STATE OF MICHIGAN
IN THE COURT OF CLAIMS

MICHIGAN SENATE and **MICHIGAN SENATE MAJORITY LEADER WINNIE BRINKS,** in her official capacity**,**	Case No. Hon.
Plaintiffs,	**URGENT STATE CONSTITUTIONAL MATTER**

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.
_____/

PLAINTIFFS' 2/3/25 BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

ORAL ARGUMENT REQUESTED IF THE COURT DEEMS IT NECESSARY

GOODMAN ACKER, P.C.
MARK BREWER (P35661)
ROWAN CONYBEARE (P86571)
Attorneys for Plaintiffs
17000 W. Ten Mile Road
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com
rconybeare@goodmanacker.com

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INTRODUCTION

This case is about enforcing the State House's state constitutional duty to present to the Governor nine bills that passed the Legislature during the 2024 legislative session: House Bills 4177 and 4665–4667 of 2023, and House Bills 4900–4901, 5817–5818, and 6058 of 2024 (collectively the "nine bills"). The first sentence of Article 4, § 33 of the State Constitution (the "Presentment Clause"), Michigan Supreme Court precedent, proceedings of the Constitutional Convention, and long-established legislative practice mandate that the House perform its state constitutional duty to present these bills to the Governor.

STATEMENT OF FACTS

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.

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 bill presentation 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 200, 201, 530, and 979 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, 1981, and January 16, 1981, the Senate presented 49 bills to the Governor. *See* 1980 Senate Journal 3767–3768.

Examples of bill presentation 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 3765–3766.

A. The Events Of January 8, 2025.

The Legislature convened on January 8, 2025, and Representative Matt Hall was elected Speaker of the Michigan House of Representatives, and Scott Starr was elected Clerk Michigan House of Representatives on that day. Following the well-established practice of the Michigan Legislature, on January 8, 2025, the Clerk of the House presented at least 88 bills to the Governor that had been passed by the Legislature in December 2024. *See* Verified Compl, ¶ 14.

However, in defiance of Article 4, § 33, Michigan Supreme Court precedent, and the legislative practice of the last 150 years, Speaker Hall ordered Clerk Starr not to present to the Governor the nine bills at issue here, all of which had passed both houses of the Legislature in 2024 and were ready for presentation together with the other bills.

ARGUMENT

PLAINTIFFS ARE ENTITLED TO MANDAMUS, DECLARATORY JUDGMENT, AND PERMANENT INJUNCTION REQUIRING DEFENDANTS TO PRESENT THE NINE BILLS TO THE GOVERNOR

I. PLAINTIFFS HAVE 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 Plaintiffs have standing on several bases under Michigan Supreme Court precedent.

A. The Legal Standards.

In *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), the Court held that "consistent with Michigan's long-standing historical approach to standing," judicial standing analyses are "limited" and "prudential." *Id* at 352–353. The sole "purpose of the standing doctrine," the Court held, "is to assess whether a litigant's interest in the issue is sufficient to 'ensure sincere and vigorous advocacy.'" *See id* at 335, *quoting Detroit Fire Fighters Ass'n v Detroit*, 449 Mich 629, 633; 537 NW2d 436 (1995).

Lansing Schools held that plaintiffs can establish standing in any one of several ways: (1) "whenever there is a[n explicit] legal cause of action"; (2) "if the statutory scheme" or some other source implies a cause of action; (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).

Plaintiffs have standing under a number of the *Lansing Schools* standards.

B. The Michigan Senate Has Standing.

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 § 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 § 33 by allowing one house and one legislator to veto the work of both houses after a legislative session has ended. 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 after a legislative session is over. 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. *See* Verified Compl, ¶¶ 16–24. 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); *see also* Verified Compl, ⁋⁋ 9–12.

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." The Michigan Supreme 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.

C. The Senate Majority Leader Has Standing.

In *House Speaker v State Admin Bd*, 441 Mich 547; 495 NW2d 539 (1993), the 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.'" *Id* at 556. One of those interests is a "complete nullification of [her] vote, with no recourse in the legislative process." *Id* at 557.

Leader Brinks' 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, but an injury peculiar to Leader Brinks as a legislator

who voted for the bills and whose vote is nullified by the failure of the House to present the nine bills.

II. PLAINTIFFS' CLAIMS ARE JUSTICIABLE.

Defendants will undoubtedly assert that Plaintiffs' claims are nonjusticiable "political questions" that a court should not resolve. Plaintiffs' claims are justiciable.

The controlling Michigan case on the "political question" doctrine is *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), *overruled as to standing by Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010), in which the 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.

The 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 (citation omitted).

In applying these standards, the 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."

Id. The 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.

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. 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) ("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, the Michigan Supreme 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 second inquiry asks whether resolution of the legal issues presented here require a court "to move beyond areas of judicial expertise." They would not. In resolving the constitutional

interpretation question here, a court would use its well-established principles of constitutional interpretation. *See, e.g.*, *Mothering Justice v Attorney General*, ___ Mich ___; ___ NW2d ___ (2024) (Docket No. 165325) (*en banc*); slip op at 12–13 (describing those principles).

Finally, as to the third inquiry, there are no "prudential considerations" that "counsel against judicial intervention." As the 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 (citation omitted).

This case presents a dispute over the meaning of the State Constitution and the fact that Defendants have 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).

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).

III. PLAINTIFFS ARE ENTITLED TO MANDAMUS.

A writ of mandamus is issued by a court to compel public bodies and officers to perform a clear legal duty, including public bodies created by the State Constitution. *See, e.g.*, *Jones v Dep't*

of Corrections, 468 Mich 646, 658; 664 NW2d 717 (2003); *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487; 688 NW2d 538 (2004) (*per curiam*) (granting mandamus against the Board of State Canvassers); *Pillon v Attorney General*, 345 Mich 536; 77 NW2d 257 (1956) (granting mandamus against the Secretary of State).

To be entitled to a writ of mandamus, a plaintiff must show that: "(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant 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; 866 NW2d 817 (2014) (*per curiam*), *lv den* 498 Mich 853; 865 NW2d 19 (2015).

Plaintiffs are entitled to a writ of mandamus because (1) Plaintiffs have a clear legal right under Article 4, § 33 to have the House present the nine bills to the Governor; (2) the House has a clear legal duty under Article 4, § 33 to present the nine bills to the Governor; (3) the act of presentation is ministerial; and (4) Plaintiffs have no other legal or equitable remedy that might achieve the same result.

A. The House Has A Clear Legal Duty To Present The Nine Bills.

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 . . . .

Const 1963, art 4, § 33 (emphasis added).[1] The Presentment Clause contains no exceptions. The Michigan Supreme Court has held that "shall" means "shall." *See, e.g.*, *Stand Up For Democracy*

[1] The legislative history of the nine bills indicates that they have all been "passed by the legislature." *See* Verified Compl, ¶¶ 16–24.

v Secretary of State, 492 Mich 588, 601; 822 NW2d 159 (2012). The Michigan Supreme 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 316, 320; 262 NW 922 (1935), *quoting* 59 CJ, p 575.[2]

Although *Atwood* was decided under the Presentment Clause of the 1908 Constitution—Article V, § 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

[2] *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 234, 236; 213 P3d 671 (2009) (*en banc*) (the legislature violates the Arizona Constitution's Presentment Clause when it withholds from the governor bills that have passed).

> 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 Roads 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 § 33 was length of time for governor to consider bill 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. 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 a delegate's 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). The duty to present never abates.

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. *Compare, e g, Smith v Auditor General*, 165 Mich 140, 144; 130 NW 557 (1911) ("contemporaneous 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 ___; 143 S Ct 2065, 2086; 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* Verified Compl, ⁋⁋ 11–12 (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 id* ⁋14. Thus, 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. The Michigan Supreme Court has 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 enrollment of a bill"). By blocking presentation of the nine bills, Speaker Hall 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*, 222 Ariz at 237 (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—indeed, a single individual—to block presentation is anti-majoritarian, violating one of the core principles embodied in the State Constitution: democracy. *See, e.g.*, *Mothering Justice*, ___ Mich at ___; slip op at 14 n 10 ("'[D]emocracy' itself is core to our Constitution . . . ."); *see also Campaign for Fiscal Equity*, 87 NY2d at 238–239 (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, Defendants have a clear legal duty to present the nine bills to the Governor.

B. Plaintiffs Have A Clear Legal Right To Presentation Of The Nine Bills.

To obtain mandamus, a plaintiff must have a "clear, legal right to performance of the specific duty sought." *Rental Props Owners*, 308 Mich App at 518. That right must be one "not possessed by citizens generally." *Id* at 519. A "clear, legal right" is

> "one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided."

Id (citation omitted).

As demonstrated, the House has a clear legal duty to present the nine bills. The Senate has a concomitant constitutional right to enforce the duties to present through mandamus. In *Anderson v Atwood*, 273 Mich 316; 262 NW 922 (1935), the Michigan Supreme Court recognized the right to bring a mandamus action to remedy an alleged violation of Article 5, § 36 of the 1908 Constitution—the location of the Presentment Clause today found in Article 4, § 33. Although the Court denied the writ, it did so based on the legal question presented, not because the plaintiff lacked the right to seek mandamus to enforce his rights under Article 5, § 36. The Constitutional Convention is presumed to have been aware of *Atwood*, *see, e.g.*, *Thompson*, 424 Mich at 129, and to have carried forward *Atwood*'s right to enforce the Presentment Clause by mandamus, *see, e.g.*, *Boards of Co Roads Comm'rs*, 391 Mich at 676. Thus, Plaintiffs have the right to enforce Article 4, § 33 through mandamus. The current Michigan Supreme Court would agree. *See Bauserman*, 509 Mich at 692 ("[L]egal obligations that exist but cannot be enforced are ghosts that are seen in the law but that are elusive to the grasp." (internal quotation marks and citation omitted)).

Plaintiffs have a well-established right to enforce Defendants' duty to present through mandamus.

C. Presentation Is Ministerial.

The House's own rules demonstrate that presentation of passed bills is ministerial, directing the Clerk to present them:

> When a House bill has been finally passed by the two houses, the Clerk shall present to the Governor an enrolled copy thereof, taking a receipt showing the day, hour, and minute at which such copy was deposited in the executive office.

2025–2026 House Rule 19; *see also* 1 Official Record, Constitutional Convention 1961, p 1719 (describing the ministerial process of presentations).

D. Plaintiffs Have No Other Adequate Legal Or Equitable Remedy That Might Achieve The Same Result As Mandamus.

The legislative session at which the nine bills passed is over. Plaintiffs have no other legal or equitable remedy that might achieve the same result as mandamus.

IV. PLAINTIFFS ARE ENTITLED TO DECLARATORY JUDGMENT AND PERMANENT INJUNCTION.

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." The Michigan Supreme 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; ___ NW2d ___ (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 Plaintiffs have a constitutional right under Article 4, § 33 to the presentment of these nine bills and Defendants have a constitutional duty under Article 4, § 33 to present them and all bills in the future that pass both houses of the Legislature. *See* Part III.

For the same reasons as set forth in Part III(A) and (B), Plaintiffs are entitled to a declaratory judgment that they have a constitutional right to presentment of these nine bills and Defendants have a constitutional duty to present them and all bills in the future that pass both houses of the Legislature.

B. Permanent Injunction.

Plaintiffs are entitled to a declaratory judgment that they have a constitutional right to presentment of these nine bills and Defendants have a constitutional duty to present them and all bills in the future that pass both houses of the Legislature. Other relief may be granted based on that declaratory judgment under MCR 2.605(F). *See, e.g.*, *Barry Co Probate Court v Mich Dep't of Social Servs*, 114 Mich App 312, 319; 319 NW2d 571 (1982) ("After entry of judgment for declaratory relief, further relief, such as an injunction, may be granted, if necessary . . . .").

Permanent injunctive relief is necessary here to ensure that there is immediate compliance with the Court's declaratory judgment. All of the criteria for permanent injunctive relief are met. *See, e.g.*, *Kernen v Homestead Dev Co*, 232 Mich App 503, 514–515; 591 NW2d 369 (1998). A constitutional violation is presumptively irreparable. *See, e.g.*, *Obama for America v Husted*, 697 F3d 423, 436 (CA 6, 2012). Moreover, there is no adequate alternative remedy—the legislative session at which the nine bills passed is over, so Plaintiffs can do nothing further to remedy Defendants' breach of their constitutional duty. Only a permanent injunction prohibiting Defendants from failing to present the nine bills can remedy Defendants' constitutional violation.

Plaintiffs are entitled to a permanent injunction.

V. DEFENDANTS' DEFENSES ARE MERITLESS.

A. The Alleged Lack Of *Sine Die* Adjournment Of The Previous Legislature Does Not Bar Presentation.

Speaker Hall has claimed that there are "implications of the previous House having not

adopted a resolution to adjourn *sine die*." Eggert, *New House Speaker Pushes Elimination of Business Tax Credits to Fund Roads, Questions RenCen Plan*, Crain's Detroit Business (January 9, 2025).

This claim cannot be used to stop presentation.

The duty to present under Article 4, § 33 is triggered by the bills being "passed" by the Legislature, nothing more. Whether either body ever officially adjourned by *sine die* motion or otherwise is irrelevant. The nine bills passed the Legislature, obligating Defendants to present them to the Governor. Relying on the alleged lack of a *sine die* resolution is an unconstitutional attempt to legislatively "curtail" the duty to present. *Atwood* forbids that. *See Atwood*, 372 Mich at 320.

The text of Article 4, § 33 reinforces the conclusion that legislative adjournment plays no role in the duty to present bills. Under Article 4, § 33, adjournment is only a factor in the Governor's veto options and the ability of the Legislature to respond to a veto:

> 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.* 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 he had signed it*.

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

Adjournment, its date, and how it was accomplished are irrelevant to the Presentment Clause, which is triggered solely by passage of bills.

B. "Technical Problems" In The Nine Bills Do Not Bar Presentation.

Speaker Hall has also raised the specter of alleged "technical problems with the bills" that could prevent presentation. Eggert, *New House Speaker Pushes Elimination of Business Tax Credits to Fund Roads, Questions RenCen Plan*. "Technical problems" with the bills cannot prevent presentation for several reasons.

First, the text of Article 4, § 33 is clear, mandatory, and permits no exceptions whether for "technical problems" or anything else. *See Atwood*, 273 Mich at 320. Thus, the nine passed bills must be presented to the Governor regardless of claimed "technical problems."

Second, the Joint Rules of the Senate and House *require* the House Clerk to correct technical errors:

> In addition, the Secretary of the Senate and the Clerk of the House of Representatives, as the case may be, *shall correct* obvious technical errors in the enrolled bill or resolution, including adjusting totals, misspellings, the omission or redundancy of grammatical articles, cross-references, punctuation, updating bill or resolution titles, capitalization, citation formats, and plural or singular word forms.

2023–2024 Joint Rule 12 (emphasis added). The authority of the House Clerk to correct technical errors has been upheld by the Michigan Supreme Court. *See, e.g.*, *LeRoux v Secretary of State*, 465 Mich 594, 607–614; 640 NW2d 849 (2002) (*per curiam*).

Alleged "technical problems" with the bills cannot justify the failure to present them to the Governor.

VI. PLAINTIFFS ARE ENTITLED TO IMMEDIATE RELIEF.

The nine bills were ready for presentation on January 8, 2025, and but for the unconstitutional action of Speaker Hall, Clerk Starr would have performed his ministerial duty to present them to the Governor on January 8, 2025. There is no reason for further delay. The Defendants should be ordered to immediately present all nine bills to the Governor.

VII. THIS IS AN URGENT MATTER REQUIRING IMMEDIATE AND EXPEDITED CONSIDERATION.

There is a compelling need for this urgent matter to be immediately and expeditiously considered.

Unless given immediate effect, laws take effect 90 days after the Legislature adjourns. Const 1963, art 4, § 27. None of the nine bills were given immediate effect, so if signed by the Governor, they will take effect on April 2, 2025, which is fast approaching.

But before their effective date other events must occur. The Governor has up to 14 days after presentation to consider bills. *Id* § 33. Moreover, appeals are expected in this matter. To resolve those appeals and allow the Governor her constitutionally mandated period of 14 days to consider a bill after presentation but before the April 2, 2025 effective date of the bills she signs, this matter requires immediate and expedited consideration.

In addition, Defendants have no basis to oppose immediate and expedited consideration. Since January 9, 2025, Speaker Hall has been reviewing the legal issues he asserts prevent presentment. *See* Eggert, *New House Speaker Pushes Elimination of Business Tax Credits to Fund Roads, Questions RenCen Plan* (reporting that Speaker Hall's "team is conducting a legal review of [the] nine bills"). In addition, the Senate adopted the resolution authorizing this litigation on January 22, 2025, *see* Verified Compl, Ex 1, so the House has known that this complaint was coming. With nearly four weeks of legal review already done and more than a week's notice of its

anticipated filing, Defendants should be able to respond quickly to this complaint that presents solely legal issues.

This matter can and should be given immediate and expedited consideration.

CONCLUSION AND RELIEF SOUGHT

For the reasons stated, Plaintiffs respectfully pray for this relief from the Court:

1. Grant the Motion for Summary Disposition;

2. Grant the Complaint for Mandamus and order Defendants to immediately present the nine bills to the Governor;

3. Issue a declaratory judgment that Defendants have a constitutional duty to immediately present the nine bills to the Governor and that Plaintiffs have the constitutional right to such presentment;

4. Grant a permanent injunction enjoining Defendants from failing to present the nine bills to the Governor; and

5. Grant such other relief as the Court considers necessary or appropriate.

Respectfully submitted,

/s/ Mark Brewer

GOODMAN ACKER, P.C.
MARK BREWER (P35661)
ROWAN CONYBEARE (P86571)
Attorneys for Plaintiffs
17000 W. Ten Mile Road
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com
rconybeare@goodmanacker.com

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