

STATE OF MICHIGAN  
IN THE SUPREME COURT

**HERON COVE ASSOCIATION, et. al.,**

Appellants

Michigan Supreme Court No: 168165

Court of Appeals No: 371649

Lwr Crt. No. 2024-2751-AA

vs.

**MIDLAND COUNTY BOARD OF COMMISSIONERS,  
GLADWIN COUNTY BOARD OF COMMISSIONERS, and  
FOUR LAKES TASK FORCE**

Appellees

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

**WHEREFORE,** Amici Curiae, Secord Lake Association, Inc., Smallwood Lake Association, Inc., Wixom Lake Association, Inc., and Sanford Lake Association, by and through

their attorneys, Zeigler, Townley & Associates, P.C., and hereby requests leave to file an amicus curiae brief, and states the following in support thereof:

1. Secord Lake Association, Inc. is a voluntary association having 409 households, representing over 1,000 individuals, invested in the future of Secord Lake, with a mission dedicated to supporting the 1,888 Lakefront Properties by (1) improving, maintaining and protecting our waterways, (2) providing a consolidated voice for the common good of the community, (3) promoting community awareness and concerns regarding the waters, flow-through, shorelines and neighborhoods; and (4) providing a liaison between the Association Community, local township governments and other agencies.

2. Smallwood Lake Association, Inc. is a voluntary association consisting of 85 households dedicated to the maintenance, safety, preservation, and beautification of Smallwood Lake. As part of this mission, Smallwood Lake Association is dedicated to restoring Smallwood Lake.

3. Wixom Lake Association, Inc. is a voluntary association supported by almost 500 household memberships (1200 individuals) in Gladwin and Midland counties in Michigan. Wixom Lake Association's goal is to improve, maintain and protect the waterways in this lake system by providing a consolidated voice for the common good of the community, and by acting as a liaison between members, county government and Four Lakes Task Force.

4. Sanford Lake Association is a voluntary association consisting of 218 households, that serves as a forum for property owners and interested community members to share concerns, implement improvements, and strengthen the community.

5. Each Lake Association understands the lakes are the keystone supporting their collective communities for over one hundred years, creating generations of people who have come

together to enjoy the beauty and recreational enjoyment of the lakes. The Lake Associations are strong advocates for the return of the lakes.

6. In accordance with their collective missions, all four lake associations (“Lake Associations”) partnered in a campaign called RestoreTheLakes collectively delivering over 23,000 individual signed letters to local, state and federal officials. This campaign helped FLTF secure over \$200 million in grants to rebuild the Four Lakes system to the betterment of all property owners in the FLSAD.

7. Approaching the fifth year without the lakes, each Lake Association recognizes the negative impact the absence of lakes has upon property values, the civic community, and economic wellbeing of the communities. The absence of lakes is felt by its families and lakeside businesses on a financial and emotional level every single day.

8. In the court of appeals, Appellants protested the Lake Association’s amicus brief, claiming the Lake Associations were not impartial.

9. Unites States Supreme Court Justice Samuel A. Alito, Jr., as a 3<sup>rd</sup> Circuit Appellate Judge, addressed the concept of partisanship and amicus briefs in *Neonatology Associations, PA v Commissioner of Internal Revenue*, (115 Tax Court 43 (2000)<sup>1</sup>, aff’d 299 F3rd 221 (3<sup>rd</sup> Cir. 2002). In *Neonatology*, Appellants opposed the filing of an amicus brief, stating the amici were partial to the outcome.

10. Justice Alito pointed out the incongruity of Neonatology Appellants’ position, noting Rule 29 of the Federal Rules of Appellate Procedure requires an amicus have an “interest” in the case. Yet Black’s Law Dictionary defines the term “impartial” as “disinterested.” Justice

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<sup>1</sup> The cases Appellants relied upon in objecting to the amicus brief regarding impartiality all pre-date *Neonatology*.

Alito observed, “[I]t is not easy to envisage an amicus who is ‘disinterested’ but still has an ‘interest’ in the case.”

11. Justice Alito goes on to address the same language quoted by the present Appellants regarding impartiality:

The appellants suggest, however, that the very term ‘amicus curiae’ suggests a degree of impartiality. The appellants quote the comment that ‘[t]he term “amicus curiae” means friend of the court, not friend of a party.’ The implication of this statement seems to be that a strong advocate cannot truly be the court's friend. But this suggestion is contrary to the fundamental assumption of our adversary system that strong (but fair) advocacy on behalf of opposing views promotes sound decision making. *Thus, an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court's friend.* [citations omitted; emphasis added]

12. This recognition of an amicus supporting a particular party has now been codified by the Federal Rules of Appellate Procedure, recognized by the United States 6<sup>th</sup> Circuit court, in FRAP 29(a)(6), which states, in part:

An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief *of the party being supported* is filed. [emphasis added]

13. The partisan nature of the amicus is not only presumed; whichever party it supports dictates timing to file a brief.

14. In Michigan, multiple entities invested in legal determinations have filed amicus curiae briefs. Business groups and labor organizations frequently weigh in where a case has potential ramifications for members. *Smith v Michigan Emp't Sec Comm'n*, 410Mich 231, 301 NW2d 285 (1981); *Charter Twp of Ypsilanti v GMC*, 201 MichApp128, 506 NW2d 556 (1993) Advocacy groups focusing on particular social or political issues often seek to make their views known via amicus briefs. *National Pride at Work, Inc v Governor*, 481 Mich 56, 748 NW2d 524 (2008) (constitutionality of ban on health insurance benefits for same-sex domestic partners of

public employees). *Fraser Twp v Linwood-Bay Sportsman's Club*, 270 MichApp 289, 715 NW2d (2006) (propriety of injunction under Sport Shooting Ranges Act).

15. Michigan Appellate courts even invite amicus briefs from parties interested in the matter. *Kuznar v Raksha Corp*, 477 Mich 1097, 729 NW2d 519 (2007) (inviting amicus briefs from persons or groups interested in determination of issues arising from suit over negligent prescription refill). *Okrie v State*, [306 Mich App 445](#), 451, 857 NW2d 254 (2014) (original action challenging transfer of court of claims to court of appeals, panel noted lack of amicus briefs despite invitation for them and “public outcry from the legal community” during statute’s enactment).

16. Amici enjoy some latitude to provide a court empirical data or factual material beyond that set forth in the record by the parties. It is only if Amici attempt to raise new legal issues when the brief should be denied. Appellate courts frequently allow parties to present verifiable extra-record evidence, especially social scientific evidence. empirical studies, statistics, social scientific theories, and historical information. In the law article K.J. Lynch, *Best Friends?: Supreme Court Law Clerks on Effective Amicus Curiae Briefs*, 20 J. L. & Politics 33 (2004), a U.S. Supreme Court clerk noted, “[a]ny data showing real world impact is important because it shows effects that go beyond the interests of the parties. This matters to some justices.”

17. The Lake Associations now join in seeking leave to file an amicus brief to support the Appellees’ efforts to restore all four lakes through the Four Lakes Special Assessment District and the Special Assessment Roll.

18. The proposed amicus brief attached to this Motion as Exhibit A contends the Court of Appeals decision of January 6, 2025 was legally correct and must be affirmed.

19. The proposed amicus brief speaks for the majority of people residing in these communities who understand the need for a speedy resolution of these appeals in light of the

Appellant’s incessant unsupported legal claims and unfounded objections causing the community harm.

WHEREFORE, Amici Curiae respectfully requests leave to file the attached Amicus Curiae Brief.

Dated: March 5, 2025

/s/ Bruce L. Townley  
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**Proof of Service** – The undersigned hereby certifies by signature the herein pleading and all exhibits attached thereto was served on all parties of record pursuant to MCR 2.107(C) on March 5, 2025. I declare the above statement is true to the best of my information, knowledge and belief. /s/ Bruce L. Townley