

STATE OF MICHIGAN
IN THE SUPREME COURT

MICHIGAN SENATE and MICHIGAN
SENATE MAJORITY LEADER WINNIE
BRINKS, in her official capacity,

Plaintiffs-Appellees

v

Supreme Court Case No. 169381

MICHIGAN HOUSE OF
REPRESENTATIVES, MICHIGAN HOUSE
CLERK SCOTT STARR, in his official
capacity,

Court of Appeals Case No. 374786

Court of Claims Case No. 25-000014-MB

Defendants-Appellants

**This appeal involves a ruling that a
state governmental action is invalid.**

and

MICHIGAN HOUSE SPEAKER MATT
HALL, in his official capacity,

Defendant

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**DEFENDANTS-APPELLANTS MICHIGAN HOUSE OF REPRESENTATIVES AND
MICHIGAN HOUSE CLERK SCOTT STARR'S REPLY IN SUPPORT OF
APPLICATION FOR LEAVE TO APPEAL**

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Just months ago, the Senate argued that the issues in this case meet the standards for granting leave to appeal. In response to the House’s Application, the Senate does not meaningfully argue otherwise. Indeed, the Senate concedes that at least one of the grounds for granting leave is met, and fails to address the others in any detail.

Instead, the Senate focuses almost entirely on the merits, claiming this is an easy case that does not warrant this Court’s attention because “[f]our Court of Appeals judges from across the judicial philosophical spectrum have unanimously concluded that the House has a constitutional duty to present the nine bills at issue to the Governor.” Senate’s Answer at 1. Although the relevance of the “judicial philosophical spectrum” is unclear, the Senate omits that two of those four judges would not have granted the Senate’s requested relief. Court of Claims Op. (Patel, J.); Dissenting Op. (Murray, J.). Regardless, whether this Court ultimately agrees with the House or Senate on the merits, this case’s importance cannot be understated. The issues implicated in the Court of Appeals’ ruling will reverberate far beyond the nine bills that the 102nd Legislature failed to present, and are worthy of this Court’s review. Leave should be granted.

ARGUMENT

I. This Case Meets the Standards for Granting Leave to Appeal

Although the Senate states in passing that the “House does not meet the criteria for granting leave,” Senate’s Answer at 1, it later acknowledges that at least one “criterion” is met, as this is a case “of public interest in which state bodies are litigants[.]” *Id.* at 13. Thus, the Senate is left to claim that “the satisfaction of one criterion is not the basis for a discretionary grant of leave to appeal.” *Id.* Unsurprisingly, the Senate provides no support for that proposition. See MCR 7.305(B)(5)(b) (using the disjunctive “or” to describe the factors an “application must show”).

Either way, this case satisfies several grounds that weigh in favor of review. The Senate previously represented that the case “involve[s] a substantial question about the validity of legislative actions.” Bypass Application at 12; MCR 7.305(B)(1). The legislative actions at issue have not changed. Moreover, as explained below, when reversing the Court of Claims’ denial of a writ of mandamus, the Court of Appeals acted contrary to Michigan’s long-standing separation-of-powers jurisprudence. MCR 7.305(B)(5)(b).

Perhaps most notably, this case involves legal principles of major significance to the state’s jurisprudence. MCR 7.305(B)(3). It is the first instance of one body of Michigan’s legislature suing the other, and appears to be the first time a Michigan court has issued a writ of mandamus against the Michigan legislature, implicating novel and important issues of justiciability, legislative standing, separation-of-powers, and remedies. Application at 19-28, 41-44. The underlying constitutional question is also novel, with the Court of Appeals recognizing that the House’s textual interpretation of Article 4, Section 33 has “arguable merit[.]” Majority Op. at 8.

If left standing, the Court of Appeals’ ruling will have significant real-world effects. The court’s holding that “Const 1963, art 4, § 33, clearly imposes the mandatory duty of presentment on the Legislature for ‘[e]very bill passed by the legislature’” will bar the legislature’s longstanding practice of vacating enrolled bills, and erode the legislature’s plenary powers. See Application at 2-3, 6, 29-31. The court’s finding that the duty to present is not “session-dependent” also creates significant practical problems, including the potential for political gamesmanship and new questions concerning the Governor’s ability to veto bills passed by prior legislatures. Application at 36-37, citing Dissenting Op. at 4-5. The Senate does not mention any of these issues, which each weigh in favor of review.

II. The Court of Appeals Erred on Several Grounds that Warrant Review.

A. This Case is Not Justiciable.

The parties agree on the relevant justiciability framework. Senate’s Answer at 18-19 (citing three-part test in *Makowski v Governor*, 495 Mich 465, 472; 852 NW2d 61 (2014)).

1. *This Case Involves Resolution of Questions Committed to the Legislature.*

The first factor in determining whether the political question doctrine bars judicial review is whether the issue “involve[s] resolution of questions committed by the text of the Constitution to a coordinate branch of government.” *Makowski*, 495 Mich at 472.

The House explained in detail why this issue—which, the Senate concedes, centers on a “legislative process,” Senate’s Answer at 16—is committed to the legislature. Application at 22-25. Courts do not require constitutional text to “expressly” state that an issue is committed to the legislature, but instead look to the text and structure of the constitution. *Id.* at 22-23. And the text and structure of Michigan’s Constitution, which “does not *grant* authority to the Legislature, but instead limits the Legislature’s plenary authority,” support the doctrine’s application here. See *Taxpayers of Mich Against Casinos v State*, 471 Mich 306, 333; 685 NW2d 221 (2004); Const 1963, art 4, §§ 1, 16. That is, the “Constitution’s silence” as to legislative matters “leads to the conclusion that the [matter] is within the discretion of the Legislature.” *Id.*; *Gilbert v Gladden*, 87 NJ 275, 288; 432 A2d 1351 (1981).

The Senate does not address the substance of this argument. Instead, it cites to *Mothering Justice v Attorney General*, __ Mich __; __NW3d __ (2024) (Docket No. 165325), claiming that, “[a]ccording to the House’s (il)logic, this Court should not have been permitted to weigh in on that issue because it was a matter of the ‘legislative process.’” Senate’s Answer at 20.

The House’s argument, however, is fully consistent with *Mothering Justice* (which did not mention the political doctrine). That ruling turned on the fact that, “[b]y reserving the initiative power to the people, *the Constitution limits the Legislature’s role with respect to initiatives* to the powers expressly conferred upon it” in Const 1963, art 2, § 9. *Mothering Justice*, __ Mich at __; slip op at 25 (emphasis added). Thus, the legislature’s plenary “power does not apply to the initiative, which is a right reserved to the people.” *Id.* Here, in contrast, nothing in Michigan’s Constitution divests or limits the legislature’s authority when it comes to presentment.¹

2. ***Intervening Moves Beyond Areas of Judicial Expertise and Conflicts with Prudential Considerations.***

The last two factors—whether the court must move beyond areas of judicial expertise, or prudential concerns counsel against intervention—also support the doctrine’s application. The Senate argues otherwise, framing this as a pure question of constitutional interpretation.

It is not. Article 4, Section 33 “does not indicate a specific time frame” for presentment. Majority Op. at 14. In similar circumstances, “some courts from our sister states” have declined to interfere with the Legislature by mandating a time for presentation. Dissenting Op. at 2 (citing cases); *Gilbert*, 87 NJ at 283. But here the Court of Appeals directed the Court of Claims to “determin[e]” a “deadline for presentment” in the court’s own “discretion,” transferring a matter of legislative discretion to one of judicial discretion. Majority Op. at 14. This was not a matter of constitutional interpretation, but a matter of intrusion into legislative processes.

The Senate claims this intrusion is permissible under *Durant v Michigan*, 456 Mich 175; 566 NW2d 272 (1997) and a case interpreting *Durant*. *Durant*, however, involved the

¹ The Senate also cites *Brewer v Burns*, 222 Ariz 234; 213 P3d 671 (2008). But there, the Arizona Constitution limited the Arizona legislature’s authority by including a presentment deadline and, thus, did “not by its terms commit to the legislature the decision on the timing of presentment of finally passed bills.” 222 Ariz at 238, 241; Application at 25 (addressing *Brewer* in detail).

interpretation of Const 1963, art 9, § 32's language that expressly grants taxpayers "standing to bring suit" to "enforce the provisions of sections 25 through 31" of the Constitution. *Id.* at 204-205. Given the constitutional text expressly authorizing courts "to 'enforce' the provisions of §§ 25 through 31," this Court found monetary damages were appropriate "as the electorate has authorized that additional relief be granted." *Id.* at 208. The electorate has not authorized such additional relief under Article 4, Section 33.²

B. The Senate and Majority Leader Lack Standing.

Next, the House argued that the Court of Appeals erred in finding that both the Senate and its majority leader have standing. The House explained that the Senate's "interest as legislators" cease[d]" once votes were "cast and duly counted" and that the Senate is thus in the same position as other members of the public. Application at 18-19. The House also noted that the Governor, who has not received the bills, has not attempted to intervene or requested the bills. *Id.* at 28.

In response, the Senate acknowledges that "[t]he right to veto legislation is the sole constitutional prerogative of the Governor." Senate's Answer at 15; *id.* at 27 (claiming the House's actions "usurp[]" *the Governor's* veto authority).³ Yet, the Senate claims, the "veto power of the governor" is a "legislative function." *Id.* at 18. Whether the Governor's review qualifies as a "legislative function" is beside the point: that review is left *to the Governor*, who has not requested the bills or taken any action.

The Senate also claims injury "because the House is refusing to follow the mandatory constitutional bicameral lawmaking process," which it says is an "anti-majoritarian" tactic because

² Other provisions of Article 4, in contrast, do include enforcement mechanisms. See Const 1963, art 4, § 10(5).

³ If anything, as Judge Murray explained in detail, upholding the Court of Appeals' and Senate's view will raise questions as to the Governor's veto authority. Dissenting Op. at 5.

the “nine bills were passed by majorities in both houses.” Senate’s Answer at 14-15, 28. But the 103rd House was elected two years after the 102nd House. A majority of the 103rd Legislature has not voted in favor of these bills. Requiring a legislature that never voted on bills to present them would be anti-majoritarian. Such a ruling will not “destroy the integrity of the joint bicameral lawmaking process” or usurp the governor’s veto power. It will simply require a legislature to present its own bills before a newly-elected legislature convenes if it wishes to ensure those bills can become law—a task the Senate says “is literally a walk down the hall.” Senate’s Answer at 2.

Finally, the Senate argues it has standing because it “expended considerable time and resources” on these bills. Senate’s Answer at 16. But legislatures spend considerable time on countless bills that never become law. Accepting this theory would mean that the legislature will have standing as to any issue concerning any bill ever considered.

C. Article 4, Section 33 Does Not Impose a “Mandatory Duty of Presentment on the Legislature for Every Bill Passed by the Legislature.”

The House next argued that the Court of Appeals misinterpreted Article 4, Section 33’s text. The court recognized that the House’s interpretation (that presentment is a mere precondition to a bill becoming law) “has arguable merit standing alone.” Majority Op. at 8. But, relying on a “hypothetical” discussed in passing at the Constitutional Convention, the court found that this language “clearly imposes the mandatory duty of presentment on the Legislature for ‘[e]very bill passed by the legislature[.]’” Majority Op. at 10 (alterations in original). The Senate’s Answer does not substantively respond to the House’s textual interpretation. See Application at 29-31. Nor does it defend in any detail the Court of Appeals’ reliance on a single remark at the Constitutional Convention discussing a separate topic. *Id.* at 31-33. Instead, the Senate tries to buttress the court’s holding with arguments the court did not mention.

First, the Senate claims that this Court has already “held that presentation is mandatory” in *Anderson v Atwood*, 273 Mich 316; 262 NW 922 (1935), and that *Atwood* “controls the interpretation of Article 4, § 33[.]” Senate’s Answer at 24-26. For good reason, the Court of Appeals did not find that “*Atwood* controls.” *Atwood* dealt with the distinct issue of whether a recalled bill becomes law without further action. It did not address whether all passed bills must be presented. Nor does it address whether a bill passed by a prior legislature must be presented by a new legislature. Put simply, *Atwood* deals with different issues that do not “control.”

Second, the Senate claims that “both houses of the Legislature have demonstrated by their practices over several decades that they agree that they have a duty to present bills that were passed during the prior legislative session.” Senate’s Answer at 27. The Senate fails to square this with (or mention) the bills cited by the House that have been passed, but never been presented to the governor after being vacated. Application at 30-31. And the five unchallenged instances cited by the Senate where a body of the legislature opted to present bills during the next legislative session, Senate’s Answer at 3, do not establish a *clear legal duty* for the 103rd House to do so.⁴

D. Any Duty to Present Does Not Extend to a New and Different Legislature.

Next, the Senate asserts that the 103rd Legislature must present the 102nd Legislature’s bills because Article 4, Section 33 “does not extinguish the duty merely because a legislative session ends and another begins.” Senate’s Answer at 28. But Article 4, Section 33 does not have to. Michigan’s entire legislative structure is based on separate, non-continuous legislative bodies. Application at 4-5, 33-37; Dissenting Op. at 2-3. And Article 4, Section 13 makes clear that “[a]ny

⁴ Contrary to the Senate’s implication, the record is clear that “No bills passed during the 102nd Michigan Legislature were presented by the House” to “the governor after the 103rd Michigan Legislature convened.” Starr Aff. ¶ 7, Ex. 6. As is the House Journal, which is authoritative. See *Mich Taxpayers United v Governor*, 236 Mich App 372, 379; 600 NW2d 401 (1999).

business, bill or joint resolution pending at the final adjournment” of one legislature’s existence does not “carry over” to a new legislature. While the Senate argues that Article 4, Section 13 “only applies to bills that have not been acted upon by both houses,” the Senate (like the Court of Appeals) ignores the House’s detailed argument that the act of presentment is the unfinished “business” of the 102nd Legislature. Application at 33-35; Dissenting Op. at 2 (“[O]nce the two-year Legislature ends, it has no further power to work on bills *or other unfinished business* ... Providing that the Legislature can continue business at the end of one calendar year, but not allowing it to do so at the end of another, should be treated as having a meaning.”).

* * *

For the above reasons, the 103rd House lacks any clear legal duty to present the 102nd Legislature’s bills. If there is any doubt as to Article 4, Section 33’s meaning, that doubt weighs against a writ of mandamus. *Kennedy v Secretary of State*, ___ Mich __; 10 NW3d 632, 635 (2024) (WELCH, J., concurring); Const 1963, art 4, § 1. For those same reasons, the Senate’s declaratory judgment claim lacks merit if the Court opts to reach it. Application at 37-38.

E. Any Duty to Present is Not Ministerial.

The Senate’s mandamus claim also fails because the act of presentment is not ministerial. The House argued presentment is a discretionary act because Article 4, Section 33 does not define who must present bills, and does not include any deadline for presentment.

As to the first point, the Senate now claims this is an “institutional duty” and “no court in any other state that has considered whether mandamus is a remedy for a failure to present has held that that right foundered” on this basis.⁵ Senate’s Answer at 31. But the cases cited by the Senate

⁵ The Senate previously claimed Clerk Starr “has the ministerial duty of presenting bills[.]” Compl. ¶ 7. Given the apparent abandonment of this argument, there is no basis for Clerk Starr to remain as a defendant.

declined to grant the relief requested by the Senate (an order compelling the legislature to present the bills) for other, independent reasons, without having to weigh in on this issue. *Campaign for Fiscal Equity v Marino*, 87 NY2d 235, 239; 661 NE2d 1372 (1995) (refusing to order presentment); *Brewer*, 222 Ariz at 242-43 (denying request for mandamus as the “case involves a good-faith dispute between the political branches of government”).

The Senate does not address the House’s second argument. But, as the House explained, the Court of Appeals’ ruling acknowledges the discretionary nature of presentment given the lack of a deadline. Application at 39-41, citing Majority Op. at 14 (“Because ... the provision does not indicate a specific time frame, *the deadline for presentment may be determined in the Court of Claims’s discretion.*”) (emphasis added); *Gilbert*, 87 NJ at 288.

F. The Only Remedy Available is a Legislative Remedy.

That leaves the remedy. The Senate first claims the House waived any argument that mandamus is not a proper remedy against the legislature. Senate’s Answer at 23. It has not. The House has maintained throughout this case that there is no judicial remedy available.⁶ The Court of Appeals recognized this. Majority Op. at 14 (“[W]e recognize that defendants raise separation-of-powers concerns with respect to the judiciary compelling legislative action in this case.”); *id.* at 13 n.14; Dissenting Op. at 2. The Court of Appeals ruled on this argument. Majority Op. at 13-14. And the House raised this argument once more in its Application. That is not waiver. *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

Next, the Senate argues that any statements in *People ex rel Sutherland v Governor*, 29 Mich 320 (1874), that were “said about the Legislature” are dicta. While *Sutherland* centered on

⁶ E.g., House’s Cross-Appeal Br. at 29-30 (“[T]he Senate has no legal remedy.”); House Appeal Br. at 19-20 (“[T]he entire point of the ... separation of powers is that it is not the judiciary’s role to police the business of other branches of government”); House Mot. Summ. Disp. at 17.

relief against the Governor, its holding—which declined to grant a judicial remedy because “all wrongs, certainly, are not redressed by the judicial department,” *id.* at 330—is directly at odds with the Senate’s position that “[t]here must be a judicial remedy for the House’s violation of Article 4, §33.” Senate’s Answer at 22; Majority Op. at 14 n.14. And despite labeling it dicta, the Senate does not explain why this Court’s statement that “no court can compel the Legislature to ... take any action whatsoever, though the duty to take it be made ever so clear by the constitution or the laws” is wrong. *Sutherland*, 29 Mich at 326.

Finally, the Senate says that the legislature “has made itself subject to relief by mandamus” under MCL 600.4411. Senate’s Answer at 23. That statute merely establishes the remedies that exist when mandamus is ordered and not complied with. It does not codify a right to mandamus against other branches of government. And if it did, it would not be valid, as statutes cannot conflict with the Constitution. See Const 1963, art 3, § 2.

CONCLUSION

This Court should grant the House’s Application and reverse the Court of Appeals’ ruling.

Respectfully submitted,

Dated: January 20, 2026

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT

I certify that this brief complies with the type-volume limitation set forth in MCR 7.305(E)(3). This brief uses a 12-point proportional font (Times New Roman) and the word count, based on the word processing system used to produce this document, is 3,199 words.

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