STATE OF MICHIGAN
IN THE SUPREME COURT

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

Plaintiffs-Appellants,

v

MICHIGAN HOUSE OF REPRESENTATIVES, MICHIGAN HOUSE SPEAKER MATT HALL, in his official capacity**,** and **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. 168269

Court of Appeals Case No. 374786

Court of Claims Case No. 25-000014-MB

/

MARK BREWER (P35661)
MICHAEL TURNER (P89035)
GOODMAN ACKER, P.C.
Attorneys for Plaintiffs-Appellees
Two Towne Square, Ste. 444
Southfield, MI 48076
(248) 483-5000
mbrewer@goodmanacker.com

KYLE M. ASHER (P80359)
STEVEN C. LIEDEL (P58852)
DYKEMA GOSSETT PLLC
Attorneys for Defendants-Appellants
201 Townsend Street, Ste. 900
Lansing, MI 48933
(517) 374-9151
kasher@dykema.com

/

ANSWER OF PLAINTIFFS-APPELLEES IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

ORAL ARGUMENT REQUESTED ONLY IF GRANTED TO DEFENDANTS-APPELLANTS

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Constitutional Provisions

Michigan Compiled Laws

Legislative Bills

Legislative Materials

Attorney General Opinions

Michigan Court Rules

Other Authorities

QUESTION PRESENTED

Do the Defendants-Appellants meet the criteria for this Court to exercise its discretionary authority to grant the Application for Leave to Appeal?

Plaintiffs-Appellees' Answer: No

Defendants-Appellants' Answer: Yes

INTRODUCTION

> "Section 33 requires presentment of all bills passed by both legislative houses, even after adjournment."
>
> -Judge Sima Patel[1]

> "Const 1963, art 4, § 33, clearly imposes the mandatory duty of presentment on the Legislature for "[e]very bill passed by the legislature[.]" This duty is not session-dependent; the Legislature, as a whole, bears the duty of presentment."
>
> -Judges Thomas Cameron and Daniel Korobkin[2]

> "[T]he Legislature has a clear constitutional duty to present bills to the Governor that were passed by both houses, as the text within Const 1963, art 4, § 33 could not be clearer."
>
> -Judge Christopher Murray[3]

Four 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. Yet the House now claims that all 4 of those judges were somehow "clearly erroneous" in reaching that conclusion, asking this Court to exercise its discretion to grant an application for leave to appeal from a thorough, well-written Court of Appeals decision directing the House to present the bills.

The House does not meet the criteria for granting leave and the Court should expeditiously deny the application so the bills can be presented to the Governor for signature, halting the significant financial and other damage to hundreds of thousands of public employees and their families, debtors, and residents of the City of Detroit caused by the year of delay in presentment.

---

[1] Opinion and Order of the Court of Claims at 12 (Appendix at 12).
[2] Opinion and Order of the Court of Appeals at 10 (Appendix at 30).
[3] Opinion of Murray, J., concurring in part, at 1 (Appendix at 35).

COUNTER-STATEMENT OF MATERIAL FACTS AND PROCEEDINGS

A. Material Facts

1. Historical Bill Presentment Practice.

The Presentment Clause of the Michigan Constitution states:

> Every bill passed by the legislature shall be presented to the governor before it becomes law . . . .

Const 1963, art 4, § 33. The Clause imposes a duty to present every bill passed by the Legislature without exception. Presentment itself is a very simple, clerical, ministerial—indeed, pedestrian—process as it currently involves an employee of the Legislature walking copies of passed bills to the Governor's Legislative Affairs Office in the Capitol. Presentment is literally a walk down the hall. That is it.

For at least 150 years under three state Constitutions—1850, 1908, and 1963—following presentment by the Legislature, Michigan governors have signed bills after the adjournment of the legislative session at which they were passed. *See, e.g.*, *Detroit v Chapin*, 108 Mich 136, 143; 66 NW 587 (1895) ("Our attention is called to instances where the governors of this State have signed bills [after legislative adjournment], one as early as 1873, and many since."); 1 OAG, 1982, No. 6,114, p 779, at 780 (December 22, 1982) (*Chapin* "expressly recognized that governors of this state have signed bills [after legislative adjournment] for many years.").

The vast majority of bills passed during a legislative session are presented to the Governor during that session. However, the volume of bills passed in the final days of a legislative session has sometimes caused bill presentation and signing to occur during the next legislative session.

Examples of bills presented by the Senate to the Governor during the next legislative session following passage include but are not limited to:

1) Senate Bill 240 of 1998 was presented to the Governor on January 13, 1999, and signed on January 27, 1999. *See* 1998 Senate Journal 2290, 2309–2310.

2) Senate Bill 1102 of 1996 was presented to the Governor on January 10, 1997, and signed on January 21, 1997. *See* 1996 Senate Journal 2377, 2392.

3) Senate Bills 530, 979, 200, and 201 of 1982 were presented to the Governor on January 4, 1983, and signed by the Governor on January 17, 1983. *See* 1983 Senate Journal 32, 56–57.

4) Between January 4 and 16, 1981 the Senate presented 49 bills to the Governor. *See* 1980 Senate Journal 3767–3768.

Examples of bills presented by the House to the Governor during the next legislative session by the House include but are not limited to:

1) In January 1981, 71 bills from the 1980 session were presented to the Governor between January 7, 1981, and January 16, 1981. *See* 1980 House Journal 3767–3768.

2. The Events of January 8, 2025.

During the morning of January 8, 2025, 19 bills were presented to the Governor that had passed the 102nd Legislature in 2024. *See* Appendix, p 40. At 12:00 p.m., the 103rd Legislature convened, Representative Matt Hall was elected Speaker, and Scott Starr was elected Clerk. Presentation of bills that had passed the 102nd Legislature in 2024 continued into the afternoon. All told, 69 bills that passed during the 102nd Legislature were presented to the Governor during the afternoon of January 8, 2025. *See* Appendix, pp 41-42.

All nine bills at issue in this litigation also had passed both houses of the Legislature in 2024 and were ready for presentation to the Governor on January 8, 2025, along with the other 88 bills. However, in defiance of Article 4, § 33, this Court's precedent, and long-established legislative practice, Speaker Hall ordered Clerk Starr not to present the nine bills to the Governor.

3. The Nine Bills Passed by the Legislature in 2024 That the House Has Failed to Present to the Governor.

House Bill 4177 of 2023

- Brief Description: Enacts the History Museum Authorities Act to allow a county board of commissioners to establish a history museum authority and levy a tax of up to 0.2 mills in a county that established an authority. *See* Senate Fiscal Agency Analysis, HB 4177 (November 25, 2024).

- Process, *see* Michigan Legislature, *House Bill 4177 of 2023: History* (accessed January 28, 2025):

  - Introduced – 3/7/23

  - Reported from the House Committee on Regulatory Reform – 9/19/23

    - Two Committee Hearings, *see* House of Representatives Committee on Regulatory Reform, *Committee Meeting Minutes* (September 12, 2023); House of Representatives Committee on Regulatory Reform, *Committee Meeting Minutes* (September 19, 2023).

  - Passed the House (56–53) – 6/20/24

  - Reported from the Senate Committee on Finance, Insurance, and Consumer Protection – 11/26/24

    - Committee Hearing, *see* Senate Committee on Finance, Insurance, and Consumer Protection, *Committee Meeting Minutes* (November 13, 2024).

  - Passed the Senate (20–18) – 12/20/24

  - Returned to the House – 12/20/24

  - Ordered Enrolled – 12/31/24

House Bill 5817 of 2024

- Brief Description: Amends the Tax Increment Financing Act to exempt the mills captured under HB 4177, so that money collected goes to the established authority. *See* Senate Fiscal Agency Analysis, HB 5817 (November 25, 2024).

- Process, *see* Michigan Legislature, *House Bill 5817 of 2024: History* (accessed January 28, 2025):

  - Introduced – 6/13/24

- Reported from the House Committee on Regulatory Reform – 6/18/24
  - Committee Hearing, *see* House of Representatives Committee on Regulatory Reform, *Committee Meeting Minutes* (June 18, 2024).
- Passed the House (56–54) – 6/27/24
- Reported from the Senate Committee on Finance, Insurance, and Consumer Protection – 11/13/24
  - Committee Hearing, *see* Senate Committee on Finance, Insurance, and Consumer Protection, *Committee Meeting Minutes* (November 13, 2024).
- Passed the Senate (20–18) – 12/20/24
- Returned to the House – 12/20/24
- Ordered Enrolled – 12/31/24

House Bill 5818 of 2024

- Brief Description: Amends the Brownfield Redevelopment Authority Act to exempt the mills captured under HB 4177, so that money collected goes to the established authority. *See* Senate Fiscal Agency Analysis, HB 5818 (November 25, 2024).
- Process, *see* Michigan Legislature, *House Bill 5818 of 2024: History* (accessed January 28, 2025):
  - Introduced – 6/13/24
  - Reported from the House Committee on Regulatory Reform – 6/18/24
    - Committee Hearing, *see* House of Representatives Committee on Regulatory Reform, *Committee Meeting Minutes* (June 18, 2024).
  - Passed the House (56–54) – 6/27/24
  - Reported from the Senate Committee on Finance, Insurance, and Consumer Protection – 11/26/24
    - Committee Hearing, *see* Senate Committee on Finance, Insurance, and Consumer Protection, *Committee Meeting Minutes* (November 13, 2024).
  - Passed the Senate (20–18) – 12/20/24

- Returned to the House – 12/20/24
- Ordered Enrolled – 12/31/24

House Bill 4665 of 2023

- Brief Description: Amends the State Police Retirement Act to allow corrections officers, conservation officers, and other law enforcement officers to participate in the Michigan State Police retirement plan. *See* House Fiscal Agency Analysis, HB 4665 (December 13, 2024).

- Process, *see* Michigan Legislature, *House Bill 4665 of 2023: History* (accessed January 28, 2025):
  - Introduced – 5/25/23
  - Reported from the House Committee on Labor – 12/12/24
    - Committee Hearing, *see* House of Representatives Committee on Labor, *Committee Meeting Minutes* (December 12, 2024).
  - Passed the House (56–0) – 12/13/24
  - Discharged from the Senate Committee on Government Operations – 12/20/24
  - Passed the Senate (25–13) – 12/20/24
  - Returned to the House – 12/20/24
  - Ordered Enrolled – 12/31/24

House Bill 4666 of 2023

- Brief Description: Amends the State Employees' Retirement Act to allow certain individuals who are qualified participants in the State Employees' Retirement System to elect to join the Michigan State Police retirement plan. *See* House Fiscal Agency Analysis, HB 4666 (December 13, 2024).

- Process, *see* Michigan Legislature, *House Bill 4666 of 2023: History* (accessed January 28, 2025):
  - Introduced – 5/25/23
  - Reported from the House Committee on Labor – 12/12/24

- Committee Hearing, *see* House of Representatives Committee on Labor, *Committee Meeting Minutes* (December 12, 2024).

- Passed the House (56–0) – 12/13/24
- Discharged from the Senate Committee on Government Operations – 12/20/24
- Passed the Senate (25–13) – 12/20/24
- Returned to the House – 12/20/24
- Ordered Enrolled – 12/31/24

House Bill 4667 of 2023

- Brief Description: Adds three sections to the State Police Retirement Act to allow eligible individuals to purchase service credit for service under the State Employees' Retirement Act. *See* House Fiscal Agency Analysis, HB 4667 (December 13, 2024).
- Process, *see* Michigan Legislature, *House Bill 4667 of 2023: History* (accessed January 28, 2025):
  - Introduced – 5/25/23
  - Reported from the House Committee on Labor – 12/12/24
    - Committee Hearing, *see* House of Representatives Committee on Labor, *Committee Meeting Minutes* (December 12, 2024).
  - Passed the House (56–0) – 12/13/24
  - Discharged from the Senate Committee on Government Operations – 12/20/24
  - Passed the Senate (25–13) – 12/20/24
  - Returned to the House – 12/20/24
  - Ordered Enrolled – 12/31/24

House Bill 4900 of 2023

- Brief Description: Modifies the types and value of wages, money, and property exempt from garnishment and execution (debt collection), and modifies Michigan's garnishment and execution process. *See* Senate Fiscal Agency Analysis, HB 4900 (December 18, 2024).

- Process, *see* Michigan Legislature, *House Bill 4900 of 2023: History* (accessed January 28, 2025):
  - Introduced – 7/18/23
  - Discharged from the House Committee on Insurance and Financial Services – 12/13/24
  - Passed by the House (56–0) – 12/13/24
  - Discharged from the Senate Committee on Government Operations – 12/20/24
  - Passed by the Senate (22–16) – 12/20/24
  - Returned to the House – 12/20/24
  - Ordered Enrolled – 12/31/24

House Bill 4901 of 2023

- Brief Description: Amends the bankruptcy section of the Revised Judicature Act to modify the value of types of property and expand the types of property exempt from inclusion in a debtor's estate. *See* Senate Fiscal Agency Analysis, HB 4901 (December 18, 2024).
- Process, *see* Michigan Legislature, *House Bill 4901 of 2023: History* (accessed January 28, 2024):
  - Introduced – 7/18/23
  - Discharged from the House Committee on Insurance and Financial Services – 12/13/24
  - Passed the House (56–0) – 12/13/24
  - Discharged from the Senate Committee on Government Operations – 12/20/24
  - Passed the Senate (21–17) – 12/20/24
  - Returned to the House – 12/20/24
  - Ordered Enrolled – 12/31/24

House Bill 6058 of 2024

- Brief Description: Amends the Publicly Funded Health Insurance Contribution Act to mandate that public employers contribute at least 80% of the costs for employee health plans and permit employers to contribute up to the full cost. *See* Senate Fiscal Agency Analysis, HB 6058 (December 19, 2024).

- Process, *see* Michigan Legislature, *House Bill 6058 of 2024: History* (accessed January 28, 2025):

  - Introduced – 11/12/24

  - Reported from the House Committee on Labor – 12/5/24

    - Committee Hearing, *see* House of Representatives Committee on Labor, *Committee Meeting Minutes* (December 5, 2024).

  - Passed by the House (56–0) – 12/13/24

  - Discharged from the Senate Committee on Government Operations – 12/20/24

  - Passed the Senate (20–18) – 12/20/24

  - Returned to the House – 12/20/24

  - Ordered Enrolled – 12/31/24

B. Legal Proceedings

On February 3, 2025, the Senate and Senate Majority Leader (hereinafter collectively, the "Senate") filed a Verified Complaint against the Defendants (hereinafter collectively, the "House") asking the Court of Claims for the following relief: (1) to grant a writ of mandamus and order the House to immediately present the nine bills to the Governor; (2) to enter a declaratory judgment that the House has a constitutional duty to present the nine bills to the Governor; and (3) to issue a permanent injunction enjoining the House from failing to immediately present the nine bills to the Governor. Concurrently, the Senate filed Motions for Immediate Consideration, Expedited Consideration, and Summary Disposition. On February 24, 2025, a hearing on the Senate's Motion

for Summary Disposition was held before the Honorable Sima G. Patel. Following the hearing, the House filed its own Countermotion for Summary Disposition.

On February 27, 2025, the Court issued its Opinion and Order finding the following: (1) Speaker Hall is privileged from civil process; (2) the Senate and Senate Majority Leader have standing; (3) the case presents a justiciable question; (3) Article 4, § 33 requires presentment of all bills passed by both legislative houses, even after adjournment; and (4) the Senate is entitled to a declaratory judgment, but not mandamus or injunctive relief at that time. *Mich Senate v Mich House of Representatives*, opinion and order of the Court of Claims, issued February 27, 2025 (Docket No. 25-000014-MB), pp 1-20 (Appendix, pp 1-20). The Court held that "all bills passed by the Legislature must be presented to the Governor within time to allow 14 days for the Governor's review prior to the first date that they could take effect." (Appendix, p 2). As such, the Court ordered the following: (1) the Senate's Motion for Summary Disposition was granted to the extent that it requests a declaratory judgment; (2) the Senate's Motion for Summary Disposition was denied with respect to its request for a writ of mandamus and injunctive relief; (3) the House's Countermotion for Summary Disposition was granted with respect to the Senate's claims for a writ of mandamus and injunctive relief; and (4) the House's Countermotion for Summary Disposition was denied with respect to the Senate's request for a declaratory judgment. (Appendix, p 19).

Under the Court of Claims' Declaratory Judgment, the nine bills were required to be presented to the Governor at least 14 days before they would take effect on April 2, 2025, or by March 19, 2025. (*Id*)

On March 12, 2025, the House adopted a resolution indicating that it would not comply with the Court of Claims' Declaratory Judgment. That same day, the House claimed an appeal as

of right from the Opinion and Order Granting in Part the Senate's Motion for Summary Disposition.

On March 13, 2025, the Senate claimed a cross-appeal from the Opinion and Order Granting in Part the House's Countermotion for Summary Disposition. The Senate did not appeal the Court of Claims' finding that Michigan House Speaker Matt Hall is privileged from civil process.

On March 17, 2025, Plaintiff Majority Leader Brinks sent a letter to Speaker Hall demanding compliance with the Declaratory Judgment and offering an alternative means of presentment: delivery of the bills to the Secretary of the Senate who would present them. *See* Letter from Hon. Winnie Brinks to Hon. Matt Hall & Hon. Scott Starr (March 17, 2025) (Appendix, p 43). Speaker Hall refused to do so on March 18, 2025. *See* Letter from Hon. Matt Hall to Hon. Winnie Brinks (March 18, 2025) (Appendix, p 44). That same day, the Senate amended its rules to authorize the Secretary of the Senate to present enrolled House bills to the Governor. *See* Senate Resolution No. 20.

Also on March 17, 2025, the Senate filed an Emergency Bypass Application with the Supreme Court. This Court denied the Bypass Application, but "order[ed] the Court of Appeals to expedite its consideration and resolution of this case." *Senate v House of Representatives*, Order of the Michigan Supreme Court, entered April 2, 2025 (Docket No. 168269).

On March 19, 2025, the deadline for the House to present the nine bills to the Governor came and went without presentation. Therefore, on March 20, 2025, the Senate filed a Motion to Enforce with the Court of Claims. On March 21, 2025, the Court denied the Motion to Enforce and issued a stay pending appeal on its own motion.

The Court of Appeals heard oral argument on September 9, 2025, and issued its opinion and order on October 27, 2025. (Appendix, pp 21-40). That opinion affirmed the Court of Claims decision that the Senate had standing, the case was justiciable, and that the House had a duty to present the bills. The Court of Appeals found that the Senate met the criteria for mandamus, reversing the Court of Claims on that issue. Having granted mandamus relief the Court did not need to address issues of declaratory or injunctive relief.

STANDARD OF REVIEW

The Application correctly acknowledges that granting leave to appeal is discretionary and that an application "must" demonstrate that the criteria in the Court Rules are met, and accurately states the criteria. Application at 18.

ARGUMENT

THE APPLICATION FOR LEAVE TO APPEAL SHOULD BE DENIED.

The Court Rules describe the criteria which the House admits "must" be met before an application is granted:

> **(B) Grounds.** The application must show that
>
> (1) the issue involves a substantial question about the validity of a legislative act;
> (2) the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's capacity;
> (3) the issue involves a legal principle of major significance to the state's jurisprudence;
>
> • • • •
>
> (5) in an appeal of a decision of the Court of appeals,
> (a) the decision is clearly erroneous and will cause material injustice, or
> (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals;

MCR 7.305(B)(1)-(3), (5).

Only one of these criteria are met. The validity of a legislative act, i.e., the validity of an enacted law, is not at issue. The decision of the Court of Appeals is not clearly erroneous and does not conflict with prior decisions of this Court – indeed the decision follows and correctly applies several decisions of this Court. Because that decision is in accord with this Court's decisions, there are no legal principles of major significance to be resolved by this Court. That leaves only the criterion of public interest in a case in which state bodies are litigants and the satisfaction of one criterion is not the basis for a discretionary grant of leave to appeal.[4]

We now detail why the Court of Appeals was correct, properly applied this Court's precedents, and leave should not be granted.

I. THE SENATE AND SENATE MAJORITY LEADER HAVE STANDING.

The House has essentially abandoned its argument against standing, making only a cursory and perfunctory 2-page argument. Application at 27-28. The Court of Appeals correctly found that the Senate – both plaintiffs – have standing. (Appendix, pp 23-24). That decision is solidly grounded in several of this Court's precedents as we now demonstrate.

A. The Senate and Senate Majority Leader Meet the Standards for Standing.

Only one plaintiff needs to have standing in order for a complaint to proceed. *See, e.g.*, *House Speaker v State Admin Bd*, 441 Mich 547, 561; 495 NW2d 539 (1993). Both the Senate and Senate Majority Leader have standing on several bases under controlling precedents of this Court.

In *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), this Court held that "consistent with Michigan's long-standing historical approach to standing,"

[4] The Application relies on the Senate's earlier Bypass Application for support. *See, e.g.*, Application at 1, 19. However, arguments made before the well-considered Court of Appeals opinion issued are irrelevant to whether leave should be granted from that opinion.

judicial standing analyses are "limited" and "prudential." *Id* at 352–353. The sole "purpose of the standing doctrine," this Court held, "is to assess whether a litigant's interest in the issue is sufficient to 'ensure sincere and vigorous advocacy.'" *See id* at 355, quoting *Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 633; 537 NW2d 436 (1995). That standard is easily met here.

Lansing Schools held that plaintiffs can establish standing in any one of several ways: (1) "whenever there is a legal cause of action"; (2) "if the statutory scheme implies that the Legislature intended to confer standing"; (3) when the plaintiff *either* "has a special injury *or* right, *or* substantial interest, that will be detrimentally affected in a manner different from the citizenry at large"; or (4) "whenever a litigant meets the requirements of MCR 2.605 . . . to seek a declaratory judgment." *Lansing Sch Ed Ass'n*, 487 Mich at 372 (emphasis added).

The Senate and Senate Majority Leader have standing under several of the *Lansing Schools* tests. Before turning to those tests, we address why the House is improperly focused on the Governor's failure to bring this challenge. The House argues that the Governor has "not moved to compel presentation. And it is unclear whether she would even sign these bills if presented. Thus, any such harm asserted by the Senate is . . . *purely speculative*." Application at 28 (emphasis added).

The House's allegation that the Senate's alleged injury is "purely speculative" is misplaced. The Senate does not contend that it is injured if the Governor does not sign the nine bills but that it is injured by the failure to present them in violation of § 33. The Senate argues that it is injured because the House is refusing to follow the mandatory constitutional bicameral lawmaking process. If allowed to succeed, this anti-majoritarian tactic will unilaterally and drastically change Michigan government bicameralism—its separation of powers, its checks and balances, and its majoritarian principles in several ways.

First, the Legislature will no longer be a body in which the majority rules in both houses when it comes to passing legislation. Instead, a single legislative leader can simply refuse to send the Governor any passed bill—even one passed by overwhelming majorities. This will permit every legislative leader to have their own "pocket veto"—pocketing passed bills by refusing to send them to the Governor. Second, this scheme will inject an entirely new political calculus into the legislative process as every bill could be turned into a hostage whose release will be bartered over with other legislators and/or the Governor.

Therefore, the Senate's injury is concrete, not "purely speculative." Indeed, even beyond these persuasive arguments, constitutional violations are presumptively irreparable, and therefore not "purely speculative." *See, e.g.*, *Obama for America v Husted*, 697 F3d 423, 436 (CA 6, 2012).

1. The Senate Has Standing.

With the House's arguments on standing being groundless, we turn now to why the Court of Appeals correctly found standing under *Lansing Schools*.

First, the Senate has a special right that will be detrimentally affected in a manner different from the citizenry at large by the House's failure to do its duty to present the nine bills. The House's unilateral refusal to present the nine bills to the Governor violates the constitutionally established bicameral lawmaking process under Article 4 generally, and § 33 specifically. As an integral part of the bicameral lawmaking body, the Senate has the institutional right under Article 4, § 33 to have bills passed by both houses presented to the Governor. To permit the House to withhold presentation would undermine the integrity of the bicameral lawmaking process mandated by Article 4, § 33 by allowing one house and one legislator to veto the work of both houses. The right to veto legislation is the sole constitutional prerogative of the Governor and it cannot be usurped

by a legislative body or a legislator. This institutional right is unique to the Senate, not shared with the citizenry at large, and is plainly detrimentally affected by the House's conduct here.

The Senate also has a special injury caused by the House's failure to do its duty to present—an injury not shared by the citizenry at large. The Senate expended considerable time and resources considering, performing bill analyses, holding committee hearings, debating, and finally passing the nine bills at issue here. No other person or organization performed or can perform these innately legislative tasks of the Senate. Thus, the Senate is uniquely injured by having spent its time and resources on these nine bills only to have them unconstitutionally blocked from presentment by the House.

In addition, the Senate has a substantial interest that will be detrimentally affected in a manner different from the citizenry at large by the House's failure to do its duty to present. The text of Article 4, § 33 specifically references the Legislature and the legislative process. *See Lansing Sch Ed Ass'n*, 487 Mich at 374 (text can demonstrate "a substantial and distinct interest"). While citizens can influence the legislative process, only the Senate and House can pass legislation and present it to the Governor. The Senate thus has a substantial interest in the presentation of the nine bills and is affected differently than citizens by the House's failure to present legislation that both houses have passed. The history of Article 4, § 33 reinforces the Senate's substantial and distinct interest. *See Lansing Sch Ed Ass'n*, 487 Mich at 374–375 (legislative history demonstrates a substantial and distinct interest).

Finally, the Senate also meets the requirements of MCR 2.605 to seek a declaratory judgment. MCR 2.605(A)(1) states: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." This

Court has held that "[a]n actual controversy exists when a declaratory judgment is needed to guide a party's future conduct in order to preserve that party's legal rights." *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 586; 957 NW2d 731 (2020) (*en banc*). There is an actual controversy because the Senate has the constitutional right to presentment of these nine bills and all bills in the future that pass both houses of the Legislature.

2. The Senate Majority Leader Has Standing.

In *House Speaker v State Admin Bd*, this Court held that legislators have standing to sue if they "establish that they have been deprived of a 'personal and legally cognizable interest peculiar to [them].'" 441 Mich at 556 (internal citation omitted). One of those interests is a "complete nullification of [her] vote, with no recourse in the legislative process." *Id* at 557 (internal citation omitted).

The Senate Majority Leader's vote to pass all nine bills has been completely nullified by the withholding of presentment by the House, and she has no recourse in the legislative process because the legislative session in which she voted for the nine bills is over. Hers is not "a generalized grievance that the law is not being followed," *id* at 556 (internal quotation marks and citation omitted), but an injury peculiar to her as a legislator who voted for the bills and whose vote is nullified by the failure of the House to present the nine bills.

The House incorrectly relies on *Killeen v Wayne Co Road Comm*, 137 Mich App 178; 357 NW2d 851 (1984) (*per curiam*), and misconstrues *State Admin Bd*, 441 Mich 547, to argue that the Senate Majority Leader lacks standing. *See* Application at 27. Neither case supports the House's contention. First, both cases predate *Lansing Schools*, the controlling precedent on standing. Second, they are factually distinguishable. Both involved situations where "legislative work-product [had been] enacted," at which point, the "special interest as lawmakers ha[d]

ceased." *Killeen*, 137 Mich App at 189; *State Admin Bd*, 441 Mich at 557 (same). Here, the failure to present has unconstitutionally interrupted the lawmaking process, which is not over because the nine bills have not been presented to and acted upon by the Governor—which is an integral part of the legislative process. *See* 1 Official Record, Constitutional Convention 1961, p 1719 (the "veto power of the governor . . . is strictly a legislative function"). Thus, the Senate Majority Leader is uniquely injured as a legislator because her vote was nullified by the House's unconstitutional interference with the lawmaking process, preventing that process from being completed.

II. THIS CASE IS JUSTICABLE.

The Court of Appeals thoroughly analyzed the issue of justiciability and found the case justiciable. Opinion at 4-7 (Appendix, pp 24-27). The Court's analysis is in line with this Court's precedents and is correct.

The controlling Michigan case on the "political question" doctrine is this Court's decision in *House Speaker v Governor*, 443 Mich 560; 506 NW2d 190 (1993), *overruled in part as to standing by Rohde v Ann Arbor Pub Sch*, 479 Mich 336; 737 NW2d 158 (2007) (*en banc*), *overruled as to standing by Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), in which this Court held that the doctrine did not prevent it from resolving a dispute between the Speaker of the House and the Governor. *Id* at 576.

This Court's framework for determining whether the political question doctrine applies uses a three-part test:

> The political question doctrine requires analysis of three inquiries: "(i) Does the issue involve resolution of questions committed by the text of the Constitution to a coordinate branch of Government? (ii) Would resolution of the question demand that a court move beyond areas of judicial expertise? (iii) Do prudential considerations [for maintaining

> respect between the three branches] counsel against judicial intervention?"

Id at 574 (internal citation omitted). The Court of Appeals applied this test. Opinion at 5 (App. at 25).

In applying these standards, this Court also held that simply because a case involves "political" issues does not mean that it is subject to the political question doctrine:

> The fact that this case involves "political" issues is not determinative of the need for this Court to defer to the Governor on political question grounds. Rather, as noted in *Baker[v Carr*, 369 US 186; 82 S Ct 691; 7 L Ed 2d 663 (1962)], "[t]he doctrine of which we treat is one of 'political questions,' not one of the 'political cases.' The courts cannot reject as 'no law suit' a bona fide controversy as to whether some action denominated 'political' exceeds constitutional authority."

443 Mich at 574. This Court also declared that judicial resolution is not precluded simply because a dispute is between or within the branches of government:

> Similarly, the mere fact that a case involves a conflict between the legislative and executive branches "does not preclude judicial resolution of the conflict." *United States v AT&T*, 551 U.S. App DC 198, 204; 551 F2d 384 (1976) (citing *Senate Select Comm on Presidential Campaign Activities v Nixon*, 162 U.S. App DC 183; 498 F2d 725 (1974).

Id at 574 n 18 (internal citation omitted).

a. Textual Commitment

Answering the first inquiry in this case, the question of whether the House violated its duty to present the nine bills under Article 4, § 33 is not textually committed to another branch of state government. Nowhere does the State Constitution expressly provide that the interpretation of Article 4, § 33 is the sole province of the House, the Senate, and/or the entire Legislature. When the State Constitution commits issues exclusively to legislative resolution it says so. *See, e g,* art 4, § 37 (granting the Legislature the exclusive authority to suspend rules and regulations); § 53 (granting the Legislature exclusive authority to appoint the auditor general).

There is no such textual commitment of § 33's interpretation to the House. Instead, that question is a classic question of constitutional interpretation for the courts. *See, e.g.*, *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 687; 983 NW2d 855 (2022) (*en banc*) ("The recognition and redress of constitutional violations are quintessentially judicial functions . . . ."); *Richardson v Secretary of State*, 381 Mich 304, 309; 160 NW2d 883 (1968) (*per curiam*) ("Interpretation of the State Constitution is the exclusive function of the judicial branch. Construction of the Constitution is the province of the courts and this Court's construction of a State constitutional provision is binding on all departments of government . . . ."). Indeed, this Court has already opined that the Presentment Clause imposes a mandatory duty on the Legislature that cannot be "enlarged, curtailed, changed, or qualified, by the legislative body." *Anderson v Atwood*, 273 Mich 316, 320; 262 NW 922 (1935) (quoting 59 CJ, p 575).

The House alleges that this case "centers on a legislative process," and, "absent language to the contrary, Michigan's Constitution commits issues concerning the legislative process to the legislature, and not the courts." Application at 23. The House's only support for this overbroad contention is other constitutional provisions found in Article 4 that outline legislative powers. *See id*. However, none of those provisions override § 33 and allow the Legislature to refuse to present passed bills and it is axiomatic that courts have the power to review the constitutionality of conduct by the Legislature. Most recently, this Court found that the Legislature's "adopt and amend" scheme was unconstitutional. *See Mothering Justice v Attorney General*, ___ Mich ___, ___; ___ NW2d ___ (2024) (Docket No. 165325) (*en banc*); slip op at 1–2. According 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." Moreover, this argument ignores the reality of the situation here. Absent judicial intervention, every path available to the Senate to attempt to remedy this

constitutional violation goes through the recalcitrant House. Therefore, placing this issue within the discretion of the legislative branch leaves the Senate at the mercy of the House, which means the Senate has no remedy.

Thus, the answer to the first inquiry – the lack of a textual commitment of an issue to a nonjudicial branch of government – supports justiciability.

b. Judicial Expertise

The second inquiry under the political question framework asks whether resolution of the legal issues presented here require a court "to move beyond areas of judicial expertise." In resolving the constitutional interpretation question here, a court would use its well-established principles of constitutional interpretation which are well within its expertise. *See, e.g.*, *Mothering Justice*, ___ Mich at ___; slip op at 12–13 (describing those principles).

c. Prudential Concerns

Finally, as to the third inquiry, there are no "prudential concerns" that "counsel against judicial intervention." As this Court held in *House Speaker v Governor*, so, too, here:

> Interpreting the constitution does not imply a lack of respect for another branch of government, even when that interpretation differs from that of the other branch. Where it is otherwise proper, virtually no court, including this Court, is hesitant to render its interpretation of a constitutional or statutory provision, even though another branch of government has already issued a contrary interpretation.

House Speaker, 443 Mich at 575 (internal citation omitted). This case presents a dispute over the meaning of the State Constitution and the fact that the House has a different interpretation of the Constitution does not "counsel against judicial intervention." Michigan courts often decide constitutional questions when "another branch of government has already issued a contrary interpretation." *See, e.g.*, *Mothering Justice*, ___ Mich at ___; slip op at 34 n 18 (rejecting the opinion of the Attorney General on a state constitutional issue).

The House complains that the Court of Appeals not only interpreted the Constitution, but it then "took the extra step" of declaring when presentment must occur. *See* Application at 26. There is nothing improper about this – it's part of the *remedy* for the House's unconstitutional conduct.

For example time and time again, Michigan courts have enforced declaratory judgments against recalcitrant parties in a wide variety of ways under MCR 2.605(F). *See, e.g., Wayne Co Chief Exec v Governor*, 230 Mich App 258, 267; 583 NW2d 512 (1998) (injunction available to enforced declaratory relief); *Durant v Michigan*, 456 Mich 175, 206; 566 NW2d 272 (1997) (*per curiam*) (awarding damages to enforce declaratory relief dur to defendants' "recalcitrance"). As this Court observed in *Durant* when it awarded relief enforcing a declaratory judgment, so, too, here:

> Any other remedy, particularly one that would grant declaratory relief alone, would authorize the state to violate constitutional mandates with little or no consequence.

Durant, 456 Mich at 206. Using *Mothering Justice* as an example, had this Court not crafted a remedy to implement – including a deadline for implementation – the minimum wage increase and availability of earned paid sick time, *see Mothering Justice*, ___ Mich at ___; slip op at 34-40, there is no reason to believe that the Legislature – whose unconstitutional conduct triggered the case – would have remedied the constitutional violation. So, too, here. There must be a judicial remedy for the House's violation of Article 4, § 33 and the Court of Appeals correctly crafted one.

d. Conclusion

Thus, none—let alone all—of the inquiries required by *House Speaker* support the application of the political question doctrine here. Courts in other states have reached the same conclusion in cases involving presentment clauses. *See, e.g.*, *Brewer v Burns*, 222 Ariz 234, 238–

239; 213 P3d 671 (2008) (*en banc*) (rejecting application of the political question doctrine in a dispute over whether the legislature must present passed bills to the governor).[5]

The Court of Appeals correctly found this case justiciable.

III. THE COURT OF APPEALS CORRECTLY HELD THAT ARTICLE 4, § 33 IMPOSES A MANDATORY DUTY OF PRESENTMENT ON THE LEGISLATIURE FOR EVERY BILL PASSED.

The Court of Appeals opinion thoughtfully and correctly concluded that Article 4, § 33 imposes a mandatory duty of presentment. Opinion at 7-10 (Appendix, pp 27-30). We here reinforce its correct conclusion and show that the Court of Appeals decision is in accord with this Court's decisions.

A. Mandamus is Available Against The Legislature

For the first time in this case, the House now argues that mandamus is not available at all against the Legislature. Application at 3, 21, 42-43. This argument is flawed for several reasons.

First, because this argument is made for the first time in this case in the Application it has been waived. *See Walters v. Nadell*, 481 Mich 377, 387; 751 N.W.2d 431 (2008) (*per curiam*).

Second, the case relied upon in support of this argument, *People ex rel Sutherland v. Governor*, 29 Mich 320 (1974), involved whether mandamus was available against the governor. Anything *Sutherland* said about the Legislature is *dicta*.

Third, the Legislature by a statute it enacted has made itself subject to relief by mandamus. *See* MCL 600.4411 (mandamus available against public bodies; no exclusion of Legislature); MCR 3.305 (mandamus available against state officers).

Finally, *Sutherland's* holding is overstated by the House. *Sutherland* does not stand for the proposition that mandamus is never available against the governor. The Court held only that it

[5] *Gilbert v Gladden,* 87 NJ 275, 288; 432 A.2d 1381 (1981), relied upon by the House, Application at 2, 3, 6, 22, 24-26, 31 40-41, is an outlier among the states on this and other issues.

would not issue mandamus against the governor to compel performance of a discretionary act in which judgment is exercised. *See* 29 Mich at 324 ("[H]ere, by the law, he is required to judge. . . and must give his certificate on his own judgment"). This case involves no judgment by the House – it involves the nondiscretionary duty to present under Article 4, § 33.

Mandamus is available as a remedy against the Legislature here.

B. The House Has a Clear Legal Duty to Present the Nine Bills.

Contrary to the House's argument, Application at 29-38, there can be no doubt that the House has a clear legal duty to present the nine bills to the Governor under the text of Article 4, § 33:

> Every bill passed by the legislature *shall* be presented to the governor before it becomes law . . . .

(emphasis added).[6] The Presentment Clause contains no exceptions. This Court has held that "shall" means "shall." *See, e.g.*, *Stand Up For Democracy v Secretary of State*, 492 Mich 588, 601; 822 NW2d 159 (2012). This Court has also held that presentation is mandatory under Article 4, § 33's Presentment Clause, and the Legislature cannot interfere with the constitutional mandate in any way:

> "Constitutional provisions regulating the presentation, approval, and veto of bills by the executive are mandatory, and the procedure as thus established cannot be enlarged, curtailed, changed, or qualified, by the legislative body."

Anderson v Atwood, 273 Mich at 320, quoting 59 CJ, p 575.[7]

[6] The legislative history of the nine bills indicates that they have all been "passed by the legislature." *See supra* at 4-9.

[7] *See also, e.g.*, *Campaign for Fiscal Equity v Marino*, 87 NY2d 235, 238–239; 661 NE2d 1372 (1995) (withholding from the governor bills that have passed the legislature violates the New York Constitution's Presentment Clause); *Brewer v Burns*, 222 Ariz at 236 (the legislature violates the Arizona Constitution's Presentment Clause when it withholds from the governor bills that have passed).

Although *Atwood* was decided under the Presentment Clause of the 1908 Constitution—Article 5, § 36—it still controls. When the drafters of the 1963 Constitution considered the current Presentment Clause, they are "presumed to be aware of existing law and judicial construction and to act in light of that knowledge." *See People v Thompson*, 424 Mich 118, 129; 379 NW2d 49 (1985), *reh den* 424 Mich 1206; ___ NW2d ___ (1986); *see also, e.g.*, *Council of Saginaw v Bd of Trustees*, 321 Mich 641, 647; 32 NW2d 899 (1948) ("The framers of a Constitution are presumed to have a knowledge of existing laws, . . . and to act in reference to that knowledge. . . . A constitutional provision must be presumed to have been framed and adopted in the light and understanding of prior and existing law and with reference to them." (internal quotation marks omitted)).

Thus, when the drafters of the 1963 Constitution adopted the identically worded 1908 Presentment Clause and simply moved it to Article 4, § 33 of the 1963 Constitution with no change in wording, they were carrying forward *Atwood*'s interpretation of it:

> The delegates to the 1961 Constitutional Convention are presumed to have known and to have understood the meaning ascribed in these earlier decisions to the language of the 1908 Constitution. This language was retained by them in the 1963 Constitution without modification in response to the earlier decisions. Under well-established principles, it is not open to us to place a new construction on this language.

Boards of Co Road Comm'rs v Bd of State Canvassers, 391 Mich 666, 676; 218 NW2d 144 (1974) (*per curiam*); *see also* 1 Official Record, Constitutional Convention 1961, p 1718 (only change in the Presentment Clause was the length of time for the Governor to consider bills after presentment).

For all of these reasons, *Atwood* controls the interpretation of Article 4, § 33, requiring the presentation of the nine bills to the Governor, and forbidding the House from "enlarg[ing], curtail[ing], chang[ing], or qualify[ing]" presentment in any way. 273 Mich at 320. All nine bills have been "passed by the legislature" and must be presented to the Governor.

That the Constitutional Convention delegates understood that Article 4, § 33 imposed a duty on the Legislature is confirmed by the description of the presentment process as a duty, even if it takes a few weeks to present a bill or there is a long queue of bills:

> What happens is this: let us assume that we have a senate bill, a bill originally introduced into the senate. It passes the senate and it passes the house and presumably in a different form. Then the 2 houses have to agree to it in a conference, but it finally is adopted by both houses in a particular form. Then, it being a senate bill, it becomes the *duty* of the secretary of the senate to print that bill in the form in which it was finally adopted and it is the *duty* of the secretary of the senate, since it was a senate bill, *to present that bill to the governor*. Sometimes a bill can be speedily printed, sometimes it takes 2 or 3 weeks to get a bill printed, if it's a great big thick bill and there's an awful lot of other bills also to be printed.

1 Official Record, Constitutional Convention 1961, p 1719 (emphasis added). Contrary to the House's argument, Application at 32, the Court of Appeals decision was not "based solely" on this Convention discussion, but the Court properly found it "instructive" and "persuasive." Opinion at 8 (Appendix, p 28).

Thus, the duty to present never abates, and that duty devolves onto officials in the house where a bill originated.

While the Legislature's conduct cannot *change* the clear text of the Presentment Clause, the text's interpretation by *Atwood*, or the text's meaning as interpreted by the Constitutional Convention delegates, legislative conduct can *confirm* that the Legislature agrees with the Clause's requirement that presentment is a duty. *Compare, e.g.*, *Smith v Auditor General*, 165 Mich 140, 144; 130 NW 557 (1911) ("[C]ontemporaneous and subsequent construction[] of the legislature[] . . . [is] entitled to weight in determining the proper construction of the constitutional provisions."); 1 Cooley, Constitutional Limitations (2d ed), p 67 (writing that "a practical construction, which has been acquiesced in for a considerable period" has "a plausibility and force which it is not easy

to resist"); *Moore v Harper*, 600 US 1, 32; 143 S Ct 2065; 216 L Ed 2d 729 (2023) ("We have long looked to 'settled and established practice' to interpret the Constitution.").

Under the Presentment Clause of the 1963 Constitution, 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. *See supra* at 2-3 (105 bills presented in the 1980's and 1990's in the sessions after they were passed). On January 8, 2025, alone—the day Speaker Hall unconstitutionally obstructed presentation of the nine bills—the House presented at least 88 bills to the Governor that had passed in the 2023–2024 legislative session. *See* Appendix, pp 40-42. Thus, for decades, the House itself has consistently interpreted the Presentment Clause to mandate that it present all passed bills to the Governor whether during the session in which they passed or during the next session.

Permitting the House to block presentation here would destroy the integrity of the joint bicameral lawmaking process mandated by Article 4 of the State Constitution, including § 33, because it would allow one house and one legislator to essentially veto the bills passed by the Legislature during a previous legislative session that has ended. The right to approve or veto legislation is vested solely in the Governor by Article 4, § 33, and it cannot be usurped by a legislative body or a single legislator. Nearly a century ago, this Court held that the State Constitution cannot be construed to allow the Legislature to impair the Governor's veto power:

> A [constitutional] construction which permits the legislature to impair the executive power of veto, whether active or "pocket," or which gives rise to a situation concerning a bill as to which the effect of either executive or legislative action or inaction is not stated in the Constitution, manifestly is untenable.

Wood v State Admin Bd, 255 Mich 220, 229; 238 NW 16 (1931); *see also, e.g.*, 1 OAG, 2003, No. 7,139 (October 2, 2003) ("[O]ne house of the Legislature may not vacate the enrollment of a bill.").

By blocking presentation of the nine bills, the House is infringing on the Governor's Article 4, § 33 authority to approve or veto the nine bills. *Wood* forbids that. *See also, e.g.*, *Brewer v Burns*, 222 Ariz at 237 (the legislature's refusal to present "violates the constitutionally established procedure for lawmaking and undermines [the governor's] express authority to veto or approve bills").

Finally, allowing the House to block presentation is anti-majoritarian, violating one of the core principles embodied in the State Constitution: democracy. *See, e.g.*, *Mothering Justice v Attorney General*, ___ Mich ___, ___; ___ NW2d ___ (2024) (Docket No. 165325) (*en banc*); slip op at 14 n 10 ("'[D]emocracy' itself is core to our Constitution . . . ."); *see also Campaign for Fiscal Equity*, 87 NY2d at 238-39 (refusing to allow withholding of bills by the legislature because it would "sanction a practice where one house or one or two persons, as leaders of the Legislature, could nullify the express vote and will of the People's representatives"). The nine bills were passed by majorities in both houses. The anti-democracy conduct of the House cannot stand.

For all of these reasons, the House has a clear legal duty to present the nine bills to the Governor.

C. The Legislative Duty To Present Does Not Abate In A Subsequent Legislative Session

The House finally argues that if there is a duty to present, it rests solely with the legislative session which passed the bills. Application at 33-37. This argument was rightly rejected by the Court of Appeals. (Appendix at 29).

This argument ignores the text of Article 4, § 33, which contains no exception to its duty. The text does not extinguish the duty merely because a legislative session ends and another begins. It clearly contemplates that a governor may be presented with a bill *after* a legislative session adjourns by describing how it becomes law or is vetoed post-adjournment:

> 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. . . . *If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it.*

Const 1963, art 4, § 33 (emphasis added).

The House's reliance on Article 4, § 13 to claim that *passed* bill dies when an even year session adjourns is incorrect. *See* Application at 33-35. That section only applies to bills that have not been acted upon by both houses. 2 Official Record, Constitutional Convention 1961, pp 2376-2377. Moreover, a specific constitutional provision controls over a general one. *See In re Advisory Opinion on Constitutionality of 1978 PA 426*, 403 Mich 631, 639; 272 NW2d 495 (1978). Article 4, § 33 controls because it addresses bills that have passed the Legislature. These 9 bills are not "unfinished business" of a prior legislative session.

The House also claims that *LeRoux v Secretary of State*, 465 Mich 594; 640 NW2d 849 (2002) (*per curiam*), relieves the current legislative session of presentment duties because a past legislature cannot bind a future legislature. Application at 36. That misstates the holding of *LeRoux*, which actually held that a future legislature is free to amend or repeal *statutes* adopted by a prior legislature. *LeRoux*, 465 Mich at 615-616. That unremarkable holding is irrelevant here because this case involves the Legislature's constitutional duty to present passed bills to the Governor, not amend or repeal statutes.

Finally, where this question has been decided in other states, the courts have repeatedly held that the general rule is that adjournment of the legislature does not preclude the presentation

of passed bills to the governor. *See, e g, Opinion of Justices*, 106 NH 402, 404; 213 A2d 415 (NH 1965) (citing several federal and state decisions and a treatise).

Against all of this authority, the House claims that a single New York case supports its arguments, Application at 3, 35, but it does not. The House cites *King v Cuomo*, 81 NY2d 247; 613 NE2d 950 (1993), for the proposition that the New York courts "have recognized that a bill passed by one legislature "lapses" when that legislature ceases to exist before presenting the bills." The House subsequently cites that as a holding of *King*. *Id*.

This argument erroneously describes *King* and misleads this Court in several ways. First, *King* never addressed the legal issue of presentment by a subsequent legislature. The only issue in *King* was a legislative procedure to recall bills from the Governor, a procedure the court held unconstitutional. Whatever observation the *King* court made about presentment was mere *dicta*, not a "holding" as the House inaccurately states. The House parlays this mischaracterization of *King* into an assertion that somehow the New York Court of Appeals on appeal in *Campaign for Fiscal Equality v. Marino* cited the *King dicta* with approval when it withheld a retroactive ruling. Application at 35. But the 2 pages of *King* cited in *Marino* involved a myriad of reasons why retroactivity was not justified. *See* 661 NE2d at 1374, *citing* 81 NY2d at 256-57. The *CFE* court's general citation of 2 pages of legal discussion in *King* does not remotely demonstrate that the Court of Appeals in *CFE* was validating the *King dicta* upon which the House so desperately relies.

The Michigan Court of Appeals correctly held that the duty to present does not abate in a subsequent legislative session. It is an ongoing duty of the entire Legislature.

IV. THE COURT OF APPEALS CORRECTLY DIRECTED THE COURT OF CLAIMS TO ISSUE A WRIT OF MANDAMUS.

The Court of Appeals properly reversed the Court of Claims on the mandamus remedy, directing that Court to issue the writ. (Appendix, pp 30-34). That decision was correct in all

respects. Having addressed the duty to present *supra*, we here show why the Court of Appeals decision on the remaining prongs to issue mandamus was correct.

A. Presentment Is Ministerial.

The Court of Appeals held that presentment is ministerial. (Appendix, pp 31-32). That decision is based on well-settled precedent and the House's argument to the contrary is wrong. Application at 39-41. The law requires only that the act of presentment be ministerial, nothing more. *See, e.g.*, *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518–519; 866 NW2d 817 (2014) (*per curiam*). Article 4, § 33 is crystal clear on the act to be performed—presentment:

> Every bill passed by the legislature *shall be presented* to the governor
> . . . .

Const 1963, art 4, § 33 (emphasis added). It is equally clear who has the duty to perform that ministerial act: the Legislature, here the House as the originator of the bills. The duty to present is a collective, institutional duty, *not* the duty of a single individual, as the Court of Appeals held. (Appendix, p 31). Mandamus actions against collective bodies, such as boards, do not fail because the Constitution or statutes give a public body discretion as to which individual of the body has to carry out the duty. *See Teasel v. Dep't of Mental Health*, 419 Mich 390, 410; 355 NW2d 75 (1984); MCL 600.4411.

Finally—and consistent with the fact that the ministerial duty to present is an institutional, collective duty of a Legislature and not an individual one—no court in any other state that has considered whether mandamus is a remedy for a failure to present has held that that right floundered because a state constitution failed to specify which human being has to carry out the Legislature's duty to present. *See, e.g.*, *Campaign for Fiscal Equity v Marino*, 87 NY2d 235; *Brewer v Burns*, 222 Ariz 234.

B. The Senate Has No Other Adequate Remedy.

The Court of Appeals held that the Senate had no other adequate remedy at law. (Appendix, pp 32-33). Contrary to the Application, p 41-44, that opinion correctly relied on the remedial principles that this Court set forth in *Bauserman*, 509 Mich. 691-693, 699-700, to conclude that a declaratory judgment by itself is an insufficient remedy.

The House continues to claim that the Senate has an adequate legislative remedy. Application at 41-44. But that is untrue for several reasons. First, the legislative session at which the 9 bills originally passed is over so that session cannot present the bills. Second, the House in its 2025 legislative session refused for an entire year to present the bills, provoking this lawsuit, and that session has also concluded. Based on its refusal to present for a year, the House will not present the bills in its 2026 session in the absence of a Court order. That recalcitrance justifies a judicial order compelling presentment. *See, e.g., Durant*, 456 Mich at 206.

V. THE HOUSE'S SPECULATION ABOUT DECLARATORY AND INJUNCTIVE RELIEF DOES NOT SUPPORT IS APPLICATION.

The House's Application speculates about the Senate's request for declaratory and injunctive relief should the Court grant the Application and deny relief in mandamus. Application at 37-38. Rather than indulge the House's speculation, if this Court grants the Application then it should grant the Senate's Cross-Application on the issue of injunctive relief so that *all* of the issues raised in the Court of Claims and Court of Appeals are before the Court. Judicial economy demands no less.

Responding to the House's arguments on declaratory relief, the Senate meets the standards for declaratory relief.

MCR 2.605(A)(1) states: "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a

declaratory judgment, whether or not other relief is or could be sought or granted." This Court has held that "[a]n actual controversy exists when a declaratory judgment is needed to guide a party's future conduct in order to preserve that party's legal rights." *League of Women Voters of Mich*, 506 Mich at 586. "The declaratory judgment rule is intended to be liberally construed to provide a broad, flexible remedy to increase access to the courts . . . ." *Recall Blanchard Comm v Secretary of State*, 146 Mich App 117, 121; 380 NW2d 71 (1985), *lv den* 424 Mich. 875; ___ N.W.2d ___ (1986). The existence of alternative remedies does not prevent its issuance. *See Bay Co Exec v. Bay Co Bd of Comm'rs*, 129 Mich App 707, 714; 342 NW2d 96 (1983).

There is an actual controversy because the Senate has a constitutional right under Article 4, § 33 to the presentment of these nine bills and the House has a constitutional duty under Article 4, § 33 to present them and all bills in the future that pass both houses of the Legislature. The Senate is entitled to a declaratory judgment that it has a constitutional right to presentment of these nine bills, and the House has a constitutional duty to present them and all future bills that pass both houses of the Legislature.

The House claims that a declaratory judgment is inappropriate because future conduct is not at issue. Application at 38. That is false. A declaratory judgment is necessary to that both houses of the Legislature have guidance in the future as to their legal obligations to present passed bills to the Governor.

The House also argues that the Senate's request for alternative relief in the form of a declaratory judgment enforced by injunction is but an attempt to "sidestep" the mandamus standards. *Id*. It is not for several reasons First, declaratory relief is available even if there are alternative remedies. *See, e.g., Bay Co Exec, supra*. Second, the standards for mandamus and injunctive relief are different so there is no "sidestepping." *Compare, Rental Props Owners Ass'n*,

308 Mich App at 218 (mandamus standards) *with Kernan v. Homestead Dev Co*, 232 Mich App 503, 514-515; 591 NW2d 369 (1998) (injunctive relief standards). Finally, the Court Rules generously allow plaintiffs to plead in the alternative as the Senate did here. *See* MCR 2.111(A)(2)(b).

CONCLUSION AND RELIEF SOUGHT

For all these reasons, the Senate prays that the Application be denied.

Respectfully submitted,

/s/ Mark Brewer
GOODMAN ACKER, P.C.
MARK BREWER (P35661)
MICHAEL TURNER (P89035)
Attorneys for Plaintiffs-Appellees
Two Towne Square, Suite 444
Southfield, MI 48076
(248) 483-5000
mbrewer@goodmanacker.com

Dated: December 30, 2025

Proof of Service

The undersigned certifies that on December 30, 2025, the foregoing instrument(s) electronically filed the foregoing papers with the Clerk of the Court using the Electronic Filing System which will send notification of such filing to all attorneys of record.

/s/ Elizabeth M. Rhodes
Elizabeth M. Rhodes

Certificate of Compliance

I certify that this brief complies with the word volume limitation set forth in MCR 7.212(B)(1) and with the format requirements of MCR 7.212(B)(5). I am relying on the word count of the word-processing system used to produce this document. The word count is 10,164.

Respectfully submitted,

/s/ Mark Brewer
GOODMAN ACKER, P.C.
MARK BREWER (P35661)
MICHAEL TURNER (P89035)
Attorneys for Plaintiffs-Appellees
and Conditional Cross-Appellants
Two Towne Square, Suite 444
Southfield, MI 48076
(248) 483-5000
mbrewer@goodmanacker.com

Dated: December 30, 2025

Proof of Service

The undersigned certifies that on December 30, 2025, the foregoing instrument(s) electronically filed the foregoing papers with the Clerk of the Court using the Electronic Filing System which will send notification of such filing to all attorneys of record.

/s/ Elizabeth M. Rhodes
Elizabeth M. Rhodes