STATE OF MICHIGAN

COURT OF CLAIMS

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

Plaintiffs,

v

Case No. 25-000014-MB

Hon. Sima G. Patel

MICHIGAN HOUSE OF REPRESENTATIVES, MICHIGAN HOUSE SPEAKER MATT HALL, in his official capacity, and MICHIGAN HOUSE CLERK SCOTT STARR, in his official capacity,

Defendants.
_____/

OPINION AND ORDER

Plaintiffs filed this lawsuit on February 3, 2025, requesting expedited consideration of their complaint to compel defendants to present to the Governor nine bills that were passed by the Legislature in or before December 2024. Plaintiffs also simultaneously moved for summary disposition under MCR 2.116(C)(10). The Court ordered expedited briefing, authorized and reviewed amicus briefs from several interested persons and entities, and heard oral argument on February 24, 2025. One day later, defendants filed a countermotion for summary disposition under MCR 2.116(C)(8) and (C)(10).

In light of this review and the applicable law, the Court GRANTS, in part, plaintiffs' motion for summary disposition under MCR 2.116(C)(10) and hereby issues a declaratory judgment recognizing plaintiffs' right under Article 4, § 33, of Michigan's 1963 Constitution to

have these nine bills presented to the Governor with sufficient time to allow her 14-days review prior to the earliest date that the bills could take effect under Article 4, § 27, of Michigan's 1963 Constitution.

The Constitution does not specify which person or entity is responsible for such presentment and, therefore, neither will the Court. There appears to be no dispute that because the nine bills originated with defendant Michigan House of Representatives, it currently controls their presentment and its rules require defendant Scott Starr, as Clerk of the House, to carry out this duty. However, Michigan courts have declined to interpret and enforce internal rules of the Legislature in the past, and the Court finds good reason to follow such precedent here.

Simply put, 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—even those passed during a "lame duck" session in an even year. The procedures through which this takes place is a legislative function in which the Court will not interfere. Plaintiffs' alternative requests for a writ of mandamus or permanent injunction are DENIED.

Accordingly, defendants' motion for summary disposition is GRANTED to the extent the Court denies plaintiffs' request for a writ of mandamus and injunctive relief, and DENIED in all other respects.

I. BACKGROUND

When Michigan's Legislature convened in January 2025, approximately 97 bills had completed the legislative process and were waiting to be presented to the Governor. Because the bills originated with the House, the parties agree that the duty of presentment falls with the House. The primary governing law here is Article 4, § 33 of Michigan's 1963 Constitution, which reads:

> 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 [she] approves, [she] shall within that time sign and file it with the secretary of state and it shall become law. If [she] does not approve, and the legislature has within that time finally adjourned the session at which the bill passed, it shall not become law. If [she] disapproves, and the legislature continues the session at which the bill was passed, [she] shall return it within such 14-day period with [her] objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. 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 [she] had signed it. [Const 1963, art 4, § 33.]

Eighty-eight of these bills were presented to the Governor. The parties dispute whether this occurred before the 103rd Michigan Legislature convened at noon on January 8, 2025, or after. Clerk Starr submitted an affidavit with defendants' response attesting that "Richard J. Brown, the Clerk of the Michigan House of Representatives during the 102nd Michigan Legislature" presented "numerous bills" to the Governor before the 103rd Michigan Legislature convened and before both Defendant House Speaker Matt Hall and Clerk Starr were elected to their respective positions. However, at the Court's request, the parties supplemented the record to include legislative histories from these bills, which indicate that a large number of them were presented to the Governor after 12:00 noon.

Regardless, there is no dispute that nine bills have not been presented to the Governor, that they are controlled by the House, and that defendants are unwilling to present them. Plaintiffs claim that the nine bills were withheld at the direction of Speaker Hall who allegedly instructed Clerk Starr to hold them. Three of these bills (2024 HB 4177, 2024 HB 5817, and 2024 HB 5818) enact a History Museum Authority Act and amend certain laws to authorize funding for county authorities formed under this act. Three other bills (2023 HB 4665, 2023 HB 4666 and 2023 HB 4667) expand eligibility for the Michigan State Police Retirement Plan and options for receiving service credits in connection with the Michigan State Police Retirement Plan. And three of these bills (2023 HB 4900, 2023 HB 4901, and 2024 HB 6058) either provide additional protections to debtors in bankruptcy and garnishment proceedings or mandate a minimum percentage that public employers must contribute to public employee health insurance plans. The substance of the bills is not relevant to the Court's analysis. The Court's role here is to determine whether Michigan's Constitution requires these bills be presented to the Governor simply because they were passed by both houses of the Legislature, not to evaluate the merits of legislation that has not yet become law.

Plaintiffs seek summary disposition under MCR 2.116(C)(10). Defendants responded and, after oral argument, filed a countermotion for summary disposition in lieu of an answer under MCR 2.116(C)(8) and (C)(10). The parties dispute whether either plaintiff has standing to bring this suit, whether the political-question doctrine or other prudential considerations counsel against judicial involvement, and whether Section 33 requires the House to present these bills given that they were passed by the 102nd Legislature, not the 103rd Legislature that convened on January 8, 2025, and whether any form of relief that plaintiffs seek (i.e., mandamus, declaratory judgment, and/or permanent injunction) is available under Michigan law.

The propriety of Speaker Hall's participation in this lawsuit is also contested. Only two of the three defendants, the House and Clerk Starr, accepted service and oppose plaintiffs' requested relief. Speaker Hall did not accept service; instead, he claims that he is privileged from civil service under Article 4, § 11 of Michigan's 1963 Constitution, which states:

> Except as provided by law, senators and representatives shall be privileged from civil arrest and civil process during sessions of the legislature and for five days before the commencement and after the termination thereof. They should not be questioned in any other place for any speech in either house.

The applicability of the legislative privilege, as well as questions of justiciability and the merits of plaintiffs' claims are analyzed below.

II. ANALYSIS

Because the Court has considered documents outside of the pleadings, it will evaluate both parties' motions under MCR 2.116(C)(10). A "motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim." *El-Khalil v Oakwood Healthcare Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). When reviewing a motion under this provision, the Court must consider "affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) may only be granted when the "provided evidence does not establish a genuine issue of material fact." *Jewett v Mesick Consol Sch Dist*, 332 Mich App 462, 470; 957 NW2d 377 (2020). Summary disposition prior to the conclusion of discovery is appropriate where, as here, the parties' dispute rests on a legal question and there is no fair likelihood of uncovering factual support for the opposing party's position. *Mazzola v Deeplands Dev Co LLC*, 329 Mich App 216, 230; 942 NW2d 107 (2019).

A. SPEAKER HALL IS PRIVILEGED FROM CIVIL PROCESS

The Court finds that Speaker Hall may claim a privilege from service of this lawsuit under Section 11.

It is undisputed that Speaker Hall is a Representative and service was attempted while the Legislature was in session. However, the parties dispute whether Speaker Hall may claim this privilege to avoid plaintiffs' claim that, acting in his official capacity, he instructed Clerk Starr to violate Section 33.

The privilege awarded in Section 11 is broad—insulating legislators not only from monetary damages but, also, from civil service during the stated period. This constitutional privilege provides legislators with absolute, broad immunity against civil process for tasks undertaken within the "sphere of legislative activity." *Bishop v Montante*, 395 Mich 672, 678; 237 NW2d 465 (1976); *Wilkins v Gagliardi*, 219 Mich App 260, 268; 556 NW2d 171 (1996). This privilege must be applied in light of its purpose, which is to "protect legislators from the distraction of litigation," whether actual or potential, and allow them to give their "undivided time and attention in public affairs." *Cotton v Banks*, 310 Mich App 104, 111-112; 872 NW2d 1 (2015) (cleaned up).

Because the language is similar to the federal Speech and Debate Clause, the Court may look to federal cases for guidance. *Id*. at 112-113. This privilege covers "anything generally done in a session of the House by one of its members in relation to the business before it," including a legislator's conduct at a hearing, voting decisions, committee reports, and other tasks within the sphere of "legitimate legislative activity." *Gravel v United States*, 408 US 606, 624-627; 92 S Ct 2614; 33 L Ed 2d 583 (1972) (cleaned up); see also *Wilkins*, 219 Mich App at 269 ("The Speech

or Debate Clause has been applied to the act of voting, to committee reports and resolutions, to the authorizing of an investigation, and to the issuing of a subpoena."). Even allegations that the legislator acted in bad faith are not sufficient to waive the privilege if the actions underlying the litigation constitute legislative activity. *Gamrat v McBroom*, 822 F Appx 331, 333-334 (CA 6, 2020).

Plaintiffs named Speaker Hall as a defendant because of his alleged instruction to Clerk Starr to withhold these nine bills from presentment to the Governor. Defendants suggest a question of fact exists as to whether Speaker Hall issued this instruction. Regardless, any involvement that Speaker Hall may have had with these bills was undertaken as Speaker of the House. Review and negotiation of legislation and instructions to the Clerk of the House regarding the same are legislative functions for which Speaker Hall is afforded immunity under Section 11. This privilege exempts him from civil process as well as relief from a judgment and, accordingly, privileges him from service of plaintiffs' complaint.

B. THIS CASE PRESENTS A JUSTICIABLE QUESTION

1. BOTH PLAINTIFFS HAVE STANDING

Under federal and state law, the interests alleged by the Senate and Senator Brinks in the context of this lawsuit authorize their standing to litigate this case.

Michigan appellate courts have set forth the standards for evaluating standing. Specifically, its purpose "is to assess whether a litigant's interest in the issue is sufficient to ensure sincere and vigorous advocacy. Thus, the standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010) (cleaned

up). Standing is present when the litigant meets the requirements for a declaratory judgment stated in MCR 2.605, when there is cause of action under the law, or "if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." *Id.* The Legislature's interest in "defending its own work," including supporting the constitutionality of enacted statutes, and in procedures or requirements necessarily implicated in this work, endow standing. *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 517-579; 957 NW2d 731 (2020); *Mich Alliance for Retired Americans v Secretary of State*, 334 Mich App 238, 246-250; 964 NW2d 816 (2020). In addition, public officials generally have standing to sue "commensurate with their public duties and trusts." *Killeen v Wayne Co Rd Comm'n*, 137 Mich App 178, 189-190; 357 NW2d 851 (1984).

Both the Senate and Senator Brinks allege injuries that are distinct from the public at large and sufficient to endow standing. Plaintiffs claim, and defendants have presented no basis to refute their claim, that the Senate and Senator Brinks voted in favor of the nine bills that have not yet been presented to the Governor. Indeed, a resolution was passed by the Senate to file this lawsuit in defense of their work. This is sufficient to warrant standing on appeal and the Court finds it equally applicable here. *League of Women Voters of Mich*, 506 Mich at 579; *Mich Alliance for Retired Americans*, 334 Mich App at 246-250.

Federal and state courts have also recognized legislator-standing with respect to Senator Brinks' claim that her vote on these bills has been rendered ineffectual by defendants' actions. Cf *Coleman v Miller*, 307 US 433, 438; 59 S Ct 972, 83 L Ed 1385 (1939) (senators "whose votes . . . have been overridden and virtually held for naught" had "plain, direct and adequate interest" in a lawsuit vindicating such right); see also *Dodak v State Admin Bd*, 441 Mich 547, 556; 495 NW2d

539 (1993) (member of a legislative committee had standing to contest actions that deprived him of a "specific statutory right to participate in the legislative process").

This lawsuit is not a "generalized grievance" about the conduct of government, or an attempt to force another branch of government to carry out an enacted law. Rather, plaintiffs seek to vindicate their interest in the legislative processes and to ensure their votes are effectuated as mandated by our Constitution with respect to the nine bills that have passed both the House and Senate and await presentment. Cf *American Fed of Gov't Employees, AFL-CIO v Pierce*, 697 F2d 303, 305 (DC Cir 1982). Both the Senate and Senator Brinks have standing based on the allegations in their complaint.

2. THE POLITICAL-QUESTION DOCTRINE DOES NOT RENDER THIS CASE NONJUSTICIABLE

While the Court agrees with defendants that Speaker Hall is privileged from appearing in this lawsuit, it disagrees that the claims here are nonjusticiable political questions. Michigan courts traditionally define judicial power " 'by a combination of considerations' " including " 'the existence of a real dispute, or case or controversy; the avoidance of deciding hypothetical questions; . . . the ability to issue proper forms of effective relief to a party; [and] the avoidance of political questions or other non-justiciable controversies . . . .' " *Carter v DTN Mgt Co*,____ Mich ___; ____NW3d ___ (Docket No. 165425); slip op at 10, quoting *Nat'l Wildlife Fed v Cleveland Cliffs Iron Co*, 471 Mich 608, 613-615; 684 NW2d 800 (2004), overruled on other grounds by *Lansing Sch Ed Ass'n*, 487 Mich at 352. The presence of a "real dispute" is not contested. Plaintiffs claim that Section 33 requires the presentment of the nine bills to the Governor; defendants disagree and, to date, have refused to present them. Resolving this dispute requires

nothing more than an interpretation of our Constitution, which is "an exclusive function of the judicial branch." *Wilkins*, 219 Mich App at 267.

The political-question doctrine does not counsel against the Court fulfilling its functions here. Michigan courts "maintain[] primacy in interpreting the Constitution." *Bauserman v Unemployment Ins Agency*, 509 Mich 673, 687; 983 NW2d 855 (2022). The mere fact that a "dispute is politically charged" or is a "political issue" does not make it a political question. Notably, the doctrine "is one of 'political questions,' not one of political cases." *Pego v Karamo*, ___ Mich App ___; ___ NW3d ___ (Docket No. 371299); slip op at 11. The following three inquiries frame this analysis:

> (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? [and] (iii) Do prudential considerations [for maintaining respect for the three branches] counsel against judicial intervention? [*House Speaker v Governor*, 443 Mich 560, 574; 506 NW2d 190 (1993) (cleaned up).]

In *Makowski v Governor*, 495 Mich 465, 472-482; 852 NW2d 61 (2014), our Supreme Court elaborated on each inquiry. Put another way, the first inquiry considers whether the "text of the Constitution commits" this question to another branch of government; the second evaluates whether resolution of the matter "demand[s] that the Court move beyond areas of judicial expertise"; and the third assesses whether there are any "prudential considerations that prevent [the] Court from resolving the issue." *Id*. at 472, 477, 481.

Section 33 includes no language committing its interpretation to any branch of government other than the courts. This lawsuit seeks "recognition and redress" of a constitutional violation, which are "quintessentially judicial functions." *Bauserman*, 509 Mich at 687. The Court need not move beyond the judicial expertise of interpreting the plain language of our Constitution.

The third inquiry, consideration of whether prudential concerns counsel against justiciability, urges caution but does not render this case and controversy nonjusticiable. Specifically, the parties' dispute whether the mandate in Section 33 applies to legislation passed in a "lame duck" session before the 103rd Legislature convened. This is a justiciable question that requires only an interpretation of our Constitution and related documents, which is unquestionably a judicial function. "When a court does not address the merits of the decision at issue but instead looks to whether the power existed in the first instance, prudential considerations do not militate against intervention." *Pego*, ___ Mich App at ___; slip op at 11.

Prudential considerations, however, set parameters for the Court's review and the relief issued. The Court is not considering the substantive merits of the nine bills at issue. Nor is it the Court's role to interpret or enforce any procedure stated in the House or Senate Rules as a basis for its decision. "The courts do not review claims that actions were taken in violation of a legislative rule . . . . 'Rules of legislative procedure, adopted by the Legislature and not prescribed by the Constitution, may be suspended and action had, even if contrary thereto, will not be reviewed by the courts.' " *LeRoux v Secretary of State*, 465 Mich 594, 609; 640 NW2d 849 (2002), quoting *Anderson v Atwood*, 273 Mich 316, 319; 262 NW 922 (1935).

The Court's analysis and opinion rest on the undisputed fact that nine bills were passed by both Michigan's House and Senate during a legislative session that adjourned in December 2024, and are awaiting presentation to the Governor. The question of whether Section 33 requires their presentation is a justiciable question before the Court and does not present a political question that prohibits the Court's review.

C. SECTION 33 REQUIRES PRESENTMENT OF ALL BILLS PASSED BY BOTH LEGISLATIVE HOUSES, EVEN AFTER ADJOURNMENT

To answer this justiciable question, the Court applies well-known principles of constitutional interpretation. The Court "ascertain[s] the purpose and intent [of Section 33] as expressed in . . . the meaning of the particular words" not in the abstract, but "in light of the general purpose sought to be accomplished or the evil sought to be remedied" by Section 33. *White v Ann Arbor*, 406 Mich 554, 561-562; 281 NW2d 283 (1979). "When interpreting constitutional provisions, we are mindful that the interpretation given the provision should be the sense most obvious to the common understanding and one that reasonable minds, the great mass of the people themselves[,] would give it" at the time of its ratification. *Adair v State,* 486 Mich 468, 477; 785 NW2d 119 (2010) (cleaned up). Put another way, courts "apply the plain meaning of each term used therein at the time of ratification unless technical, legal terms were employed." *Studier v Mich Public Sch Employees Retirement Bd*, 472 Mich 642, 652; 698 NW2d 350 (2005). Moreover, constitutional provisions are to be interpreted as consistent with other provisions. See *Straus v Governor*, 459 Mich 526, 533-534; 592 NW2d 53 (1999); see also *Lewis v Attorney General*, unpublished per curiam opinion of the Michigan Court of Appeals, issued Oct 20, 2011 (Docket No. 299743), pp 2-3 (rejecting interpretation of a constitutional provision that is inconsistent with other provisions of Article 4).

The text of Section 33 refutes defendants' position that the House has discretion to withhold bills passed by the Legislature in December 2024. The text is unequivocal: ***"[e]very*** bill passed by the legislature ***shall*** be presented to the governor before it becomes law . . . ." Const 1963, art 4, § 33 (emphasis added). The language is mandatory and leaves no room for the exceptions that defendants claim.

Notably, there is no exception for bills passed by a prior Legislature. Defendants' attempt to disavow itself of the textual mandate by claiming that they are the "103rd Legislature," and the bills were passed by the "102nd Legislature" is without merit. Section 33 authorizes no such distinction. A bill passed by the 102nd Legislature is one of "[e]very bill passed by the legislature" referenced in the first sentence of Section 33. Const 1963 art 4, § 33. Nothing in the text of Section 33 or any related provision supports an argument that a passed bill becomes invalid, or unavailable for the Governor's review, after the legislative session in which it was passed ends. To the contrary, the drafters of Section 33 recognized the potential that the Governor would receive a bill after final adjournment of the legislative session in which it was passed. When this situation occurs, the bill must be presented to the Governor. The bill becomes law upon the Governor's approval, signature, and filing with the Secretary of State, regardless of whether the Legislature that enacted the bill is still in session. Const 1963, art 4, § 33. However, if the Governor disapproves, the bill never becomes law. A bill may only be returned to the Legislature for fresh consideration and review if the Governor's review occurs before the legislative session in which the bill was enacted has ended. Const 1963, art 4, § 33.

The language of Section 33 and its refutation of defendants' requested interpretation is even more clear when contrasted with other provisions within Article 4. Section 13 refers to "[a]ny business, bill or joint resolution ***pending*** at the final adjournment of a regular session . . . ." Const 1963, art 4, § 13 (emphasis added). Section 33 refers to ***passed*** bills in its title and presents a different procedure, requiring every bill passed by the Legislature to be presented to the Governor for her review. Const 1963, art 4, § 33. Defendants' position that they are exempt from this because they are the "103rd Legislature" is without merit.

Moreover, defendants' reliance on precedent prohibiting a Legislature from "bind[ing] a future Legislature or limit[ing] its power to amend or repeal statutes" is misplaced. *LeRoux*, 465 Mich at 612-617. This maxim refers to a judicial recognition that the Legislature may not enact a law that limits future amendments or prohibits repeal of that law. *Id.* Legislation that contains such limitations or prohibitions is considered "wholly inoperative," and a "legislative declaration, embodied in a particular law, that it shall be binding only on those who may assent to it, may limit the scope of that law, but a declaration that any future law on the same subject shall be thus restricted must be void." *Detroit v Detroit & Howell Plank Road Co*, 43 Mich 140, 145; 5 NW 275 (1880).

This has no application here. The nine bills at issue were passed by Michigan's Legislature and, pursuant to Section 33, must be presented to the Governor. If the Governor disapproves, the bills die. If the Governor approves and the bills become law, defendants may act within their legislative authority to negotiate amendments, revisions, or even a repeal of these laws if they see fit. There is no claim that any bill, by its text or otherwise, prohibits such action. Defendants' citation to precedent recognizing that a current Legislature may not bind a future Legislature has no application here.

D. PLAINTIFFS ARE ENTITLED TO A DECLARATORY JUDGMENT, BUT NOT MANDAMUS OR INJUNCTIVE RELIEF

1. MANDAMUS IS DENIED BECAUSE THE DUTY TO PRESENT IS NOT MINISTERIAL

While the language of Section 33 leaves no question that a bill passed by the Legislature must be presented to the Governor, it does not provide sufficient detail to be a ministerial task warranting a writ of mandamus.

"Mandamus is not a matter of right, but rather one of grace . . . and of discretion." *Toan v McGinn*, 271 Mich 28, 33; 260 NW 108 (1935). This "extraordinary remedy" is available only when the party seeking it shows that: (1) the party has a "clear, legal right to performance of the specific duty sought," (2) the opposing party "has a clear legal duty to perform," (3) "the act is ministerial," and (4) "no other adequate legal or equitable remedy exists that might achieve the same result." *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518-519; 866 NW2d 817 (2014). A "ministerial act" is one " 'where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.' " *Keaton v Beverly Hills*, 202 Mich App 681, 683-684; 509 NW2d 544 (1993), quoting *Delly v Bureau of State Lottery*, 183 Mich App 258, 260-261; 454 NW2d 141 (1990). And a clear legal right in this context is one "clearly founded in, or granted by, law; [or] a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided." *Univ Medical Affiliates, PC v Wayne Co Executive*, 142 Mich App 135, 143; 366 NW2d 277 (1985).

Section 33 requires that all bills passed by the Legislature be presented to the Governor, but does not prescribe and define this duty with sufficient precision and certainty as to leave nothing to the Legislature's discretion or judgment. While the House Rules support plaintiffs' position that responsibility for this mandate falls on Clerk Starr, these rules are not law, and prudential concerns counsel against an order from the Court interpreting or enforcing them. Plaintiffs' request for a writ of mandamus is DENIED.

2. A DECLARATORY JUDGMENT IS WARRANTED

However, plaintiffs' alternative request for a declaratory judgment is GRANTED. This case presents an actual controversy over proper interpretation of an unambiguous mandate in our Constitution. Michigan law supports the issuance of a declaratory judgment.

The standard for a declaratory judgment is stated in our court rules and interpreted by Michigan courts as follows: "In a case of actual controversy . . . a Michigan court . . . 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." MCR 2.605(A)(1). An "actual controversy" for purpose of MCR 2.605(A)(1) is present when the "declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve legal rights." *UAW v Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012). Hypothetical issues cannot be the subject of declaratory relief, but an order may be entered before actual injuries or losses have occurred. *Id.* Essential to this request is the "plead[ing] and prov[ing] facts which indicate an adverse interest necessitating the sharpening of the issues raised." *Shavers v Kelley*, 402 Mich 554, 589; 267 NW2d 72 (1978). The Court may, but is not required to consider and/or grant "further relief, such as an injunction . . . against any adverse party whose rights were determined by the declaratory judgment." *Barry Co Probate Court v Mich Dep't of Soc Servs*, 114 Mich App 312, 319; 319 NW2d 571 (1982).

The nine bills at issue are encompassed in the mandate that begins Section 33, i.e., "[e]very bill passed by the legislature ***shall*** be presented to the Governor." Const 1963, art 4, § 33 (emphasis added). The parties agree that responsibility for carrying out this mandate falls on the House because the bills originated there. The failure of the House to either carry out this mandate or alter its rules so as to pass the bills to the Senate to carry out the mandate, at minimum, renders

the votes that Senator Brinks placed in favor of these bills ineffective. Plaintiffs have a legal and a constitutional right to have bills that they passed proceed to the Governor under Section 33. To hold otherwise would render nugatory a clear mandate in our Constitution. The Court will not do so.

With respect to timing, Section 33 provides no mandate. But Article 4, § 27 of Michigan's 1963 Constitution provides the earliest date on which the legislation could take effect:

> No act shall take effect until the expiration of 90 days from the end of the session at which it was passed, but the legislature may give immediate effect to acts by a two-thirds vote of the members elected to and serving in each house.

Interpreting Section 33 in light of Section 27, the Court finds that the bills must be presented to the Governor with sufficient time to allow them to take effect at the end of the 90-day period authorized by Section 27, including 14 days for the Governor's review.

Plaintiffs' request for a declaratory judgment is GRANTED. Under Section 33, the nine bills that were passed by the Legislature and are under the House's control must be presented to the Governor with sufficient time to allow her 14 days for review before the end-date of the 90-day period on which the bills could take effect.

3. PLAINTIFFS' REQUEST FOR A PERMANENT INJUNCTION IS DENIED

The declaratory judgment is sufficient to resolve the parties' dispute, and both prudential concerns and Michigan law counsel against coupling this with a permanent injunction.

"Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there is a real and imminent danger of irreparable injury." *Janet Travis, Inc v Preka Holdings, LLC*, 306 Mich App 266, 274-275; 856 NW2d 206 (2014). The

decision to grant or deny this relief is within the Court's "sound discretion," which is "ordinarily a matter of grace . . . to be exercised according to the circumstances and exigencies of each particular case." *Youngs v West*, 317 Mich 538, 545; 27 NW2d 88 (1947). When deciding whether to grant this equitable remedy, the following factors are taken into account:

> (a) the nature of the interest to be protected,
>
> (b) the relative adequacy to the plaintiff of injunction and of other remedies,
>
> (c) any unreasonable delay by the plaintiff in bringing suit,
>
> (d) any related misconduct on the part of the plaintiff,
>
> (e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied,
>
> (f) the interests of third persons and of the public, and
>
> (g) the practicability of framing and enforcing the order or judgment. [*Kernen v Homestead Dev Co*, 232 Mich App 503, 514-515; 591 NW2d 369 (1998), citing 4 Restatement Torts, 2d, §§ 936, pp 565-566.].

Applying these factors to plaintiffs' claims, the Court finds the permanent injunction inappropriate. While our jurisprudence on standing and the political-question doctrine do not alleviate the Court's duty to interpret Section 33 and to declare the parties' legal rights, the political nature of this dispute cannot be ignored. The lawsuit was filed by a body within our bicameral Legislature, alleging a failure of the other body to carry out a legislative process. The interest to be protected is one of fulfillment of the constitutional mandate, for certain, which the Court does through issuance of declaratory relief. However, the Court cannot say that the hardships fall disproportionately on one party vis-à-vis the other, or the interests of third persons and of the public are served by injunctive relief. Moreover, the injunction plaintiffs seek is an order that "prohibits Defendants from failing to present the nine bills." Such a negative command would be impractical, if not impossible, to enforce.

Our Supreme Court has recognized that "[a] strict legal right, if incompatible with the equities of the case, does not necessarily entitle one to equitable redress." *Roy v Chevrolet Motor Co*, 262 Mich 663, 668; 247 NW 774 (1933). Considering the facts of this case, the Court DENIES plaintiffs' request for injunctive relief.

III. CONCLUSION

For the reasons stated in this Opinion and Order, IT IS ORDERED that plaintiffs' motion for summary disposition is GRANTED to the extent that plaintiffs request a declaratory judgment. The Court hereby enters the declaratory judgment described below. Plaintiffs' motion is DENIED with respect to plaintiffs' request for a writ of mandamus and injunctive relief. Plaintiffs' complaint is DISMISSED with respect to these claims; and

IT IS FURTHER ORDERED that defendants' countermotion for summary disposition under MCR 2.116(C)(10) is GRANTED with respect to plaintiffs' claims for a writ of mandamus and injunctive relief. The Court DENIES defendants' motion for summary disposition with respect to plaintiffs' request for a declaratory judgment.

The Court enters a judgment declaring that Article 4, § 33, of Michigan's 1963 Constitution requires that all bills passed by the Legislature be presented to the Governor in sufficient time to allow her 14 days to review the bills prior to the earliest date that the legislation may take effect under Article 4, § 27, of Michigan's 1963 Constitution. This includes the nine bills that are currently under defendants' control.

IT IS SO ORDERED.

This is a final order and disposes of the last claim in this case.

Date: February 27, 2025

Sima G. Patel
Judge, Court of Claims