

MSC: Adair v. State

15. July 2010 By Madelaine Lane

On July 14, 2010, the Michigan Supreme Court published Chief Justice Kelly's majority opinion in [Adair v. State, Nos. 137424 & 137453](#). In *Adair*, the Court affirmed [Court of Appeals' opinion](#) in part concluding that the prohibition of unfunded mandates set forth in the Michigan Constitution of 1963, in Article IX, Section 29, the "POUM Clause" or the Headlee Amendment, did not require the plaintiff-school districts to prove specific costs, either through the reallocation of funds or out-of-pocket expenses. The Court reversed the part of the Court of Appeals opinion denying plaintiffs' request for attorney fees. The Court concluded that plaintiffs were entitled to recover the costs incurred in maintaining this suit where they succeeded in their recordkeeping claim, even where 20 of their 21 original claims were dismissed. The case was remanded to the Court of Appeals for a determination of costs and attorney fees to be awarded to plaintiffs.

In *Adair*, school districts from across the state sued the State of Michigan because the State imposed increased reporting requirements on the school districts without providing the additional funding necessary to pay for the increased requirements. The case was tried as an original action in the Court of Appeals.

The POUM Clause provides that the legislature may not mandate a new activity or increased level of activity of any unit of local government (such as a school district) unless the State pays the unit of local government for any associated increased costs. In 2000, the State mandated that school districts report various information on a student-by-student, employee-by-employee, and building-by-building basis, rather than in aggregate form. The new reporting requirements were far more labor intensive and led to a substantial increase in costs for the school districts. The State argued that the school districts must prove that implementation of the mandates required them to incur specific out-of-pocket expenses.

The Court of Appeals held that such a showing is unnecessary. Because the school districts are not seeking money damages, and because the Court lacks authority to order the legislature to appropriate funds, the goal of a declaratory judgment in a POUM Clause action is simply to provide sufficient notice so that the State will be aware of the financial adjustment it needs to make for future compliance. The court held that school districts do not need to show specific out-of-pocket expenses for such notice to be given to the State.

The Court of Appeals denied the school districts' claim for attorney fees because, although plaintiffs bringing successful POUM Clause actions are entitled to costs under Mich. Const. of 1963, art. IX, § 32 (1978), the POUM Clause cause of action was brought alongside many other claims, all of which were rejected by the Court of Appeals.

The Michigan Supreme Court concluded that to establish a violation of the POUM provision, the plaintiffs need only prove that (1) the State mandated an increased level of activity or service; and (2) the State failed to appropriate funding to offset the necessary costs that would be incurred in carrying out the mandate. A plaintiff is not required to show a quantified dollar-amount increase in costs in excess of a *de minimis* amount

In this case, the Court agreed with the Court of Appeals and concluded that the new recordkeeping requirements constituted an increase and the legislature did not make any appropriation to offset the necessary costs incurred in implementing these new reporting requirements. Accordingly, the Court determined that the school districts had met their burden in establishing a POUM violation and, therefore, that the Court of Appeals correctly granted declaratory judgment in plaintiffs' favor.

The Court reversed the Court of Appeals' opinion regarding plaintiffs' request for attorney fees. Although 20 of plaintiffs' original 21 claims had been dismissed, the Court concluded that plaintiffs were still entitled to costs under Mich. Const. of 1963, art. IX, § 32 (1978), because they succeeded in their recordkeeping claim. Applying the broad Black's Law Dictionary definitions of "suit" and "sustain", the Court held that the plaintiffs' recordkeeping claim, standing alone, constituted a suit under Mich. Const. of 1963, art. IX, § 32 (1978) and therefore, plaintiffs were entitled to recover their attorney fees and costs incurred in litigating the recordkeeping claim.

Justice Markman, joined by Justices Corrigan and Young, dissented from this ruling arguing that plaintiffs failed to establish a POUM violation because they did not prove that the new recordkeeping requirements resulted in specific "necessary increased costs" through the reallocation of funds or out-of-pocket expenses. Specifically, Justice Markman contended that, under the Headlee Amendment, the relevant question is whether there would be an increase in the actual cost to the State if it were to provide the activity or service itself. Accordingly, a cost incurred by a local unit of government as a result of a mandate does not automatically constitute a necessary cost so long as it is not *de minimis*.