruling in that case.

The MEA filed the instant appeal. The defendant-appellees and the intervening defendant-appellee have each filed a brief in opposition.

ARGUMENT

I. The MEA lacks standing under MCL 600.2041(3) and MCR 2.201(B)(4).

A. Standard of review

Whether a party has standing is a question of law that is reviewed de novo. *Cleveland Cliffs Iron Co*, 471 Mich at 612.

B. Merits

The trial court held that the MEA cannot meet the requirements of constitutional standing, but that the union could meet the requirements for standing found in MCL 600.2041(3) and MCR 2.201(B)(4). Both defendant-appellees have argued that the statute and the court rule are unconstitutional and that constitutional standing requirements cannot be relaxed.[7] Nevertheless, in *People v Riley*, 465 Mich 442; 636 NW2d 514 (2001), the Michigan Supreme Court decreed:

> constitutional issues should not be addressed where the case may be decided on nonconstitutional grounds. Or, as we said in *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234, 507 NW2d 422 (1993), "there exists a general presumption by this Court that we will not reach constitutional issues that are not necessary to resolve a case."

Riley, 465 Mich at 447. The MEA does not contest the trial court's decision that the union lacks constitutional standing. Thus, for jurisprudential reasons, this Court must first consider whether the MEA meets the requirements of MCL 600.2041(3) or MCR 2.201(B)(4) before addressing the defendant-appellees' arguments

[7] Amicus curiae is not taking a position on this argument at this point in the litigation.

regarding the constitutionality of the relaxed requirements in the statute and court rule.

MCL 600.2041(3) and MCR 2.201(B)(4) give standing to nonprofit corporations of a certain kind. MCL 600.2041(3) states:

> An action to prevent the illegal expenditure of state funds or to test the constitutionality of a statute relating thereto may be brought in the name of a domestic nonprofit corporation organized for civic, protective, or improvement purposes, or in the names of at least 5 residents of this state who own property assessed for direct taxation by the county wherein they reside.

MCR 2.201(B)(4) is substantively similar. At the trial court, the MEA contended that its articles of incorporation indicate that it was created for a public purpose, and indeed, much of the language in the purpose section of the Michigan Education Association's 1991 Articles of Incorporation might suggest this is so.[8]

But MCL 450.2108(3) of the nonprofit corporation act defines a "nonprofit corporation" as "a corporation incorporated to carry out any lawful purpose or purposes not involving pecuniary profit or gain for its directors, officers,

---

[8] The purpose section of the MEA's 1991 Articles of Incorporation states in its entirety:

> 1. The purpose or purposes for which the corporation is organized are to advance the interests of education and to promote the professional growth of its members.
>
> 2. To provide for the financing of the aims and purposes of this corporation through the solicitation of membership fees, contributions and/or donations.
>
> 3. To do all and everything necessary, suitable, and proper for the accomplishment of the purpose or the attainment of any of the objects or the furtherance of any of the powers herein set forth, and to do every other act or acts, thing or things, incidental or pertinent to or growing out of or connected with the aforesaid purposes or powers, or any part or parts thereof.

The above language, which was submitted by the MEA, may have caused the Department of Labor and Economic Growth not to question whether the MEA met the requirements of the nonprofit corporation act, which is discussed below. This may explain the department's potentially improper classification of the MEA as a nonprofit corporation on the department's Web site.

shareholders, or members." Under these terms, the MEA is not a nonprofit corporation.

Common sense and the doctrine of judicial notice both support the conclusion that the MEA's primary goal is to increase the wages and job benefits of its members — after all, labor organizations exist to negotiate wages and benefits, and the MEA is the parent organization of numerous local bargaining units. Indeed, the MEA's own public pronouncements reinforce the conclusion that the MEA is organized to benefit its members financially. During the deposition at the trial court level (excerpted above), Mr. Battaglieri admitted that the MEA brought this suit largely due to the union's belief that Bay Mills' ability to authorize schools — which, despite no legal hurdles, have not been unionized — might adversely affect MEA members' incomes.

Further, an MEA Web page[9] provides a sales pitch to members and prospective members that strongly emphasizes the union's ability to improve the financial reimbursement they receive at work:

> ## Why do I need the MEA?
>
> Since 1965, Michigan public employees have enjoyed the right to bargain collectively. This means that, rather than accepting whatever the employer is willing to offer you as an individual, the terms and conditions of your employment are controlled by a contract negotiated between the employer and your union. Furthermore, as a union member, you have the right to offer input into what that agreement contains. And finally, the contract must be returned to you for your ratification vote before it becomes a binding agreement.

[9] The MEA Web page provided the information quoted in the text is located at http://www.mea.org/design.cfm?p=2922 (last visited on April 26, 2006).

. . .

The salary and benefits you receive when you become an employee are not gifts from your employer. They are the result of many years of hard work on the part of your association members, leaders, and staff. Traditional benefits you probably enjoy in your contract include:

* Salary
* Health insurance
* Life insurance
* Long-term disability insurance
* Vision insurance
* Dental insurance
* Tax-deferred annuities
* Sick leave
* Personal leave
* Paid and unpaid leaves
* Class size or other controls on your working conditions
* Holidays
* Vacations
* Guarantees of adequate preparation time
* Extra-duty pay
* Layoff control and protection
* Protection against arbitrary discipline/dismissal
* A fair evaluation process
* A grievance procedure to redress problems
* Antidiscrimination
* Employment protection

. . .

Since 1965, when the Public Employment Relations Act (PERA) was passed, the Michigan Education Association has assisted local associations in bargaining. The MEA provides a vast number of services to local associations and individual members to assist in collective bargaining. These include numerous training opportunities, information exchange and consultant services.

Most important, the MEA offers direct, at-the-table bargaining assistance and consultation through your local Uniserv director. Uniserv directors are the local "front line" of the MEA. They are experienced, knowledgeable and well-trained labor relations professionals who can help you in your contract bargaining. A local contract is only as strong as the association it represents. You can

> make both your contract and your association stronger by becoming involved.

This passage reinforces the commonsense conclusion that the purpose of a teachers union is to enhance the income and improve the job benefits of its members — forms of pecuniary gain that prevent the MEA from satisfying the definition found in the Michigan nonprofit corporation act. Thus, the MEA is not a nonprofit corporation under either MCL 600.2041(3) or MCR 2.201(B)(4). Consequently, the union has no standing, and this case can be resolved on nonconstitutional grounds.

If this Court were to decide that the MEA is nevertheless a nonprofit corporation, this Court should still conclude that the union is not "organized for civic, protective, or improvement purposes." This additional language, found in both the statute and the court rule, is clearly meant to describe entities whose primary purpose is to serve the nonpecuniary interests of their membership or of the public in general. There is no reason to believe that this language was meant to include entities whose primary purpose is serving the pecuniary interests of their members. Indeed, if the statute and the court rule were meant to include such organizations, it is difficult to explain why profit-making corporations were excluded from the rules. Holding that unions are not entities "organized for civic, protective, or improvement purposes" would simply place the unions and profit-making corporations on equal footing.

MCL 423.215(3)(e) bolsters the argument that MCL 600.2041(3) and MCR 2.201(B)(4)[10] do not provide the MEA with standing to bring a suit to shut down charter schools. MCL 423.215(3)(e) prohibits a teachers union from attempting to prevent school districts from authorizing charter schools during the collective bargaining process; this amounts to a legislative pronouncement that the teachers unions are not to interfere with the authorization of charter schools. It seems odd to suggest that the Legislature would explicitly prohibit teachers unions from constraining the growth of charter schools during the collective bargaining process, but would implicitly provide standing to those same unions to achieve the identical result through a lawsuit under MCL 600.2041(3).

The case law does not support the conclusion that the statutory and the court rule provide standing to a union. While various nonprofit corporations have been held to be appropriate parties under either MCL 600.2041(3) or MCR 2.201(B)(4), the MEA cannot point to a single case where a court has held that a labor union has standing under either.

At the trial court, the MEA cited *House Speaker v Governor*, 443 Mich 560; 506 NW2d 190 (1993). There, the Michigan Environmental Protection Foundation (MEPF) and the Michigan United Conservation Clubs (MUCC) filed suit to challenge an executive order that rearranged the Department of Natural Resources. The Michigan Supreme Court held that the two nonprofit corporations had standing under MCR 2.201(B)(4):

[10] MCR 2.201(B)(4) is based on MCL 600.2041(3).

> Both the trial court and the Court of Appeals found that the MUCC and MEPF had standing to sue under MCR 2.201(B)(4). We agree. The court rule allows a domestic nonprofit corporation organized for civic, protective, or improvement purposes to bring an action to prevent the illegal expenditure of state funds. The MEPF is a nonprofit Michigan corporation whose purposes are to evaluate legal issues and bring environmental litigation on issues of statewide importance. The MUCC is a nonprofit Michigan corporation whose purposes are to further the cause of the environment and conservation in all its phases, to promote and encourage the intelligent use of resources, to promote conservation education programs, and to protect and defend the rights of citizens to keep and bear arms. We find that these corporations are organized for civic, protective, or improvement purposes and, as such, are the type of plaintiff the court rule envisioned.

Id. at 572-73.[11] In *House Governor*, there was no evidence in the record that in addition to each organization's stated purpose, either operated for pecuniary gain.

In *Michigan Soft Drink Ass'n v Dep't of Treasury*, 206 Mich App 392; 522 NW2d 643 (1994) lv den 448 Mich 898 (1995), an association challenged Michigan's bottle-return law. In the face of a standing challenge, this Court held "Plaintiff, a domestic nonprofit Michigan corporation, exists to promote the strength and well-being of the Michigan soft drink industry and to influence legislation and public policies affecting the soft drink industry. These purposes qualify as protective or improvement purposes." *Id.* at 400. As in *House Governor*, there was no evidence in

[11] The question of whether either entity met the constitutional requirements was not discussed by the Michigan Supreme Court. Representational (i.e. associational) standing was not at issue either. The Michigan Supreme Court has stated that "Nonprofit organizations . . . have standing to bring suit in the interest of their members where such members would have standing as individual plaintiffs" (individual plaintiffs would have standing only if they could demonstrate injury under the constitutional requirement). *Cleveland Cliffs Iron Co*, 471 Mich at 629. In *House Speaker*, there was no analysis of whether a member of either organization could meet the individual standing requirements.

the record that the association existed primarily to directly negotiate higher income for its members.

There is a case in which unions were granted standing to challenge an administrative rule, but that decision is easily distinguished from the instant case. In *Michigan Coalition of State Employee Unions v Michigan Civil Service Com'n*, 465 Mich 212; 634 NW2d 692 (2001), the Michigan Supreme Court held that a coalition of unions had standing to challenge a civil service rule, but only because the express terms of Const 1963, art. 11, § 5 provided that anyone had standing to bring such a suit, not because a union met the requirements of either MCL 600.2041(3) or MCR 2.201(B)(4).

For the reasons discussed above, the MEA cannot meet either the statutory or court rule requirements for standing. Therefore, this court need not reach the issue of whether the legislature can expand standing past its constitutional limits. Since the MEA does not have standing to make its claim, this court should not address the merits.

II. The BMCC charter schools are public schools, since the BMCC board is subject to the same amount of public control as the boards of the charter schools approved by the Michigan Supreme Court in *Council of Organizations*.

A. Standard of Review

Summary disposition under either MCR 2.116(C)(8) or (C)(10) presents an issue of law and is reviewed de novo. *Ormsby v Capital Welding*, 471 Mich 45; 684 NW2d 320 (2004).

B. Merits

The MEA's initial challenge to charter schools was in the *Council of Organizations* case, in which the Supreme Court upheld the constitutionality of the law that created charter schools. The preclusive effect of the *Council of Organizations* case forecloses the arguments that the MEA makes in this action.

Const 1963, art. 8 § 2, which contains Michigan's "Blaine Amendment,"[12] states:

> The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.
>
> No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school. No payment, credit, tax

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[12] The term "Blaine Amendment" refers to provisions in state constitutions that prohibit aid to "sectarian" schools. They are named for former Speaker of the United States House of Representatives James G. Blaine, who proposed such a federal amendment in 1875. While the federal amendment failed, several copycat state amendments were passed. Many of these amendments were approved during a period of bigotry against Catholics.

This history is discussed in Justice Breyer's dissent in *Zelman v Simmons-Harris*, 536 US 639; 122 SCt 2460; 153 LE2d 604 (2002). Basically, the early public schools were Protestant in nature. The students cited Protestant prayers, read the King James version of the Bible, and were taught Protestant religious ideals. With the influx of Catholic immigrants during the late 19th and early 20th century conflict arose as Catholics fought the Protestant domination of the public schools. Justice Breyer explained how this led to the rise of Blaine Amendments:

> Catholics sought equal government support for the education of their children in the form of aid for private Catholic schools. But the "Protestant position" on this matter, scholars report, "was that public schools must be 'nonsectarian' (which was usually understood to allow Bible reading and other Protestant observances) and public money must not support 'sectarian' schools (which in practical terms meant Catholic)." And this sentiment played a significant role in creating a movement that sought to amend several state constitutions (often successfully), and to amend the United States Constitution (unsuccessfully) to make certain that government would not help pay for "sectarian" (i.e., Catholic) schooling for children.

Id. at 721 (J. Breyer dissenting)(citations omitted).

> benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any school.

In *Council of Organizations*, the MEA and others claimed that under art. 8, § 2 charter schools were not public schools, since: (1) the schools were not under the ultimate and immediate or exclusive control of the state; and (2) because the various boards of directors of the charter schools were not publicly elected or appointed. 455 Mich at 571.

The Michigan Supreme Court held that "there is no requirement in our constitution that the state must have exclusive control of the school system." *Id*. at 572. It also rejected a requirement that a charter's board be publicly elected. The Legislature is able to maintain control of charter schools by mandating the selection process for the charter schools' boards of directors. *Id*. at 575. Also, control is maintained through the authorizing bodies. *Id*. at 575-76. There is no requirement that a public school "be under the control of the voters of the school district." *Id*. at 577.

The Michigan Supreme Court also held that the second paragraph of art. 8 § 2 was inapplicable since it was solely enacted to prevent tax credits from being given to parents who wished to send their children to Catholic schools.[13] The

[13] In 1970, opponents of such tax credits were able to gather sufficient signatures to put the second paragraph of art. 8, § 2 on the ballot after it seemed likely that the Legislature was going to enact such tax credits. The electorate approved the measure that same year.

common understanding of the voters was solely that no state aid would go to Catholic schools. The court explained that charter schools were not parochial schools:

> [P]ublic school academies are not parochial schools. The statute specifically prohibits religious organization [sic] from organizing a public school academy and further prohibits any organizational or contractual affiliations with churches or other religious organizations. Additionally, a public school academy is not a parochial school in that the charging of tuition is prohibited, as is any restrictions [sic] on admission other than a random selection process if the school is [sic] has more applicants than space.

455 Mich at 582 (citation omitted).

The Michigan Supreme Court also rejected a challenge based on Const 1963, art. 8, § 3, which states that the state Board of Education is to supervise all public education. The court noted that various statutes indicated that the Board of Education retained control over charter schools; for instance, the board had the power to deny funding. 455 Mich at 584-85.

At the time *Council of Organizations* was decided, federal tribally controlled community college boards were not authorized to open charter schools. That changed in 2000 with the enactment of MCL 380.1475, which states in pertinent part:

> A federal tribally controlled community college board may provide college level courses or participate in other activities under this act only if all of the following are in effect:
>
> > (a) The members of the board of the federal tribally controlled community college execute the constitutional oath of office as a public officer of the state of Michigan.
> >
> > (b) The members of the board of the federal tribally controlled community college certify to the state department

> of education that the members will act as a public educational body or officer of this state subject only to the constitution and laws of this state in exercising the powers or carrying out the functions and that their functions are under the exclusive control of the state.
>
> (c) A member of the board of the federal tribally controlled community college acting as a public officer under this section shall be subject to removal or suspension by the superintendent of public instruction for violating the provisions of this section.

The MEA contends that MCL 380.1475 does not prevent this Court from holding that BMCC's charter schools are unconstitutional. It argues that there is no public control over the BMCC board, since members of that board are neither appointed by state elected officials nor elected by the voters of a county. The MEA believes that MCL 380.1475 does not cure this problem, since there is nothing in the BMCC charter that explicitly requires board members to be subject to the state's control.

In support of its argument on the third count, the MEA attempts to resurrect the instant lawsuit's second count, which was a claim that the BMCC improperly contracted with a private entity to help it manage the charter schools. But the MEA did not appeal the trial court's ruling that it did not have standing to make this claim; therefore, this Court should not factor this argument into its analysis of the sole claim before this court — i.e., count three.

The MEA's arguments fail. It is true that federal tribes generally have unique rights. But MCL 380.1475 requires a tribal community college board that wishes to authorize charters to subject itself to the same amount of state control as any other charter school authorizing board. The MEA's claim that a tribe must

amend its charter to incorporate the wording of MCL 380.1475 is entirely without support in any case law. The BMCC charter schools are subject to the same amount of state control as those charters that were approved in *Council of Organizations*. Therefore, like the schools in that case, the BMCC charter schools are public schools and can properly receive public education funding.

RELIEF REQUESTED

For the reasons stated above, amicus curiae requests that this Court hold that the MEA does not have standing under MCL 600.2041(3) or MCR 2.201(B)(4). If this Court were to conclude that the MEA has standing, however, this Court should affirm the trial court's ruling that the BMCC charter schools are "public schools" that are entitled to public funding.

Dated: April 26, 2006

Respectfully Submitted,

_____

Patrick J. Wright (P54052)
Attorney for Amicus Curiae
Mackinac Center for Public Policy