

STATE OF MICHIGAN  
IN THE SUPREME COURT

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

Plaintiffs-Appellees

v

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

Defendants-Appellants

and

MICHIGAN HOUSE SPEAKER MATT  
HALL, in his official capacity,

Defendant

Supreme Court Case No. 169381

Court of Appeals Case No. 374786

Court of Claims Case No. 25-000014-MB

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

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**DEFENDANTS-APPELLANTS MICHIGAN HOUSE OF REPRESENTATIVES AND  
MICHIGAN HOUSE CLERK SCOTT STARR'S SUPPLEMENTAL BRIEF ON  
APPLICATION FOR LEAVE TO APPEAL**

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

STATEMENT OF JURISDICTION FOR FILING SUPPLEMENTAL BRIEF .....v

INTRODUCTION .....1

ARGUMENT .....2

    I. The Court of Appeals Erred in Determining That This Case Does Not Implicate the Political Question Doctrine. ....2

        A. The Text and Structure of Michigan’s Constitution is Important. ....3

        B. Intervening Moves Beyond Areas of Judicial Expertise and Conflicts With Prudential Considerations. ....7

    II. The Court of Appeals Erred in Determining There Is a “Mandatory Duty of Presentment on the Legislature for ‘[E]very Bill Passed by the Legislature[.]’” .....9

        A. Article 4, Section 33’s Text Does Not Impose a Mandatory Duty to Present “Every Bill.” .....9

        B. Any Duty to Present Bills Ceases to Exist When the Legislature Ceases to Exist. ...12

        C. The Court of Appeals’ Ruling Creates Practical Issues That Do Not Exist if Each Legislature is Required to Present Its Own Bills. ....15

    III. The Court of Appeals Erred in Directing the Court of Claims to Issue a Writ of Mandamus Against the Legislature.....17

CONCLUSION.....20

**TABLE OF AUTHORITIES**

**Cases**

*Attorney General v Montgomery*,  
275 Mich 504; 267 NW 550 (1936)..... 4

*Baker v Carr*,  
369 US 186; 82 S Ct 691; 7 L Ed 2d 663 (1961)..... 8

*Bauserman v Unemployment Ins Agency*,  
509 Mich 673; 983 NW2d 855 (2022)..... 3, 4, 8, 10

*Berry v Garrett*,  
316 Mich App 37; 890 NW2d 882 (2016)..... 17, 18

*Brewer v Burns*,  
222 Ariz 234; 213 P3d 671 (2008) ..... 5

*City of Detroit v Chapin*,  
108 Mich 136; 66 NW 587 (1895)..... 14

*Fergus v Russel*,  
270 Ill 304; 110 NE 130 (Ill, 1915) ..... 11

*Gilbert v Gladden*,  
87 NJ 275; 432 A2d 1351 (1981) ..... 6, 7, 14, 16

*Kennedy v Secretary of State*,  
\_\_ Mich \_\_; 10 NW3d 632, 635 (2024)..... 11, 18

*Makowski v Governor*,  
495 Mich 465; 852 NW2d 61 (2014)..... 3, 7

*Marbury v Madison*,  
5 US 137; 2 L Ed 60; 1 Cranch 137 (1803) ..... 8

*Mich Coal of State Employee Unions v State*,  
498 Mich 312; 870 NW2d 275 (2015)..... 12

*Moon v Moon*,  
431 F Supp 3d 394 (SDNY, 2019) ..... 3

*Mothering Justice v Attorney General*,  
515 Mich 328; 29 NW3d 346 (2024)..... 4, 5, 7

*Nate v Denney*,  
166 Idaho 801; 464 P3d 287 (2017) ..... 12

*Native Village of Kivalina v Exxon Mobil Corp*,  
663 F Supp 2d 863 (ND Cal, 2009)..... 3

*Nixon v United States*,  
506 US 224; 113 S Ct 732; 122 L Ed 2d 1 (1993)..... 3, 8

*People ex rel Petersen v Hughes*,  
372 Ill 602; 25 NE2d 75 (1939)..... 11

*People ex rel Sutherland v Governor*,  
29 Mich 320 (1874) ..... 19

*Rucho v Common Cause*,  
588 US 684; 139 S Ct 2484; 204 L Ed 2d 931 (2019)..... 8

*Scott v State Bd of Assessment*,  
221 Iowa 1060; 267 NW 111 (1936) ..... 11

*Senate v House of Representatives*,  
\_\_ Mich App \_\_; \_\_ NW2d \_\_ (2025)..... passim

*Taxpayers of Mich Against Casinos v State*,  
471 Mich 306; 685 NW2d 221 (2004)..... 4

*Vieth v Jubelirer*,  
541 US 267; 124 S Ct 1769; 158 L Ed 2d 546 (2004)..... 8

*Woodland v Mich Citizens Lobby*,  
423 Mich 188; 378 NW2d 337 (1985)..... 5

*Young v City of Ann Arbor*,  
267 Mich 241; 255 NW 579 (1934)..... 4

**Other Authorities**

*Before*, WEBSTER’S COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (unabr. Ed. 1886) ..... 10

**Rules**

MCR 7.305(B) ..... 1, 2

MCR 7.305(H)(1) ..... 20

**Constitutional Provisions**

Const 1963, art 2, § 9 ..... 5

Const 1963, art 3, § 2 ..... 12

Const 1963, art 4, § 1 ..... 4

Const 1963, art 4, § 26 ..... 9

Const 1963, art 4, § 33 ..... passim

Ariz Const, art 4, pt. 2, § 12 ..... 5

Ill Const, art 4, § 9(a) ..... 6

Kan Const, art 2, § 14(a) ..... 6

La Const, art 3, § 17 ..... 6

Md Const art 3, § 30 ..... 6

**STATEMENT OF JURISDICTION FOR FILING SUPPLEMENTAL BRIEF**

On March 27, 2026, this Court issued an order scheduling an oral argument on the application, and directing the parties to “file supplemental briefs within 28 days after the date of this order in accordance with MCR 7.312(E).” The Michigan House of Representatives and Michigan House Clerk Scott Starr (together, the “103rd House” or “House”) do so here.

## INTRODUCTION

The Court of Appeals’ published, divided opinion reversing the Court of Claims presents issues of extreme importance that satisfy several grounds for granting leave to appeal under MCR 7.305(B). The last two centuries have seen countless disputes and infighting between the two bodies of the Michigan legislature. But rather than leave it to the legislature to resolve this intra-legislative dispute, as has been done in every past dispute, the Senate filed this lawsuit against the House, seeking a writ of mandamus from the judicial branch, compelling the legislative branch to perform the purely legislative function of presenting bills to the executive branch. If left unchecked, the Court of Appeals’ ruling will have far-reaching consequences that limit the legislature’s plenary authority, bar longstanding legislative practices, and invite future problems.

To rule in the Senate’s favor, the Court of Appeals first had to determine that this dispute between the two bodies of the legislature, over an alleged failure to carry out a legislative process that has no deadline, does not implicate the political question doctrine; is ripe; and that the Senate had standing to bring it. Second, the court had to find that Const 1963, art 4, § 33’s language—which provides that “[e]very bill passed by the legislature shall be presented to the governor before it becomes law”—means there is a “clear legal duty” for “every bill passed by the legislature” to “be presented to the governor,” full stop, and by a deadline that can be fashioned in a trial court’s discretion. Third, the court had to extend this “clear legal duty” to a new legislature that did not exist when the bills were drafted or passed, notwithstanding Const 1963, art 4, § 13’s implication that “[a]ny business, bill or joint resolution” that is pending at the end of an even-numbered year does not “carry over” to a new legislature. Fourth, the court had to determine that the Court of Claims abused its discretion when declining to issue a writ of mandamus against the 103rd House. Fifth, in doing all of that, the court had to reject the House’s “separation-of-powers concerns with

respect to the judiciary compelling legislative action in this case.” *Senate v House of Representatives*, \_\_ Mich App \_\_; \_\_ NW2d \_\_ (2025) (Docket No. 374786), p 13; *id.* at 13 n 14 (rejecting “Defendants argu[ment] that any remedy in this case is not for the judiciary to impose; that this is a matter concerning a legislative process that must be resolved by the Legislature.”).

If this Court finds that the Court of Appeals erred on any one of these issues, judgment must enter in the House’s favor. Respectfully, the court erred on each front. The House fully incorporates, and will not restate, those arguments made in its application. Rather, as directed, the House submits this brief to supplement its prior briefing, and to urge this Court to grant its application or, alternatively, enter an order peremptorily reversing the Court of Appeals, and upholding the Court of Claims’ denial of the writ of mandamus. As has been recognized from the outset of this case, whether this Court ultimately agrees with the House or the Senate on the merits, “[t]he issues in this case are extremely important” and “a thoroughly considered opinion from the state’s top court would be to everyone’s benefit.” *Senate v House of Representatives*, unpublished order of the Court of Claims, entered March 21, 2025 (Docket No. 25-000014-MB), p 2.

## ARGUMENT<sup>1</sup>

### **I. The Court of Appeals Erred in Determining That This Case Does Not Implicate the Political Question Doctrine.**

As the House has explained, this appears to be the first ever lawsuit filed by one body of the Michigan legislature against the other. And as the Senate recognizes, it centers on Article 4,

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<sup>1</sup> The House incorporates, and does not supplement, the Statement of Facts and Standard of Review sections from its application for leave to appeal (the “Application”). See Application at 4-18. Likewise, the House also fully incorporates, and does not supplement, its arguments as to why MCR 7.305(B)’s standards are satisfied, *id.* at 19-20; why the Senate and its Majority Leader lack standing, *id.* at 27-28; why the Senate fails to meet the standards for a declaratory judgment, *id.* at 37-39; and why the Senate’s request for a preliminary injunction compelling legislative action is improper, see generally House Answer to Cross-Application.

Section 33 of the Michigan Constitution, which “specifically references the Legislature and the legislative process.” Senate’s Answer to App. for Leave at 16 (“Senate Answer”). This intra-legislative dispute concerning the “legislative process” presents a nonjusticiable political question. When that is the case, the underlying issues are not for the Court to resolve. *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 693 n 3; 983 NW2d 855 (2022) (“[T]here may be nonjusticiable questions courts cannot decide.”). And, it necessarily follows, if this Court “cannot decide” the nonjusticiable issue, it cannot provide a remedy for any asserted violation. *Moon v Moon*, 431 F Supp 3d 394, 414 (SDNY, 2019) (“[W]hen a case is nonjusticiable it means the wrong committed, if there is one, cannot be remedied” by the courts) (citation omitted).

The House’s application for leave to appeal and its reply have briefed this argument in detail. See Application at 21-26; House Reply at 3-5. The House fully incorporates those arguments, and writes here to emphasize several points.

**A. The Text and Structure of Michigan’s Constitution is Important.**

The first question in the political question analysis is whether “the issue involve[s] resolution of questions committed by the text of the Constitution to a coordinate branch of Government.” *Makowski v Governor*, 495 Mich 465, 472; 852 NW2d 61 (2014) (citation omitted). The Constitution need not expressly state that an issue is committed to a different branch of the government. Application at 22. Rather, courts “are usually left to infer the presence of a political question from the text and structure of the Constitution.” *Nixon v United States*, 506 US 224, 240; 113 S Ct 732; 122 L Ed 2d 1 (1993) (WHITE, J., concurring); *Native Village of Kivalina v Exxon Mobil Corp*, 663 F Supp 2d 863, 872 (ND Cal, 2009).

Here, the structure of Michigan’s Constitution is important. “Beyond Article 1,” which “set[s] forth” the “inalienable fundamental liberties ... in our Constitution[,]” “much of the balance

of our Constitution focuses on the operational mechanics for state and local government ... as well as other more technical details[.]” *Bauserman*, 509 Mich at 717 (WELCH, J., concurring). That’s true of Article 4, which establishes the Michigan Legislature’s structure and operational framework, and which starts by making clear that, “[e]xcept to the extent limited or abrogated by article IV, section 6 or article V, section 2, the legislative power of the State of Michigan is vested in a senate and a house of representatives.” Const 1963, art 4, § 1.

As this language indicates, when it comes to matters within the legislative sphere, the legislature has plenary authority that “is as broad, comprehensive, absolute and unlimited as that of the parliament of England, subject only to the Constitution of the United States and the restraints and limitations imposed by the people upon such power by the Constitution of the State itself.” *Young v City of Ann Arbor*, 267 Mich 241, 243; 255 NW 579 (1934); see also *Attorney General v Montgomery*, 275 Mich 504, 538; 267 NW 550 (1936) (“The legislative authority of the State can do anything which it is not prohibited from doing by the people through the Constitution of the State or the United States.”). And unlike the United States Constitution, Michigan’s “Constitution does not grant authority to the Legislature, but instead limits the Legislature’s plenary authority.” *Taxpayers of Mich Against Casinos v State*, 471 Mich 306, 333; 685 NW2d 221 (2004).

For that reason, when the Constitution is “silen[t] regarding” issues that fall under the legislature’s plenary authority, the matter is left “within the discretion of the Legislature.” *Taxpayers of Mich*, 471 Mich at 333. Conversely, if “restraints and limitations” on the legislature’s plenary powers are, in fact, “imposed by the people upon such power by the Constitution,” *Young*, 267 Mich at 243, then the issue is no longer left to the legislature.

The examples cited by the Senate highlight this exact point. The Senate starts with *Mothering Justice v Attorney General*, 515 Mich 328; 29 NW3d 346 (2024), and claims 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. That is inaccurate. *Mothering Justice* did not involve “a matter of the ‘legislative process’” under Article 4. It involved Article 2’s initiative process, through which the “‘people reserve[d] to *themselves*,’ rather than to the Legislature, ‘the power to propose laws and to enact and reject laws.’” *Mothering Justice*, 515 Mich at 347 (quoting Const 1963, art 2, § 9) (emphasis in *Mothering Justice*). This Court had long recognized that “[a]rt 2, § 9, is a reservation of legislative authority *which serves as a limitation on the powers of the Legislature.*” *Id.* (quoting *Woodland v Mich Citizens Lobby*, 423 Mich 188, 215; 378 NW2d 337 (1985)) (emphasis added). And precisely because “the Constitution limits the Legislature’s role with respect to initiatives to the powers expressly conferred upon it,” this Court rejected the argument that, “because the Constitution does not prohibit adopt-and-amend expressly, the Legislature is free to employ that tactic.” *Id.* at 361. Instead, it found the legislature’s plenary powers do “not apply to the initiative.” *Id.* at 361.

The Senate also cites *Brewer v Burns*, 222 Ariz 234, 238-39; 213 P3d 671 (2008) as “rejecting [the] application of the political question doctrine in a dispute over whether the legislature must present passed bills to the governor.” Senate’s Answer at 22-23. But as in *Mothering Justice*, *Brewer* turned on the fact that the Arizona Constitution’s language restrains and limits the legislature’s discretion when it comes to bill presentation. The Arizona Supreme Court expressly noted that, while “[m]any state constitutions say nothing about the timing of presentment other than indicating it must occur sometime after passage,” the Arizona “constitution, in contrast, specifies that measures shall be presented ‘when finally passed.’” *Brewer*, 222 Ariz at 241 (quoting Ariz Const, art 4, pt. 2, § 12). It interpreted this language to require presentation “upon final passage and not at whatever later time the Legislature might deem

appropriate.” *Id.* at 240. “Thus,” the Court was “not persuaded by the out-of-state cases cited by the Legislature” that referenced “presentment clauses that lack any specified time requirement[.]” *Id.* at 241. Even still, the Court declined to issue a writ of mandamus and compel presentment, noting that the case “ involves a good-faith dispute between the political branches of government about their respective roles in Arizona’s lawmaking process.” *Id.* at 242.

Notably, just like Arizona’s Constitution, several other states’ constitutions include clear limits on the legislature’s discretion when it comes to presentment. See, e.g., Ill Const, art 4, § 9(a) (“Every bill passed by the General Assembly shall be presented to the Governor within 30 calendar days after its passage. The foregoing requirement shall be judicially enforceable. ...”); Kan Const, art 2, § 14(a) (“Within ten days after passage, every bill shall be signed by the presiding officers and presented to the governor.”); La Const, art 3, § 17 (“A bill passed by both houses shall be signed by the presiding officers and delivered to the governor within three days after passage.”); Md Const art 3, § 30 (“All bills passed during a regular or special session shall be presented to the Governor for the Governor’s approval no later than 20 days after adjournment.”).

Michigan’s does not. See Const 1963, art 4, § 33 (“Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it.”). The text of Article 4, Section 33 does not require the legislature to present every bill that it passes in the first place (nor does that occur in practice). See *infra*, Section II. Critically, even if it did, the Michigan Constitution does not impose any limits or restraints on the legislature’s exercise of the legislative process of presentment. Rather, as the House explained,<sup>2</sup> just like the presentment clause analyzed by the New Jersey Supreme Court in *Gilbert v Gladden*, 87 NJ 275; 432 A2d 1351 (1981), there

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<sup>2</sup> See Application at 23-25.

is an “absence of constitutional or statutory standards” governing presentment. *Id.* at 282. And absent any limits on restraints on the legislative act of presentment, “it is not the function of this Court to substitute its judgment for that of the Legislature[.]” *Id.* Thus, as in *Gilbert*, the Senate’s request for judicial intervention in this intra-legislative dispute over the exercise of a legislative process “presents a nonjusticiable political question the resolution of which is constitutionally committed to the Legislature[.]” *Id.* at 288.

\* \* \*

In sum, the parties agree that the passage and presentment of legislation is a legislative function. This Court has long held that, absent limitations or restraints on legislative functions, those issues are left to the legislature. Here, unlike the many states that include limits on the legislature’s discretion, and unlike the Michigan Constitution’s limits concerning the initiative process at issue in *Mothering Justice*, the constitutional text and structure provide no such limits or restraints on the legislative process of presentment. This issue, which falls under a procedural clause of the article of the Constitution titled “Legislative Branch,” is thus committed to the legislature. *Makowski*, 495 Mich at 472.

**B. Intervening Moves Beyond Areas of Judicial Expertise and Conflicts With Prudential Considerations.**

The Court of Appeals’ analysis of the remaining two factors turned on the same analytical framework. The court framed the narrow “question” in this case as “whether defendants are required to present the bills to the Governor under Const 1963, art 4, § 33.” See *Senate*, \_\_ Mich App \_\_; slip op at 6. It found that merely interpreting the Constitution does not “stray[] beyond judicial expertise[.]” *Id.* And it then found that prudential concerns do not weigh against intervention because “the interpretation” of the Constitution “falls to the judiciary.” *Id.*

This approach effectively renders the political question doctrine a dead letter. Virtually every constitutional dispute will involve a degree of constitutional interpretation. See, e.g., *Nixon*, 506 US at 226 (case “ask[ing] th[e] Court to decide whether Senate Rule XI, which allows a committee of Senators to hear evidence against an individual who has been impeached and to report that evidence to the full Senate, violates the Impeachment Trial Clause, Art. I, § 3, cl. 6” was nonjusticiable under political question doctrine); *Rucho v Common Cause*, 588 US 684; 139 S Ct 2484; 204 L Ed 2d 931 (2019) (case alleging that congressional district maps “violated the First Amendment, the Equal Protection Clause of the Fourteenth Amendment, the Elections Clause, and Article I, § 2 of the Constitution” was nonjusticiable under political question doctrine).

But the point of the doctrine and the “prudential concerns” that go along with it is that, whether or not constitutional interpretation is involved, not every constitutional dispute is for the judiciary to resolve. See *Bauserman*, 509 Mich at 693 n 3 (“[T]here may be nonjusticiable questions courts cannot decide.”); *Vieth v Jubelirer*, 541 US 267, 277; 124 S Ct 1769; 158 L Ed 2d 546 (2004) (“Sometimes, however, the law is that the judicial department has no business entertaining the claim of unlawfulness—because the question is entrusted to one of the political branches[.]”); *Baker v Carr*, 369 US 186; 82 S Ct 691; 7 L Ed 2d 663 (1961) (“The nonjusticiability of a political question is primarily a function of the separation of powers.”); *Marbury v Madison*, 5 US 137, 170; 2 L Ed 60; 1 Cranch 137 (1803) (“Questions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in this court.”).

If, as the Court of Appeals did here, courts could limit the relevant question to one of pure constitutional interpretation, while ignoring the relief ordered and the ultimate impact the court’s intervention will have on a coordinate branch of government, then the doctrine would never apply. Thus, while the House would not dispute justiciability if this case involved an abstract

interpretation of constitutional text that limited or restrained the legislature, that is not what this case does. Indeed, the Senate appealed the Court of Claims' ruling precisely because that court granted only declaratory relief, and declined to compel the legislature to present the bills. The Court of Appeals then took that extra step, wrested away the legislature's discretion when it comes to presentment, and ordered the Court of Claims to issue a writ of mandamus that determines a "deadline for presentment . . . in the Court of Claims' discretion." *Senate*; \_\_ Mich App at \_\_; slip op at 13-14. That was not a pure act of interpretation. It was an exercise of power that belongs to the legislature. This Court should thus find the case to be a nonjusticiable political question.

**II. The Court of Appeals Erred in Determining There Is a "Mandatory Duty of Presentment on the Legislature for '[E]very Bill Passed by the Legislature[.]'"**

The Court of Appeals' ruling was flawed on the merits as well. Again, the House incorporates its prior briefing, and supplements it below.

**A. Article 4, Section 33's Text Does Not Impose a Mandatory Duty to Present "Every Bill."**

The Court of Appeals determined that Article 4, Section 33 "clearly imposes the mandatory duty of presentment on the Legislature for '[e]very bill passed by the legislature[.]'" *Senate*, \_\_ Mich App at \_\_; slip op at 10 (alterations in original). In doing so, however, the Court omitted important language from Section 33, which provides, in full, that "[e]very bill passed by the legislature shall be presented to the governor before it becomes law." Const 1963, art 4, § 33 (emphasis added).

As the House previously explained, this text is structurally identical to Article 4, Section 26, which states: "Every bill shall be read three times in each house before the final passage thereof." Const 1963, art 4, § 26 (emphasis added). There is no indication that Section 26 requires every bill that is ever introduced to be read three times, whether or not it will proceed to final

passage. Nor does this occur. See, e.g., 2023 HB 4068 (referred to second reading but never read a second or third time); 2023 HB 4563 (read only a first time); 2024 SB 833 (read a first and second time, but not a third). Likewise, there is no indication that Section 33 requires every passed bill to be presented to the governor, whether or not the legislature wishes for it to “become law.” Nor does this occur. See, e.g., 1997 SB 386 (bill passed both houses of the legislature, its enrollment was vacated, and it was never presented to the Governor after its companion bill was vetoed); 2019 SB 117 (bill passed both houses of the legislature, was vacated upon protest from legislators, and reintroduced in a subsequent legislative session where it was passed and enacted into law); 2023 SB 6 (bill passed both houses of the legislature, was vacated, and was never presented to the Governor in favor of the House’s alternate bill on the same subject).

Rather, these provisions simply impose preconditions that must be met “before” a subsequent result can occur. See *Before*, WEBSTER’S COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (unabr. Ed. 1886) (defining “before” to mean “[p]receding in time; earlier than; previous to; in order”). A bill cannot proceed to “final passage” unless it is first “read three times in each house.” And a passed bill cannot “become law” unless it is first presented to the governor. But there is no requirement that all bills be read three times and proceed to final passage, or that all passed bills be presented to the governor and become law. That is, while these procedures must be followed “before” a bill can proceed to “final passage” or “become law,” they do not require the legislature to move a bill to final passage or seek for it to become law in the first place.

Indeed, the passage and presentment of legislation (like the reading of bills) are purely legislative acts that are left entirely to the legislature. See *Bauserman*, 509 Mich at 701 (“The legislative power we understand to be the authority, under the Constitution, to make laws, and to alter and repeal them.”) (citation omitted). As courts have recognized, these provisions are aimed

at *slowing down* the legislative process to ensure that the legislature and its constituents are well informed, and that legislation is well-reasoned. See *People ex rel Petersen v Hughes*, 372 Ill 602, 607; 25 NE2d 75 (1939) (“The purpose of granting the Chief Executive authority to approve or disapprove legislative matters was to enable him to prevent, as far as possible, the evils that flow from hasty and ill-considered legislation.”); *Scott v State Bd of Assessment*, 221 Iowa 1060, 1063; 267 NW 111 (1936) (the “primary purpose” of requiring a “last reading” of a bill is to “avoid[] the evils that might follow in the train of enactment of bills immediately upon presentment to the legislative house” and “to inform legislators, and the people, of legislation proposed by a bill, and to prevent hasty legislation”). They do not create new rights. See *Fergus v Russel*, 270 Ill 304, 349; 110 NE 130 (Ill, 1915) (“[T]he Governor, when engaged in considering bills . . . is exercising only *a qualified and destructive legislative function* and not a creative legislative power.”) (emphasis added) (internal citations omitted). Nor, as the House has explained, do they impose new duties on a legislature to present every bill that it passes.

Again, the Court of Appeals recognized that, as a matter of text, this “interpretation has arguable merit[.]” *Senate*; slip op at 8. It also found there was not “any evidence of the intent of the people, generally, at the time the provision was enacted.” *Id.* at 8 n 8. But rather than look to (much less exhaust) the traditional tools of textual interpretation, the court relied entirely on a “hypothetical scenario” posed by one delegate at the Constitutional Convention, which was made “[w]hen discussing the amount of time that the Governor would have to consider each bill.” *Senate*; slip op at 8. The House has explained in detail why this was improper. See Application at 31-33. That is particularly true given that the Court was tasked with determining whether there was a *clear* legal duty for the 103rd House to present the 102nd Legislature’s bills. *Kennedy v Secretary of State*, \_\_\_ Mich \_\_; 10 NW3d 632, 635 (2024) (WELCH, J., concurring) (“Although I doubt that

the Court of Appeals’ statutory interpretation is correct, the statutory ambiguity makes it impossible to conclude that defendant had a *clear* legal duty to remove plaintiff from the ballot.”) (emphasis in original).

Thus, while the House believes the constitutional text unambiguously does not require the presentment of every bill that has ever been passed, if there is any doubt whatsoever, that doubt weighs against a writ of mandamus, *id.*, and in favor of leaving this legislative matter to the legislature. *Mich Coal of State Employee Unions v State*, 498 Mich 312, 329; 870 NW2d 275 (2015) (“No person exercising powers of one branch shall exercise powers properly belonging to another branch except as *expressly* provided in [the] constitution.”) (quoting Const 1963, art 3, § 2) (alteration and emphasis in original).

**B. Any Duty to Present Bills Ceases to Exist When the Legislature Ceases to Exist.**

Even if this Court determines that Article 4, Section 33 requires a legislature to present every bill that it passes, this does not mean that a new legislature—who did not draft or vote on the bills, and who is accountable to the voters who elected its own members, rather than the voters who elected the members of a prior legislature—must present leftover bills from a prior legislature.

Indeed, there are significant questions as to whether the presentment of a prior legislature’s leftover bills would itself run afoul of the Constitution.<sup>3</sup> See Application at 33-37. The 102nd

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<sup>3</sup> For that reason, the 103rd House could just have easily been sued if it had immediately presented the 102nd Legislature’s bills. While the Senate has cited a handful of instances where a new legislature presented a prior legislature’s bills over the past half-century, in those cases, “there was no apparent objection” or litigation over whether the new legislature could do so without running afoul of Article 4, § 13. “Of course, the[] failure to object cannot change the requirements of the Constitution.” *Nate v Denney*, 166 Idaho 801, 808. 811; 464 P3d 287 (2017) (holding Idaho’s “Constitution clearly and necessarily prohibits the legislature from presenting bills to the governor after the legislature has adjourned *sine die*. It requires that bills must be presented to the governor while the legislature is still in session.”).

Legislature’s pending business and bills ceased to exist when the 102nd Legislature ceased to exist. Const 1963, art 4, § 13. “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.” *Senate*, \_\_ Mich App at \_\_ (MURRAY, J., dissenting in part); slip op at 2. That meaning is simple: “once the two-year Legislature ends, it has no further power to work on bills or other unfinished business.” *Id.*; Application at 34 (summarizing in detail Constitutional Convention discussion concerning the introduction of the word “business” into Const 1963, art 4, § 13).<sup>4</sup>

Apart from Section 13, this interpretation is also supported by the remainder of Article 4, § 33’s text, which provides:

Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and *the legislature has within that time finally adjourned the session at which the bill was passed*, it shall not become law. If he disapproves, and *the legislature continues the session at which the bill was passed*, he shall return it within such 14-day period with his objections, to the house in which it originated. . . . [Const 1963, art 4, § 33 (emphasis added)].

This contemplates only two scenarios: (1) the legislature presents the bill *before* “finally adjourn[ing] the session at which the bill was passed,” and then finally adjourns “within” the 14 day period the governor has to consider the bill;<sup>5</sup> or (2) the legislature presents the bill *before*

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<sup>4</sup> While the April 24, 2026 amicus brief of Professor Bagenstos states that “Defendants make a labored effort to parse the difference between ‘business’ and ‘bills’ in this provision,” it was the framers of the 1963 Constitution who did the parsing, and made the express choice to add the word “business” where it was not before. The amicus brief does not address the substance of the Convention’s discussion concerning the introduction of the word “business.”

<sup>5</sup> The April 24, 2026 amicus brief filed by Professor Bagenstos states that this “provision explicitly provides that the Governor has 14 days after presentment to decide whether to sign a bill *even if* the Legislature has ‘finally adjourned the session at which the bill was passed.’” Amicus Brief at 7 (emphasis in original). But critically, this language only contemplates the legislature’s final adjournment of “the session at which the bill was passed” *during* (“within that time”) the 14-day

“finally adjourn[ing] the session at which the bill was passed,” and remains in session while the governor considers the bill. There is no indication that the framers contemplated a third scenario: the legislature “finally adjourn[ing] the session at which the bill was passed” without presenting the bill, and leaving it to a new legislature to do so.

Regardless, because the Senate is seeking mandamus, the question is not whether the 103rd House is *barred from* completing the 102nd Legislature’s business and presenting their bills. It’s whether the 103rd House has a *clear legal duty* to do so. It does not. As explained above, the constitutional text does not limit or restrain the legislature’s presentment authority in any way, nor does it provide any deadline to present bills. *Gilbert*, 87 NJ at 283 (finding the “timing of such presentment is discretionary, and a rule or practice delaying presentment is well within the legislative prerogative”). If, as the Court of Appeals found, a duty to present is not “session-dependent,” then there is no basis to force the 103rd House (as opposed to the 102nd, 104th, 105th or even more distant legislatures) to present the bills within a timeframe the Constitution does not contemplate. As shown by the relief ordered by the Court of Appeals, the only way to come to this conclusion is for the court to create a deadline that does not exist. This Court should decline to do so. See *Senate*, \_\_ Mich App at \_\_ (MURRAY, J., dissenting in part); slip op at 2.

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period the governor has to consider the bills. Thus, while the legislature can present bills and then finally adjourn while the governor is considering them, it cannot finally adjourn before presenting the bills, which is what occurred here. This is entirely consistent with the language cited in the amicus brief that “upheld the authority of the Governor to review bills enacted by the Legislature within the constitutionally authorized review period, even though the legislature had finally adjourned” during (but not before) the review period. See *City of Detroit v Chapin*, 108 Mich 136, 137; 66 NW 587 (1895) (“This case involves the question of the validity of an act of the legislature passed previous to the last five days of the session, and approved by the governor after the adjournment of the legislature”).

**C. The Court of Appeals’ Ruling Creates Practical Issues That Do Not Exist if Each Legislature is Required to Present Its Own Bills.**

As a final matter, the Court of Appeals’ holding that every bill that has ever been passed must be presented by a deadline that can be determined within the trial court’s discretion, and that this requirement is not “session-dependent,” creates significant practical problems.

*First*, it has potentially unintended effects on other legislative powers. As the House has noted, the Court of Appeals’ 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’” runs contrary to past practices. It has long been understood that the legislature can vacate or amend bills that have already passed both houses. See Rule 16 of the 2023-24 Joint Rules of the Senate and House of Representatives; OAG, 2003-2004, No 7,139 (Oct 2, 2003) (citing Attorney General’s advice “relating to the effect to be given legislative requests to return enrolled bills” and to “vacate the action of enrollment”); 1997 SB 386 (passed but not presented); 2019 SB 117 (same); 2023 SB 6 (same). This longstanding legislative power cannot operate in harmony with the Court of Appeals’ ruling. Indeed, the finding that there is a “mandatory duty of presentment” for “every bill passed by the Legislature” that is not “session-dependent” raises the question of whether every prior bill that has ever been passed by the legislature without being presented to the governor must now be resurrected and presented—no matter how long ago the passage occurred.

Along similar lines, it has also long been understood that the legislature has complete discretion as to the timing for bills that it chooses to present. As the House’s Application explained, during the 102nd Legislature, bills were presented at varying times – including, for example, 132 and 84 days after passage. See Application at 6-7 (citing bills). Here, however, the 103rd House was sued just 14 days after taking office, at a time when it was still evaluating its obligation or ability to present the bills. *Id.* at 9-10. The Court of Appeals’ directive for the Court of Claims to

determine a “deadline for presentment” in the court’s own “discretion” changes that. By opening this door, any time one body of the legislature is dissatisfied with the time it takes for the other to present a bill, rather than resolve the dispute legislatively, they can bring it to the judicial branch. This “obtrude[s] the judiciary into the legislative process” and “require[s] courts to make political value judgments regarding the priority of bills[.]” *Gilbert*, 87 NJ at 283 n 4. “A more blatant breach of the separation of powers is difficult to imagine.” *Id.*

*Second*, as noted above, Article 4, Section 33 does not contemplate a new legislature’s presentment of a prior legislature’s bills. Thus, as Judge Murray recognized, the Court of Appeals’ finding that a duty to present is not “session-dependent” creates a “difficult dilemma.” *Senate*, \_\_ Mich App at \_\_ (MURRAY, J., dissenting in part); slip op at 4. While the Constitution is clear as to the veto procedures that apply when a bill is presented before final adjournment,<sup>6</sup> it makes no mention of the procedures that apply if a bill is presented after final adjournment (which, again, shows the framers did not envision a new legislature presenting a prior legislature’s bills). *Id.* at 4-5. Thus, courts will be left to resolve new questions without the benefit of any constitutional guidance, such as whether the Governor can “exercise her constitutional veto power” when “the Legislature that passed these bills has not continued in session.” *Id.*

*Third*, the finding that any duty to present is not “session-dependent” invites future gamesmanship. As one example, if there were a Republican majority in the current Senate, the Republican House and Republican Senate could pass legislation today (or weeks before final

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<sup>6</sup> These veto procedures further support the position that the framers did not contemplate a new legislature acting on a prior legislature’s bills. If the governor vetoes a bill and the legislature that passed the bill remains in session, then that same legislature can override the veto with a two-thirds vote. If, on the other hand, the legislature that passed the bill has adjourned by the time the governor vetoes the bill, the bill dies, with no opportunity for the new legislature to override the veto or otherwise act on the bill. See Const 1963, art 4, § 33.

adjournment) that they suspect the Governor would likely veto. That legislature could intentionally withhold presentment of those bills in the hopes that a new governor is elected who would view them more favorably. And as soon as that occurred (whether in the 2026 election, 2030 election, or later), the legislature could voluntarily present the bills (if a Republican majority were still in power), or a member of the new legislature could sue to compel presentment of the prior legislature's bills (if the control of the legislature had changed, and the new majority did not view the bills favorably).

These are all new issues brought about by the Court of Appeals' ruling. And they are all issues that do not exist if this Court either: (1) does not hold that Article 4, Section 33 "clearly imposes the mandatory duty of presentment on the Legislature for '[e]very bill passed by the legislature'"; or (2) if it does, limits any such duty to the legislature that passed the bills at issue.

### **III. The Court of Appeals Erred in Directing the Court of Claims to Issue a Writ of Mandamus Against the Legislature.**

Last, the Court of Appeals erred in directing the Court of Claims to issue a writ of mandamus compelling the 103rd Legislature to present the bills by a deadline to be determined within the Court of Claims' discretion. Again, the House incorporates the arguments in its prior pleadings, and writes to emphasize several points. See Application at 39-44; Reply at 8-10.<sup>7</sup>

*First*, the lens of review is important. When interpreting the constitutional text, the relevant question for mandamus is whether there is a "clear legal duty" for the 103rd House to present the 102nd Legislature's bills. *Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016). And "[b]ecause mandamus is a discretionary writ," courts ultimately "review for an abuse of discretion

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<sup>7</sup> As noted above, the House further incorporates, and will not supplement, its arguments that if the Senate does not meet the mandamus standards, it cannot compel the House to present these bills by sidestepping those standards, and coupling a claim of declaratory judgment with a request for injunctive relief. See House Answer to Senate's Cross-Application.

a trial court’s decision regarding whether to grant mandamus relief.” *Id.* Thus, ambiguity in the constitutional text can “make[] it impossible to conclude” that a “clear legal duty” exists. *Kennedy*, 10 NW3d at 635 (WELCH, J., concurring). And even if, writing on a blank slate, a court of review would have granted mandamus relief, it must defer to the trial court’s decision so long as it is within the range of reasonable and principled outcomes.

Here, however, the Court of Appeals recognized that, as a matter of text, the House’s argument that Article 4, Section 33 does not require the legislature to present every passed bill “has arguable merit[.]” *Senate*; \_\_ Mich App at \_\_; slip op at 8. It found there was not “any evidence of the intent of the people, generally, at the time the provision was enacted.” *Id.* at 8 n 8. But, without expressly saying so, the court then effectively found that the Court of Claims abused its discretion by failing to issue a writ of mandamus that creates a deadline for presentment “in the Court of Claims’ discretion.” *Id.* at 14. That was error. Again, while the House believes the constitutional text unambiguously does not require the presentment of every bill that has ever been passed, if there is any doubt whatsoever, that doubt weighs against a finding that the Court of Claims abused its discretion in denying the Senate’s request for a writ of mandamus. And it weighs in favor of letting the legislature resolve this dispute concerning legislative processes.

*Second*, and relatedly, for a writ of mandamus to issue, the law must “prescribe[] and define[] the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Berry*, 316 Mich App at 42 (citation omitted). Again, the constitutional text, past practices, and the relief fashioned by the Court of Appeals<sup>8</sup> all show that

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<sup>8</sup> See *Senate*, \_\_ Mich App at \_\_; slip 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). As Judge Murray recognized, the creation of this deadline will require the judiciary “to add language to the constitution. *Id.* at \_\_ (MURRAY, J., dissenting in part); slip op at 2 (finding “much appeal” to the House argument that, “[b]ecause there is no *explicit* time

any duty to present (which the House disputes exists) is, as the Court of Claims held, not a duty that “leave[s] nothing to the exercise of discretion or judgment.” *Id.*; Application at 39-41.

*Third*, the House has maintained that there is no permissible remedy for a court to provide. This is consistent with more than 150 years of precedent recognizing that “all wrongs, certainly, are not redressed by the judicial department.” *People ex rel Sutherland v Governor*, 29 Mich 320, 330 (1874); see also *id.* at 326 (“[N]o court can compel the Legislature to make or to refrain from making laws, or to meet or adjourn at its command, or to take any action whatsoever, though the duty to take it be made ever so clear by the constitution or the laws.”). But that does not mean no remedy exists. The Senate can exhaust traditional legislative tools. For instance, as has been done in the past, it could have sought to re-introduce the bills during the new legislative session. See 2019 SB 117 (bill passed both houses of the legislature, was vacated upon protest from legislators, and reintroduced in a subsequent legislative session where it was passed and enacted into law); OAG, 1989-1990, No. 6629, p 326 at 328 (April 27, 1990) (an enrolled bill presented to the Governor at the end of the legislative session in an even-numbered year, which was subjected to a pocket veto, could “become law only by being re-introduced as an original bill, re-enacted, and either approved by the Governor or passed over a veto made by the Governor while the Legislature is still in session”). It made no attempt to do so, but instead went straight to the courts. Blessing this practice will result in a significant intrusion on the legislature’s plenary authority, and will open the door to countless legislative disputes going forward. Application at 43-44. This Court should reject that approach.

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frame for presentment within § 33,” to “impose a time frame on *when* the Legislature must present an enrolled bill would be a violation of the separation of powers”).

**CONCLUSION**

For the reasons stated above and in the House’s prior briefing, this Court should grant the House’s application for leave to appeal or enter an order under MCR 7.305(H)(1) peremptorily reversing the Court of Appeals.

Respectfully submitted,

Dated: April 24, 2026

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