STATE OF MICHIGAN
IN THE COURT OF CLAIMS

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

Plaintiffs,

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.

Case No. 25-000014-MB

Hon. Sima Patel

ORAL ARGUMENT REQUESTED

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DEFENDANTS MICHIGAN HOUSE OF REPRESENTATIVES AND CLERK SCOTT STARR'S FEBRUARY 7, 2025 RESPONSE TO MOTION FOR SUMMARY DISPOSITION[1]

[1] As set forth below, the House Defendants assert that Speaker Matt Hall is immune from civil process "during sessions of the legislature" and that he has not been properly served. Const 1963, art 4, § 11. This response is therefore submitted on behalf of the House of Representatives and the Clerk of the House of Representatives, although the arguments would apply with full force to Speaker Hall as well.

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INTRODUCTION

As the 2024 lame duck legislative session "barreled toward its end, infighting and finger-pointing in the Democratic caucus appeared to mount,"[2] and the 102nd Legislature missed a necessary step to enable bills it had passed to become law: presentation to the governor. Const 1963, art 4, § 33. The Michigan Senate and Senate Majority Leader Winnie Brinks (the "Senate") now ask the judicial branch to intervene in a dispute between two bodies within the legislative branch, and to order the new 103rd Legislature to clean up the mess left by the 102nd. For both substantive and procedural reasons, the Senate's request lacks merit, its motion for summary disposition should be denied, and this case should be dismissed.

Starting with substance, the Senate's complaint presents a simple question: does Michigan law impose a duty on the 103rd Legislature to present legislation passed by the 102nd Legislature? The answer is no. The Senate's claim that the current "House" has a "constitutional duty to present these bills to the Governor" is wrong because: (1) the business of the 102nd Legislature does not continue into the 103rd; (2) a past legislature cannot bind future legislatures; and (3) Michigan's Constitution imposes no duty to present legislation upon any specified legislative body or officer.

What's more, because the Senate seeks the "extraordinary remedy" of mandamus, it bears the burden of showing that Defendants violated a "clear legal duty" to present the bills to the governor. But the Senate points to no constitutional text requiring that the 103rd Legislature, its speaker, or its clerk present the bills, or to do so "immediately" as they ask. Nor could they. Michigan's Constitution imposes no temporal limitation on when a bill must be presented. Indeed, on numerous occasions, the Senate, while led by its current Majority Leader, has sat on ready-to-

[2] Lobo, *Michigan Democrats anger allies, advocates as lame duck ends*, Detroit Free Press (December 23, 2024) <https://www.freep.com/story/news/politics/2024/12/23/michigan-house-democrats-lame-duck-adjourn/77105539007/> (accessed February 5, 2025).

present bills for far longer than the two weeks between when the 103rd Legislature convened on January 8th, and when the Senate authorized litigation on January 22nd. (See, e.g., Senate Bills 205, 206, and 207 of 2024, held for presentment for 84 days). Likewise, the Constitution does not specify who must present a bill to the governor (as shown by the Senate's shotgun approach of naming the House, its speaker, and its clerk). Nor does it ever contemplate a new legislature presenting a bill passed by a prior legislature. Quite the contrary, it ties presentation of a bill to the legislature that passed it, as makes sense, given that a past legislature cannot bind a future legislature. *LeRoux v Sec'y of State*, 465 Mich 594, 615-16 (2002).

Put simply, if the 102nd Legislature wanted to assure that bills it passed had an opportunity to become law, it needed to present them to the governor before the 103rd Legislature convened. The 102nd Legislature's failures start and end with that legislature. The unpresented bills did not carry over and are not pending before the 103rd Legislature. Old business cannot be made new again. And Michigan law imposes no duty on the 103rd Legislature or its officers to resurrect the uncompleted work of the 102nd Legislature.

But even if all of this were not true, the Senate would still not be entitled to relief. The Senate has sued Speaker Hall contrary to the Speech or Debate Clause's stated purpose of "protect[ing] the legislators from the trouble, worry and inconvenience of court proceedings during the session . . . so that the State could have their undivided time and attention in public affairs." *Cotton v Banks*, 310 Mich App 104, 112 (2015). It improperly asks the judiciary to intervene in legislative matters. And neither the Senate nor its Majority Leader have met their "heavy burden" of showing legislative standing exists. *League of Women Voters of Mich v Sec'y of State*, 331 Mich App 156, 172 (2020), aff'd in part on other grounds, 506 Mich 561 (2020).

While the Senate may be frustrated with the failures of the 102nd Legislature, the 103rd

Legislature has no duty to correct those failures. The Senate's motion should be denied, and its Complaint should be dismissed with prejudice. MCR 2.116(I)(2).

COUNTER-STATEMENT OF FACTS

I. MICHIGAN'S BIENNIAL LEGISLATURES

The legislature "meet[s] at the seat of government on the second Wednesday in January of each year at twelve o'clock noon." Const 1963, art 4, § 13. A regular session is held each year and a new legislature convenes every two years. "Any business, bill or joint resolution pending at the final adjournment of a regular session held in an odd numbered year shall carry over with the same status to the next regular session" in an even numbered year. *Id.* But "[b]ills pending upon a final adjournment in an even-numbered year do not [] carry over to the next regular legislative session." OAG, 1981-1982, No. 6,114 (December 22, 1982); 1 Official Record, Constitutional Convention 1961, p 2376-77. Rather, those bills die, and must be re-introduced in a new legislature for consideration by that new body. *Id.* Legislatures are not continuing bodies. Each biennial legislature is separate and distinct from the next. And the "act of one legislature is not binding on, and does not tie the hands of, future legislatures." *LeRoux*, 465 Mich at 615-16.

II. THE PRESENTMENT CLAUSE AND PAST PRACTICES

As the Senate notes, "[e]very bill passed by the legislature shall be presented to the governor before it becomes law." Const 1963, art 4, § 33. Once presented with a bill, "the governor shall have 14 days measured in hours and minutes" to "consider it." *Id.* From there, outcomes depend on whether the governor approves of the bill and, if not, whether the specific legislature that passed the bill has finally adjourned:

- **Governor Approval:** If the governor approves a bill, the analysis is simple: she can "sign and file it with the secretary of state and it shall become law." *Id.*

- **Governor Disapproval, Legislative Adjournment:** If the governor "does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed," the analysis is also simple: the bill "shall not become law." *Id.*

- **Governor Disapproval, Legislature Still in Session:** If the governor "disapproves, and the legislature continues the session at which the bill was passed," the governor "shall return it within" the 14-day review period with "objections" and the originating house can reconsider and still pass the bill with a two-thirds majority. *Id.*

- **Governor Inaction, Legislature Still in Session:** "If any bill is not returned by the governor" during the 14-day window to review, and the legislature that passed the bill is still "continuing in session," the bill "shall become law as if [s]he had signed it." *Id.*

Article 4, § 33 is important both for what it does, and does not, say. See *Bronner v City of Detroit*, 507 Mich 158, 173 n.11 (2021) (the "express mention in a statute of one thing implies the exclusion of other similar things"). Section 33 does not specify who shall present a bill to the governor. And Section 33 does not (contrary to other states[3]) specify when a bill must be presented, or otherwise mention any temporal limitations.[4] Section 33 does, however, repeatedly tie the presentment to the legislature that passed the bill. Const 1963, art 4, § 33 (bill "shall not become law" if not approved and "the legislature has . . . finally adjourned the session at which the bill was passed"); *id.* (procedures if "the legislature continues the session at which the bill was passed"); *id.* (procedures if the "bill is not returned" and "the legislature" was "continuing in session").

[3] See Ohio Const, art 2, § 15(E), requiring that bills "be presented forthwith to the governor[.]"

[4] This is not unusual. The constitution imposes other legislative obligations without designating a person or entity responsible or imposing a time requirement. See, e.g., Const 1963, art 4, § 17 (requiring recording of legislative committee actions and making committee votes available for public inspection); Const 1963, art 4, § 19 (mandating publication of votes in either house or joint convention and votes on appointments); Const 1963, art 4, § 51 (requiring legislature to pass laws suitable for protection and promotion of public health); and Const 1963 art 4, § 52 (indicating legislature must provide for protection of natural resources from pollution, impairment and destruction). That general mandate that a bill be presented to a governor before it becomes law under Article 4, § 33 is no more a duty enforceable by mandamus or otherwise by the judiciary than the legislative mandates described above.

Given that legislatures are not continuing bodies[5] and that one legislature lacks authority to bind a successor, this makes sense. And, contrary to the Senate's assertions, it is consistent with past practices. As the Senate recognizes, "[t]he vast majority of bills passed during a legislative session are presented to the governor during that session." (Senate Brief in Support of Mot. Summ Disp. ("Senate Br."). at 1.) Indeed, many of the examples cited by the Senate in support of its argument did not involve "presentment to the governor" *after* a new legislature had convened.[6]

III. THE 102ND LEGISLATURE'S "CHAOS"

Consistent with the mandate of Const 1963, art 4, § 13, the first regular session of the 102nd Legislature was convened at noon on January 11, 2023. 2023 House Journal 1 (No. 1, January 11, 2023). Richard J. Brown was elected as the Clerk of the House (the "102nd Clerk"). *Id.* The first regular session of the 102nd Legislature adjourned without day at noon on November 14, 2023. 2023 House Journal 2549 (No. 98, November 14, 2023). With 2023 being an odd-numbered year, any business, bill, or joint resolution pending at adjournment of the first regular session in 2023 carried over with the same status to the next regular session in 2024. Const 1963, art 4, § 13.

The second regular session of the 102nd Legislature was convened at noon on January 10, 2024. 2024 House Journal 1 (No. 1, January 10, 2024). After the November 2024 general election, however, the "Republicans flipped" the House "from Democratic control" for the 103rd

[5] *Howard Jarvis Taxpayer Ass'n v Secretary of State*, 62 Cal 4th 486, 512; 363 P3d 628 (2016).

[6] For instance, Senate Bills 200, 201, 530, and 979 of 1982 "were presented to the Governor on January 4, 1983." Compl. ¶ 11. But the new legislature did not convene until January 12. 1983 Senate Journal 1 (No. 1, January 12, 1983). Likewise, the Senate points to bills passed "between January 4 and 16" in 1981. Compl. ¶ 11. But the vast majority of those bills were presented before the new legislature convened on January 14, 1981. 1981 Senate Journal 1 (No. 1, January 14, 1981). This Court can take judicial notice of House journals and records. *Wilson v Atwood*, 270 Mich 317, 321 (1935).

Legislature that would convene in January 2025.[7] This created a "lame-duck" Democratic majority in the House for most of November and December 2024, which was marked by "infighting and finger-pointing in the Democratic caucus." Lobo, *supra* note 2. Due in large part to these issues, bills stalled in the House. Many considered were never passed. And several that did pass did so at the last minute. The House Journal for December 31, 2024 indicates that numerous House bills passed the Senate, and that those bills were "referred to the [102nd] Clerk [of the House] for enrollment printing and presentation to the Governor on December 23, 2024." 2024 House Journal 2080-2092, 2094 (No. 89, December 31, 2024). This includes the nine bills at issue—House Bills 4177 and 4665–4667 of 2023, and House Bills 4900 to 4901, 5817–5818, and 6058 of 2024 (together the "Bills")—which were returned to the House after passage by the Senate and referred to the Clerk for enrollment, printing, and presentation to the governor on December 23, 2024. 2024 House Journal 2080–2082, 2090, and 2092 (No. 89, December 31, 2024).

On December 30, 2024, the secretary of the senate declared the Senate adjourned without day. 2024 Senate Journal 2278 (No. 111, Dec. 30, 2024). The next day, the speaker pro tempore of the House declared the House adjourned without day given the lack of a quorum at 1:50 p.m. 2024 House Journal 2095 (No. 89, Dec. 31, 2024). With the 102nd Legislature finally adjourned, and 2024 being an even numbered year, any business, bill, or joint resolution pending at adjournment of the second regular session in 2024 did not carry over to the first regular session of the 103rd Legislature in 2025. Const 1963, art 4, § 13; OAG, 1981-1982, No. 6,114.

IV. THE 103RD LEGISLATURE

Before the 103rd Legislature convened on January 8, 2025, the 102nd Clerk, who had been

[7] https://www.freep.com/story/news/politics/elections/2024/11/06/michigan-republicans-claim-state-house-victory/75997687007/ (accessed February 5, 2025).

directed by the House to present the bills on December 23, 2024, sent numerous bills to the governor. Starr Aff. ¶¶ 3-4, Ex. 1. While the Senate states that, "[f]ollowing 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" (Senate Br. at 2), it was the holdover Clerk elected by the 102nd House that sent the bills, and this was done before the 103rd Legislature had convened, organized, and elected a new speaker and clerk. Starr Aff. ¶¶ 4-6. The 102nd Clerk never presented the nine bills at issue to the governor before the 103rd Legislature convened on January 8, 2025, despite being directed to do so the month before.

The first session of the 103rd Legislature convened at noon on January 8, 2025. 2025 House Journal 1 (No. 1, Jan. 8, 2025). The House was called to order by the 102nd Clerk, consistent with MCL 4.44. *Id.* A short time later, Scott Starr was elected as the new clerk of the newly organized House. 2025 House Journal 24 (No. 1, January 8, 2025). No bills passed during the 102nd Legislature were presented to the governor after the 103rd Legislature convened. Starr Aff. ¶ 7.

V. THIS LAWSUIT

After the 103rd Legislature convened, questions arose about the unpresented bills leftover from the 102nd Legislature. The House was in the process of conducting a legal review when, on January 22, 2025, the Senate introduced a resolution to commence legal action and "compel the House" to "present to the Governor the nine remaining bills passed by" the 102nd Legislature. 2025 Senate Journal 40 (No. 5, January 22, 2025). After waiting 12 days to sue, the Senate then claimed "immediate" relief was needed. An expedited briefing schedule was set, providing the House with 3 days to respond. As of yesterday, Speaker Hall was quoted as saying that the legal review was still in process at the time the lawsuit was filed. See Ex. 2 ("'All the experts and the legal scholars, they're all saying that I don't have to present the bills . . . I haven't even taken the

position that I don't have to present the bills. We were doing a very thorough legal review, and now there are all these other questions.'"). As of today, Speaker Hall has not been properly served; pleadings were left at his office while he was not present, on a date the legislature was in session.

LEGAL STANDARDS

Citing no court rule to support its motion, the Senate apparently seeks summary disposition under MCR 2.116(C)(10). In evaluating a motion under this Rule, "a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties."[8] *Maiden v Rozwood*, 461 Mich 109, 119-20 (1999). It is the moving party's burden to show there is no genuine issue of material fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63 (1996).

ARGUMENT

I. SPEAKER HALL IS PRIVILEGED FROM PROCESS AND HAS NOT BEEN PROPERLY SERVED.

To start, the Senate's motion for summary disposition should be denied as to the claims against Speaker Hall because he is immune from process during sessions of the legislature and has not been properly served. Michigan's Speech or Debate Clause 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 next before the commencement and after the termination thereof. They shall not be questioned in any other place for any speech in either house.

Const 1963, art 4, § 11. The Clause is designed to "protect the legislators from the trouble, worry and inconvenience of court proceedings during the session . . . so that the State could have their undivided time and attention in public affairs" and to "prevent both actual distraction and potential distraction from public duty during the legislative session." *Cotton*, 310 Mich App at 112.

[8] While Defendants have endeavored to provide admissible evidence, the House Defendants request the opportunity to supplement the record if needed, given the expedited, three-day period allotted to respond to the dispositive motion served contemporaneously with the Complaint.

As the Court of Appeals has recognized, "[b]ecause Michigan's Speech or Debate Clause is substantially similar to the Speech or Debate Clause found in the Constitution of the United States, it should be similarly construed." *Cotton*, 310 Mich App at 112. And the United States Supreme Court has broadly interpreted that Clause to "protect [legislators] not only from the consequences of litigation's results but also from the burden of defending themselves" as "[p]rivate civil actions . . . may be used to delay and disrupt the legislative function." *Id.* at 113 (citation omitted). Thus, "once it is determined that Members are acting within the 'legitimate legislative sphere,' the Speech or Debate Clause is an absolute bar to interference." *Id.* And "in the absence of a waiver of the immunity, the Speech or Debate Clause immunizes a legislator from civil suits premised on actions that he or she took within the legitimate sphere of legislative activity." *Id.*

Here, the Senate has sued Speaker Hall in connection with his review of legislation passed by a prior legislature but not presented to the governor. This review of and activity concerning legislation falls within the legislative sphere. *Gravel v United States*, 408 US 606, 625 (1972) ("[T]he consideration and passage or rejection of proposed legislation" or "other matters which the Constitution places within the jurisdiction of either House" falls within the legislative sphere). And he is therefore "immunize[d] from civil suit" as a result. *Cotton*, 310 Mich at 113.

II. THE SENATE AND SENATE MAJORITY LEADER LACK STANDING TO SUE

A. The Senate Majority Leader lacks standing.

Although ignored by the Senate Majority Leader, "[o]ur Supreme Court [has] noted that to establish standing, a legislator must overcome a heavy burden." *League of Women Voters*, 331 Mich App at 172. "[P]laintiffs who sue as legislators must establish that they have been deprived of a personal and legally cognizable interest peculiar to them individually, rather than assert a generalized grievance that the law is not being followed." *Id.* The Senate Majority Leader claims

her "peculiar" interest is that her "vote to pass all nine bills has been completely nullified by the withholding of presentment by the House." (Senate Br. at 5.) But "once votes which lawmakers are entitled to make have been cast and duly counted, their interest as legislators ceases." *Killeen v Wayne County Rd Comm'n*, 137 Mich App 178, 189 (1984) (cleaned up); see also *House Speaker v State Admin Bd*, 441 Mich 547 (1993) ("*Dodak*") (legislator who "did have the opportunity to vote on an issue" was "not suing to maintain the effectiveness of his vote" but rather "to reverse the outcome of a political battle that he lost").

Here, Senator Brinks' vote counted and the bills passed, marking the end of any special interest she may have asserted. *Killeen*, 137 Mich App at 189. She fulfilled her duty as a legislator. And from there, she was in the same position as members of the general public, who may (or may not) wish that the Clerk of the 102nd House had presented the bills as directed, and may (or may not) wish that, if presented, the governor would approve them. Just like the legislators in *Dodak*, Senator Brinks does not allege that anyone interfered with her right *to vote* on the bills. She argues only that the House failed to present bills, after her role as a senator voting on the bills had ended. As in *Dodak* and *Killeen*, once Senator Brinks voted on the bills, any special interest as a legislator ceased, and she was in the same shoes as the general public. Any other result undermines the fundamental principles of standing that Michigan courts have consistently upheld.

B. The Senate lacks standing.

The Senate cites no case supporting its assertion of standing. That alone is fatal. *League of Women Voters*, 331 Mich App at 171 ("While the Legislature asserts that it is the *only* real party in interest . . . and may therefore file a declaratory action . . . it has provided no authority or support for this position. This Court need not search for authority to sustain a party's position."). Regardless, as in *League of Women Voters*, "the Legislature's" unsupported "position [is]

unconvincing." *Id.* As with individual legislators, "the legislature," too, "has a heavy burden to show that it has standing." *Id.* at 173. That burden is not met by a claim that a law passed by the legislature is not being "enforced," as "that injury is not personal or unique to the Legislature. Particularly so given that once legislators' votes are counted and a law enacted, 'their special interest as lawmakers has ceased.'" *Id.*, quoting *Killeen*, 137 Mich App at 189. In other words, the standing analysis for the Senate is no different than for the Senate Majority Leader: the Senate's votes were counted, the bills were returned to the House, and the Senate's role was fulfilled. The Senate's interests are currently the same as those of the general public.

C. The Senate and Senate Majority Leader lack standing to turn an intra-branch political dispute into a lawsuit.

Moreover, "courts should not confer standing in matters that have the real possibility of infringing upon the separation of powers." *League of Women Voters*, 331 Mich App at 173, citing *Dodak*. Whether framed as standing or justiciability, the Senate falls short here, too.

The Senate would have this Court interpret Article 4, Section 33 as requiring the 103rd Legislature to not only do the presentation work of the 102nd Legislature, but to do so "immediately." Compl. at 17. But even if Section 33 required the 103rd Legislature to present the bills to the governor (it does not), it is not the judicial branch's role to dictate when and how the legislature should do so. That is a matter the framers left to the legislature by declining to implement any timeframe for presentment. Presentment of bills to the executive, 1 Sutherland Statutory Construction § 16:1 (7th ed.) ("[T]he timing of such a presentment is discretionary and delaying the presentment according to either rule or practice is within the legislative prerogative."). Indeed, the Senate's misplaced reliance on internal House and joint legislative rules (Senate Br. at 8, 14-15) in support of their claim proves as much. As this Court explained in *LeRoux*, "courts do not review claims that actions were taken in violation of a legislative rule." 465 Mich at 609-610.

This case was brought in the midst of a legal review by the House. (Senate Br. at 19 ("Since January 9, 2025, Speaker Hall has been reviewing the legal issues he asserts prevent presentment"); see also Ex. 2.) Given the absence of any constitutional text or other authority requiring this Legislature to present the bills, and the lack of any temporal limitations on when a bill must be presented, the Senate's request for judicial intervention on legislative matters, during the House's review (particularly when it has delayed as long 84 days to present bills), is improper.

Put simply, courts do not "serve as political overseers of the executive or legislative branches, weighing the costs and benefits of competing political ideas or the wisdom of the executive or legislative branches in taking certain action." *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 647 (2012) That is core to Michigan's separation of powers. Const 1963, art 3, § 2. Nor do courts serve "as the arbiter of disputes solely between branches of government to which [it is] coequal, not superior." *League of Women Voters of Mich v Sec'y of State*, 501 Mich 561, 607 (2020) (Clement, C.J., dissenting). "This may help explain why the Legislature does not provide a single example of a legislative body maintaining a declaratory-judgment action against" another legislative body. *Id.*

III. THE SENATE'S MANDAMUS CLAIM FAILS ON THE MERITS

Turning to the merits, the Senate seeks to compel the House to "immediately present the bills" through a claim for mandamus. "To obtain the extraordinary remedy of a writ of mandamus, the 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." *Berry v Garrett*, 316 Mich App 37, 41 (2016) (cleaned up). *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492 (2004) ("The plaintiff bears the burden of demonstrating

entitlement to the extraordinary remedy of a writ of mandamus.").

A. Article 4, Section 33 does not contemplate a new legislature presenting bills passed by a prior legislature.

To start, the Senate's claim for mandamus falls short because it misstates how the legislature works, and misreads the Constitution.

The legislature is not a continuing body. Each legislature exists for two years. As relevant here, the 102nd Legislature was in session in 2023 and 2024. The Constitution states that any "bill . . . pending at the final adjournment of a regular session held in an odd numbered year shall carry over with the same status to the next regular session" in an even numbered year. Const 1963, art 4, § 13. Thus, bills introduced in the first year of the 102nd Legislature carry over into the second year of the 102nd Legislature. But the Constitution omits any similar language for bills pending at final adjournment in an even-numbered year. That is, a bill from the second regular session of the 102nd Legislature does not carry over into the 103rd Legislature. OAG, 1981-1982, No. 6,114. That makes perfect sense. *LeRoux*, 465 Mich 594, 615-16 (2002) ("[A]n act of one legislature is not binding on, and does not tie the hands of, future legislatures.").

This structure of separate and distinct legislatures that cannot bind future legislatures is entirely consistent with Article 4, Section 33, which provides that "[e]very bill passed by the legislature shall be presented to the governor before it becomes law." Const 1963, art 4, § 33. As discussed below, this text does not clearly require *anyone* to present a bill; it states only that a bill cannot become law *unless* presented to the governor. But even assuming it requires a legislative body or officer to do so, given that a "legislature" is not a never-ending, continuous body, this raises the question of which "legislature" must. The remainder of Article 4, Section 33's text helps answer that question. This Section repeatedly ties presentation of bills to the legislature that passed the bill. Const 1963, art IV, § 33 (bill "shall not become law" if not approved and "the legislature

has within that time finally adjourned the session at which the bill was passed"); *id.* (procedures if "the legislature continues the session at which the bill was passed"); *id.* (procedures if the "bill is not returned" and "the legislature" was "continuing in session").

And for good reason. Were it otherwise, absurd results would occur. Consider first a discovery by the Clerk in 2025 of an original House bill that the Michigan Senate and House had passed in 1956. It was ordered enrolled and printed that year, but was never presented. Is there a duty to present the bill to the governor in 2025? Under the Senate's argument, yes. But that is entirely inconsistent with the hornbook law that the business of one legislature ends when the legislature adjourns. Or consider the passage of a controversial bill by a lame duck Democratic majority in the legislature. A recently defeated Republican governor has threatened to veto the bill before her term expires. Could the lame duck Democrats deliberately delay presentation of the bill until a new Democratic governor takes office, and then sue the new legislature once the new legislature convenes for failing to present the bill to the new governor? Using the Senate's logic, the answer is again, yes.

These absurd results are only possible based on the Senate's fundamental misunderstanding of how the legislature works, and its misreading of constitutional text. If there is any obligation at all to present a bill to the governor, that obligation must belong to the legislature that passed the bill – not a subsequent and wholly distinct legislative body, which cannot be legally bound by its predecessor. This is not a tall ask. The House Clerk for the 102nd Legislature had ample time to present the bills after being directed to do so on December 23, 2024. 2024 House Journal 2080-2092, 2094 (No. 89, December 31, 2024). The Senate then had ample time to encourage the Clerk to do so before the 102nd Legislature ended. But now, more than a month later, the Senate cries "emergency." If any "emergency" existed (and, given the lack of any presentment deadline, it did

not), the appropriate time to remedy that emergency was before the 103rd Legislature convened.[9]

B. Article 4, Section 33 does not clearly impose a duty on the legislature or a legislative officer.

To the extent this Court finds any ambiguity at all in the above, the lens through which this Court must review the question is important. To obtain mandamus relief, the Senate must show the named Defendants have a "clear legal duty" to present bills passed by a prior Legislature. *Hayes v Parole Bd*, 312 Mich App 774, 782, 886 NW2d 725 (2015) (citation omitted). For example, "[a] clear legal duty exists when the defendant has a statutory obligation to perform a specific act." *Dearborn Hts City Council v Mayor of Dearborn Hts*, unpublished per curiam opinion of the Court of Appeals, issued June 11, 2020 (Docket No. 351408), p 8.

But questions abound in the Senate's theory. Lacking citations to any legal authority, the Senate's Complaint states that *the Clerk* "has the ministerial duty of presenting bills passed by the Legislature and originating in the House to the Governor." (Compl. ¶ 7.) The text of Article 4, Section 33 does not say that. Nor does the Senate explain *which* Clerk (102nd or 103rd) would bear that duty, or why, if this duty is the Clerk's, the Senate believed it necessary to also name the Speaker and the House as Defendants. If anyone must do so, the only plausible reading is that the legislature that passed the legislation must present the legislation, and that there is no duty of a

[9] The Senate's basis for the emergency is illusory. It points to "a compelling need for this urgent matter to be immediately and expeditiously considered" because "unless given immediate effect, laws take effect 90 days after the Legislature adjourns. Const 1963, art 4, § 27." (Senate Br. at 19.) But the bills at issue in this case *are not laws*, and Const 1963, art 4, § 27 applies to the effective date *of laws*, not bills. If the bills are presented, the governor may not approve them, and they would not become law. Const 1963, art 4, § 33. Moreover, there are flaws in the bills that may explain why they were never presented. By its terms, 2024 HB 5818 would take effect only upon the enactment of 2024 HB 5317. 2024 HB 5818, enacting § 1. But HB 5317 never passed the House, died with the adjournment of the 102nd Legislature, and can never take effect. 2024 House Journal 17 (No. 3, January 17, 2024). And yet another one of the Bills would take effect "180 days after the date it is enacted into law." 2023 HB 4900, enacting § 1.

future legislature to present a prior legislature's bills.

Equally uncertain is whether the Constitution's statement that "[e]very bill passed by the legislature shall be presented to the governor before it becomes law" imposes an affirmative duty on *anyone* to present bills to the governor, or if it just means that a bill cannot become law before it is presented to the governor. In other words, it is unclear if Section 33 is meant to clarify that laws are not effective upon passage by the legislature, but rather become effective only after presentment to the governor and the governor signs the bill. The Senate would have this Court read Article 4, Section 33 as follows: "Every bill passed by the legislature shall be presented to the governor."[10] But the Constitution does not say that. Read in full, it states: "Every bill passed by the legislature shall presented to the governor before it becomes law." This Court must give full effect to every word of the Constitution. *Koontz v Ameritech Servs*, 466 Mich 304, 312 (2002). Doing so establishes that presentation is simply a precondition of a bill becoming a law.

Injecting further uncertainty is Section 33's lack of temporal guidance. Even if read to require someone to present bills to the Legislature, the only temporal constraint is that a bill must be presented "before it becomes law." *Id.* Unlike Section 33's 14-day timeline for the governor to take action, there is no similar timeline to present to the governor. This lack of precision further renders mandamus inappropriate. *Berry*, 316 Mich App at 50.

The lack of any temporal requirement also creates other issues. By the Senate's own admissions, it filed this lawsuit while Speaker Hall was "reviewing the legal issues he asserts

[10] The only Michigan case the Senate cites for its position is *Anderson v Atwood*, 273 Mich 316 (1935), which it claims presents a mandatory obligation to present bills. But *Anderson* never says that. In fact, it did not deal with presentment at all. Rather, it dealt with whether a bill returned by the governor retained any legal force. While it stated in an unrelated context that "[c]onstitutional provisions regulating the presentation, approval, and veto of bills by the executive are mandatory," it never says that presentment itself is mandatory, and it certainly never says that presentment by a subsequent legislature is mandatory.

prevent presentment." (Senate Br. at 19; see also Ex. 2.) But the Senate fails to specify *when* any constitutional violation occurred as a result of this asserted delay while a legal review occurred. Did the asserted violation occur the day the 103rd Legislature convened? Was it January 22nd, when the Senate authorized the filing of the Complaint? February 3rd, when they filed? And whatever date they claim it is (they have yet to specify), what is the source of that? Would the Senate still claim the constitution was violated if the bills were presented tomorrow? Next week? Within 84 days, as the Senate recently waited? Next year? The absence of any deadline means the absence of any violation. And the absence of any violation means there is no claim or, at the least, that any claim is not ripe. See *City of Huntington Woods v City of Detroit*, 279 Mich App 603, 615-16; 761 NW2d 127 (2008) ("Ripeness prevents the adjudication of hypothetical or contingent claims before an actual injury has been sustained. A claim is not ripe if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'") (citation omitted).

C. To the extent the court determines "the legislature" had a duty to present the bills to the Governor, that duty belonged to the previous Legislature.

Although the Senate fails to identify when presentment of a bill must occur, to the extent there was any duty to present a bill, that duty did not survive the termination of the 102nd Legislature. As discussed above, the 102nd Legislature that passed the bills in 2024 could have ensured that the clerk of the 102nd Legislature presented those bills to the Governor. It failed to do so. And the bills did not carry over to the 103rd Legislature. The business of the 102nd Legislature is old business now that the 103rd Legislature has convened. The Senate neglects to recognize the principle espoused in one of the United States Supreme Court's earliest seminal cases: "To render a mandamus a proper remedy, the officer to whom it is directed must be one to whom, on legal principles, such writ must be directed." *Marbury v Madison*, 5 US 137 (1803). If anyone had a duty to present bills to the Governor, it was a person in the prior legislature. And that

duty does not come from the Constitution itself. Rather, the most plausible source of any "duty" to present occurred when the 102nd Legislature directed the 102nd Clerk to do so on December 23, 2024. 2024 House Journal 2080-2092, 2094 (No. 89, December 31, 2024). The Senate points to no similar directive to the 103rd Clerk, the 103rd Speaker, or the 103rd House itself. A writ to the current House, its speaker, or its clerk is improper because they are not the correct person to whom such writ should be directed.

The reason the 102nd Legislature has not been named is straightforward: it no longer exists. If the prior Legislature had a duty it failed to fulfill, then the beginning of a new legislative term renders it impossible for this Court to grant the requested relief because only the prior legislature or its officers could do so. It thus renders any claim moot. *Leemreis v Sherman Twp*, 273 Mich App 691, 703-704; 731 NW2d 787 (2007). And again, given that the Senate did not act on their perceived claim until nearly several weeks after the bills passed (and for the duration of the 102nd Legislature's remaining term after the Clerk had been directed to present the bills), the Senate's supposed emergency is of its own making and its claims barred by laches.

D. Section 33 does not confer a right to have bills presented to the governor.

To prevail on the mandamus claim, the Senate must also establish a "clear, legal right to performance of the specific duty sought," which is a right "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." *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518-519 (2014). Further, a plaintiff's clear legal right in the execution of a duty must be more than a right possessed by citizens generally. *Id*. at 519. The Senate seems to misunderstand this requirement and claim that this lawsuit is premised on a "legal right" to have bills presented to the governor. But the Constitution does not confer a special legal right to have

bills presented. Indeed, the Constitution does not convey any specific right to have bills presented, and certainly the Plaintiffs do not have any special right beyond any other Michigan citizen.

E. Any Duty of the 103rd Legislature to Present the 102nd Legislature's Bills is Not Ministerial.

As a final matter, this case involves the unchartered and uncertain territory regarding the authority of a new legislature or its officers to act upon direction of a prior legislature. As discussed above, mandamus is available only for ministerial acts. "A ministerial act is one in which 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." *Berry*, 316 Mich. App. at 42 (citation omitted).

The complaint waffles on *who* might have a clear legal duty to present bills from the 102nd Legislature to the governor. At various places, Plaintiffs say "the House of Representatives" has a duty (without specifying *which* House – the 102nd or 103rd). At other places, it states the "the House Clerk" has a duty. Elsewhere, it alleges that "Defendants" have a duty. Perhaps the only thing that is clear is that the Plaintiffs are not certain who they believe has this supposed duty. They are also unclear on when this duty must be fulfilled. Plaintiffs' inability to allege who has a duty, and when that duty must be satisfied, shows that no duty is precise or certain in a manner that would be required for mandamus relief. Given the threshold fact in dispute regarding who allegedly failed to fulfill a duty, mandamus cannot lie. *Berry*, 316 Mich App at 42; *Dearborn Heights, supra*; *Powers v Dignan*, 309 Mich 530, 533 (1944) ("mandamus is not a writ of right but of grace and discretion, and will not lie to compel a public officer to perform a duty dependent upon disputed and doubtful facts.").

IV. THE SENATE IS NOT ENTITLED TO A DECLARATORY JUDGMENT, AND ITS PERMANENT INJUNCTION "CLAIM" IS NOT A CAUSE OF ACTION.

Next, while Plaintiffs also raise a claim for declaratory judgment, in effect, they are seeking

to couple that judgment with an injunction that would "enjoin[] Defendants from failing to present the nine bills." (Compl. at 20.) An injunction to stop a party from "not doing something" is the same as an order "to do something." And mandamus is the appropriate mechanism to compel a party to do something. The Senate cannot avoid mandamus and its standards by calling their claim something else. *Minarik v State Hwy Comm'r*, 336 Mich 209, 213 (1953) ("No litigant can mandamus a State officer in the circuit court simply by using the term injunction instead of mandamus when it is the latter remedy that he seeks.").

Finally, Count III of Plaintiffs' Complaint is a "claim" for "permanent injunction." They seek an "injunction enjoining Defendants from failing to present the nine bills to the governor." *Id.* ¶ 48. But "[i]t is well settled that an injunction is an equitable remedy, not an independent cause of action." *Terlecki v Stewart*, 278 Mich App 644; 754 NW2d 899 (2008). To the extent Plaintiffs' motion relies on this "claim" as an independent cause of action, the motion should be denied.

CONCLUSION

The business of the 102nd Legislature ended upon the final adjournment of its second regular session, and did not carry-forward into the 103rd Legislature. The Senate has failed to point to constitutional text, case law, or other authority that would support its novel claim that the 103rd Legislature has a duty—much less a clear one, as is needed to prevail on their mandamus claim—to present bills passed by a prior legislature. That is because none exists. This Court should decline the Senate's request to make old business new again. The Senate's attempt to resurrect dormant legislation should be rejected, its motion should be denied, and the case should be dismissed.

Dated: February 7, 2025

/s/ Kyle M. Asher
Kyle M. Asher (P80359)
Steven C. Liedel (P58852)
DYKEMA GOSSETT PLLC
kasher@dykema.com

PROOF OF SERVICE

I hereby certify that on February 7, 2025, I electronically filed the foregoing document with the Clerk of the Court using the MiFile system.

/s/ Kyle M. Asher
Kyle M. Asher

DYKEMA GOSSETT PLLC • Capitol View, 201 Townsend Street, Suite 900, Lansing, Michigan 48933

Exhibit 1

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

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

Plaintiffs,

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.

Case No. 25-000014-MB

Hon. Sima Patel

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Attorneys for Michigan House of Representatives and Michigan House Clerk Scott Starr

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AFFIDAVIT OF SCOTT E. STARR

I, Scott E. Starr, having been duly sworn and under oath, state as follows:

1. I am over the age of 18 years old and have personal knowledge of the facts in this Affidavit. If sworn as a witness, I can testify competently to the facts stated herein.

2. I served as the Assistant Clerk of the House of Representatives during the 102nd Michigan Legislature. On January 8, 2025, I was elected to serve as the Clerk of the House of Representatives during the 103rd Michigan Legislature.

3. On January 8, 2025, Richard J. Brown, the Clerk of the Michigan House of Representatives during the 102nd Michigan Legislature ("Clerk Brown"), delivered to the governor numerous bills that were passed by the 102nd Michigan Legislature.

4. At the time Clerk Brown did so, the 103rd Michigan Legislature had not yet convened and the officers of the House of Representatives for the 103rd Michigan Legislature, including Representative Matt Hall and me, had not yet been elected to their leadership positions.

5. At 12:00 o'clock noon. on January 8, 2025, the Michigan House of Representatives was called to order for the First Regular Session of the 103rd Michigan Legislature by Clerk Brown.

6. At the time the 103rd Michigan Legislature convened, there remained nine (9) outstanding bills passed by the 102nd Michigan Legislature that had not yet been sent to the governor.

7. No bills passed during the 102nd Michigan Legislature were presented by the House of Representatives to the governor after the 103rd Michigan Legislature convened.

Further affiant saith not.

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Scott E. Starr

2-7-2025
Date

STATE OF MICHIGAN)
) **s.s.**
COUNTY OF _____)

Subscribed and sworn by Scott E. Starr before me this 7 day of February 2025, in Ingham County, State of Michigan.

/s/ _____

Printed Name: Matthew Carnagie
Notary Public, State of Michigan, County of Eaton
My commission expires 11/1/2025
Acting in the County of Ingham

MATTHEW CARNAGIE
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF EATON
My Commission Expires Nov 1, 2025
Acting in the County of Ingham

Exhibit 2

GONGWER
SINCE 1906
MICHIGAN'S HOME FOR POLICY & POLITICS

Thursday, February 6, 2025

Listen to the Article

Despite Senate Lawsuit, Hall Hopeful Deal On Minimum Wage, Earned Sick Leave Possible Before Feb. 21

Although the Senate has sued House Speaker Matt Hall over his delay in presenting nine bills from last session to the governor, Hall said he's still hopeful the two chambers will be able to reach a deal on legislation to preserve a lower wage for tipped workers and alter the Earned Sick Time Act.

"They just want to serve me for political reasons, to satisfy their rabid left-wing base," Hall (R-Richland Township) said at a Thursday news conference. "This is weaponization of state government."

Despite, or perhaps because of the lawsuit, Hall said he has not met much with Senate Majority Winnie Brinks (D-Grand Rapids).

"I've talked to her on the phone a couple of times, but I've not met with her," he said.

Although his conversations with Brinks have been limited, Hall said he spoke with Senate Majority Floor Leader Sam Singh (D-East Lansing) on Wednesday about the minimum wage and earned sick time legislation.

"There's about 20 things that need to be negotiated," Hall said. "What I'm going to do is I'm going to write a proposal that I think is in the middle between these corporations and these businesses and these union bosses. One that I think will work for Michigan workers."

Hall said he was hopeful that the House and the Senate would be able to meet in the middle and compromise on legislation (SB 8 , SB 15 , HB 4001 , HB 4002) prior to February 21, when the laws are set to go into effect.

"The earlier we can resolve this, the more likely that workers will be able to follow what we come up with, the small businesses, the corporations will still be able to do it, and there'll be a smooth transition."

Regarding the nine bills from last session, Hall contended that he was under no obligation to present them, though he also said that wasn't his original argument.

"All the experts and the legal scholars, they're all saying that I don't have to present the bills," he said. "I haven't even taken the position that I don't have to present the bills. We were doing a very thorough legal review, and now there are all these other questions."

The lawsuit, filed Monday, notably involves HB 6058 of 2024, which requires public employers to pay a larger share of the health insurance premium for public employees (See Gongwer Michigan Report, February 3, 2025).

Hall said it is not the obligation of the current Legislature to carry out the previous Legislature's work.

Further, he argued that previous speakers have held bills in the chamber for far longer than he has held the nine bills from last term.

"We do remember the time where Joe Tate refused to present that Grand Rapids hotel tax increase until Winnie Brinks moved an economic development bill?" Hall said. "That was months and months of holding on presenting."

A bill allowing Kent County to increase its hotel-motel tax waited in the House for more than four months after it had passed both houses in identical form before the House presented it to Governor Gretchen Whitmer as negotiations on related legislation continued (HB 5048 of 2023).

There is nothing in the Constitution, statute or the Joint Rules of the Legislature stating when a legislative house must present a bill. For unknown reasons, House Speaker Joe Tate (D-Detroit) and then-House Clerk Rich Brown allowed the 2023-24 House Democratic majority to end at noon January 1 without completing the enrollment and presentation of the bills to the governor.

– By Elena Durnbaugh

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Exhibit 3

STATE OF MICHIGAN

COURT OF APPEALS

DEARBORN HEIGHTS CITY COUNCIL,

Plaintiff-Appellee,

v

MAYOR OF DEARBORN HEIGHTS,

Defendant-Appellant.

UNPUBLISHED
June 11, 2020

No. 351408
Wayne Circuit Court
LC No. 19-010859-AW

Before: LETICA, P.J., and STEPHENS and O'BRIEN, JJ.

PER CURIAM.

Plaintiff, Dearborn Heights City Council, hired a law firm to assist it with a financial review of certain spending by the City of Dearborn Heights (the City). Defendant, the Mayor of Dearborn Heights, refused to sign plaintiff's retainer agreement with the law firm, despite plaintiff voting to override his veto of the agreement. Plaintiff brought this action seeking a writ of mandamus to compel defendant to sign the agreement. The trial court granted plaintiff's request and issued the writ. Defendant appeals. This appeal has been decided without oral argument pursuant to MCR 7.214(E). We affirm.

I. BACKGROUND

This case was plaintiff's third attempt to compel defendant to sign plaintiff's agreement with the law firm Ottenwess, Taweel & Schenk, PLC (Ottenwess) through a writ of mandamus.

On March 26, 2019, plaintiff passed two resolutions; one approving a financial review of certain spending by the City, a second approving the hiring of Ottenwess to assist with that review. Defendant vetoed the second resolution. At an April 9, 2019 meeting, plaintiff voted to override defendant's veto, and passed a resolution approving a retainer agreement with Ottenwess. Before defendant could veto that resolution, plaintiff sought a writ of mandamus directing defendant to sign the agreement. Defendant thereafter denied plaintiff's resolution, and on May 7, 2019, the trial court denied plaintiff's motion for a writ of mandamus because plaintiff, having not authorized the filing of the complaint, lacked standing.

On May 9, 2019, plaintiff passed a resolution authorizing the filing of a complaint for mandamus, and on May 16, 2019, plaintiff filed a second action, again asking for an order directing defendant to sign plaintiff's retainer agreement with Ottenwess. The trial court denied plaintiff's request on July 17, 2019, concluding that plaintiff's resolutions and the retainer agreement, as written, did not comply with the Dearborn Heights City Charter (the City Charter).

On July 24, 2019, plaintiff authorized both a revised retainer agreement with Ottenwess and the filing of a third complaint of mandamus if defendant refused to sign that agreement. Plaintiff also passed a resolution to hold a regular meeting on July 30, 2019. On July 25, 2019, defendant vetoed the resolutions passed at the July 24, 2019 meeting. At the newly scheduled July 30, 2019 meeting, plaintiff overrode defendant's veto. After defendant still refused to sign the revised retainer agreement, plaintiff filed the instant mandamus action on August 9, 2019.

This time, the trial court granted plaintiff's request for a writ of mandamus. First addressing whether plaintiff had a clear legal right to hire Ottenwess, the trial court ruled that it did under Dearborn Heights Charter § 5.13(j). The trial court reasoned that unlike plaintiff's prior retainer agreement, the revised retainer agreement complied with § 5.13(j), which allowed plaintiff to "retain special legal counsel to appear Of Counsel for and to assist the Corporation Counsel for a special matter and for such limited time and purpose as the City Council shall specify." Dearborn Heights Charter § 5.13(j). The trial court recognized that a portion of the revised agreement stating that Ottenwess would serve as special counsel to plaintiff (as opposed to corporation counsel) was not consistent with § 5.13(j), but it concluded that this was not fatal to plaintiff's action because the revised agreement contained a clause stating that it was "intended to be in compliance with the Dearborn Heights City Charter" and that any portion of the agreement inconsistent with the City Charter was to be severed. Based on this clause, the trial court severed the portion of the revised retainer agreement stating that Ottenwess was to serve as special counsel to plaintiff, thereby making the revised agreement compliant with § 5.13(j).

Next, the trial court concluded that defendant had a clear legal duty to sign the retainer agreement under Dearborn Heights Charter § 5.3, which required defendant "to perform all administrative functions of the City that are imposed by . . . resolution not inconsistent with the provisions of this Charter." The trial court also concluded that defendant's signing of the retainer agreement was ministerial, and that plaintiff had no other adequate remedy at law.

Subsequently, defendant filed a motion for relief from judgment under MCR 2.612(C)(1)(e), which states that the court may relieve a party from an order if "it is no longer equitable that the judgment should have prospective application." Defendant argued that it would not be equitable to enforce the writ of mandamus because plaintiff's override of defendant's veto was invalid. Defendant explained that plaintiff could only vote to override defendant's veto at a regular meeting, and the July 30, 2019 meeting was not a regular meeting because defendant vetoed plaintiff's July 24, 2019 resolution scheduling the July 30, 2019 regular meeting, making that meeting a special (not a regular) meeting. The trial court denied defendant's motion because his new argument "could have been raised at any time."

This appeal followed.

II. WRIT OF MANDAMUS

Defendant first argues that it was error for the trial court to grant plaintiff's request for a writ of mandamus compelling defendant to sign the revised retainer agreement. We disagree.

A. STANDARD OF REVIEW

"A lower court's decision on whether to grant a writ of mandamus is reviewed for an abuse of discretion." *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42, 59; 921 NW2d 247 (2018). To the extent that a request for a writ of mandamus involves a question of law, such as the interpretation of a municipal charter, our review is de novo. *Id.*; *Barrow v Detroit Election Comm*, 305 Mich App 649, 663; 854 NW2d 489 (2014).

B. ANALYSIS

A writ of mandamus is an "extraordinary remedy." *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 492; 688 NW2d 538 (2004). The purpose of a writ of mandamus is to compel action by a public official. *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016). A writ of mandamus is proper if the party seeking the writ can meet the following requirements:

> (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result. [*Id.* (quotation marks and citation omitted).]

Defendant only contests the trial court's ruling with respect to the first two elements: (1) whether plaintiff had a clear legal right to hire Ottenwess as special counsel, and (2) whether defendant had a clear legal duty to sign the revised retainer agreement with Ottenwess.

1. CLEAR LEGAL RIGHT

"Within the meaning of the rule of mandamus, 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." *O'Connell v Dir of Elections*, 317 Mich App 82, 91; 894 NW2d 113 (2016) (quotation marks and citation omitted).

Defendant concedes on appeal that plaintiff has a legal right to hire Ottenwess as special counsel. The City Charter clearly states, "The Mayor or the City Council may retain special legal counsel to appear Of Counsel to the Corporation Counsel for the purpose of assisting the Corporation Counsel for a special matter and for such limited time and purpose as the Mayor or Council shall specify." Dearborn Heights Charter § 5.13(j).

Defendant contends, however, that the issue is not whether plaintiff *could* hire Ottenwess as special counsel, but "whether [plaintiff] wishes to hire special counsel *for a proper purpose*." The City Charter permits plaintiff to conduct a financial investigation into City expenditures:

> The Council may subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidences needed to conduct formal investigations into the conduct of any department, office, or officer of the City and make investigations as to malfeasance, misfeasance, nonfeasance, or irregularities in municipal affairs. Failure to obey such subpoena or to produce books, papers, or other evidence as ordered under the provisions of this section shall constitute misconduct in office. [Dearborn Heights Charter § 6.13.]

The City Charter also permits corporation counsel to assist plaintiff with this investigation. It states that corporation counsel serves as "legal advisor to the Mayor and the Council in matters relating to their official duties," and must "perform such other and further duties as may be prescribed by this Charter, the Council or the Mayor." Dearborn Heights Charter §§ 5.13(b) and (g). Based on these provisions, plaintiff had the legal right to hire Ottenwess as "special legal counsel to appear Of Counsel to the Corporation Counsel," Dearborn Heights Charter § 5.13(j), and as of counsel to the corporation counsel, Ottenwess could assist plaintiff in plaintiff's official duties, Dearborn Heights Charter §§ 5.13(b) and (g), which includes conducting a financial investigation into certain spending by the City, see Dearborn Heights Charter § 6.13.

Defendant argues that the revised retainer agreement does not hire Ottenwess to merely assist plaintiff in its financial investigation, but instead delegates to Ottenwess plaintiff's investigative authority in violation of the nondelegation principle. See *Taylor v Smithkline Beecham Corp*, 468 Mich 1, 10; 658 NW2d 127 (2003) (explaining the nondelegation principle).[1]

Yet defendant points to nothing in the revised retainer agreement where plaintiff delegates its investigative authority to Ottenwess. Instead, he asks us to glean from the agreement as a whole that this was the parties' intent. We decline to do so. Under "Scope of Engagement," the agreement states:

> The Firm will perform legal services . . . regarding issues related to the special matter of the City Council's financial review of city operations. This scope of engagement includes the filing of any mandamus actions related to implementation of the financial review, appeals related to same, and is inclusive of all prior mandamus actions filed on behalf of the Dearborn Heights City Council. At your request, the scope of the service will include engaging Rehmann as a subcontractor under its MiDeal contract with the State of Michigan.

[1] Defendant first raised this argument in a motion for reconsideration, so it is not properly preserved. *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). Though we could decline to review this unpreserved issue, see *Autodie, LLC v City of Grand Rapids*, 305 Mich App 423, 431; 852 NW2d 650 (2014), we choose to review it because "it is an issue of law for which all the relevant facts are available." *Vushaj*, 284 Mich App at 519.

We read this not as plaintiff delegating its investigative authority to Ottenwess, but as plaintiff hiring Ottenwess to assist plaintiff in its financial investigation. This is particularly so given that the agreement provides:

> This retainer agreement is intended to be in compliance with the Dearborn Heights City Charter and shall be interpreted consistent with the Charter. The relevant provisions thereof are incorporated by reference in this Agreement. Any provision of this Agreement that is contrary to a provision of the Charter shall be severed from this Agreement and the balance of the Agreement shall remain in force.

As stated, the City Charter allows plaintiff to hire Ottenwess as "special legal counsel to appear Of Counsel to the Corporation Counsel," Dearborn Heights Charter § 5.13(j), and in that role, Ottenwess can act as legal advisor to plaintiff in its investigations, see Dearborn Heights Charter §§ 5.13(b) and (g). Interpreting the revised retainer agreement consistent with the City Charter, we read it as providing that Ottenwess will assist plaintiff in its financial investigation into certain spending by the City and nothing more.[2]

Defendant next argues that the revised retainer agreement violates the City Charter in a second way—according to defendant, the Charter does not allow plaintiff to hire special counsel to represent its individual interests. Defendant recognizes that plaintiff could hire Ottenwess as special counsel to assist corporation counsel in a special investigation, but argues that, as corporation counsel, Ottenwess would represent "*the City's* interests, not the interests of the appointing official."

We find this argument unpersuasive given the language of the City Charter. The City Charter states that corporation counsel serves as "legal advisor to the Mayor and the Council in matters relating to their official duties," serves as "legal advisor to and for each and every one of the several departments, commissions, boards, administrative offices and agencies of the City as directed by the Council or the Mayor," and must "perform such other and further duties as may be prescribed by this Charter, the Council or the Mayor." Dearborn Heights Charter §§ 5.13(b), (h), and (g). Based on these provisions, we conclude that the City Charter does not prohibit corporation counsel from representing the interests of one constituency within the City's government. To the contrary, we read the City Charter as permitting it.[3]

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[2] This is not to say that defendant's argument is meritless, only that, at this time, we do not read the retainer agreement as plaintiff delegating its investigative authority to Ottenwess. If, in the future, Ottenwess and plaintiff attempt to construe this agreement as granting Ottenwess that authority, then defendant's claim should be revisited. But until that time, we cannot address it. See *City Of Warren v City Of Detroit*, 471 Mich 941, 941-942; 690 NW2d 94 (2004) (MARKMAN, J., concurring) (explaining that an "essential element" of our courts' judicial authority is that the courts do not "declare rules of law that have no practical legal effect in a case").

[3] This is not to say that defendant is entirely wrong. In support of his argument that corporation counsel cannot represent plaintiff individually, defendant relies on the Michigan Rules of

In sum, we conclude that plaintiff had a clear legal right under the City Charter to hire Ottenwess to assist plaintiff in its financial investigation into certain spending by the City, and we are unpersuaded by defendant's arguments to the contrary.

2. CLEAR LEGAL DUTY

A clear legal duty exists when the defendant has a statutory obligation to perform a specific act. *Barrow*, 301 Mich App at 412.

Under the City Charter, once defendant's veto was overridden, plaintiff's resolution approving the revised retainer agreement became effective. See Dearborn Heights Charter § 7.13. And as part of defendant's responsibilities as mayor, he was required to "authenticate by his signature" the agreement. See Dearborn Heights Charter § 5.3(d). Thus, once plaintiff overruled defendant's veto, he had a clear duty under the City Charter to sign the revised retainer agreement.

Defendant contends that he did not have a duty to sign the revised retainer agreement because it violated the City Charter, and as mayor he has a duty "to enforce all of the laws and ordinances of the City." Dearborn Heights Charter § 5.3(a). But in support of this assertion, defendant simply repeats his argument that the City Charter does not permit corporation counsel (which includes Ottenwess under the revised retainer agreement) to represent plaintiff's interest individually. This argument is unpersuasive for the reasons explained above.

Defendant also asserts that allowing plaintiff to hire Ottenwess "jeopardizes the transparency required" by the City Charter because it would be possible for plaintiff to shield its investigation from the public under the guise of attorney-client privilege. But like defendant's nondelegation argument, this argument rests on defendant's assumption that Ottenwess, not plaintiff, will conduct the financial investigation. As stated, we read the revised retainer agreement as providing that Ottenwess will *assist* plaintiff in its financial investigation, not perform the investigation. As such, plaintiff would be conducting the investigation to the extent that it would any other investigation under § 6.13 of the City Charter, and Ottenwess would be providing plaintiff legal advice to assist in that investigation to the extent prescribed by plaintiff, as corporation counsel can do in any investigation. See Dearborn Heights Charter §§ 5.13(b) and (g).

Professional Conduct (MRPC). Defendant correctly points out that cities are bodies corporate, MCL 117.1, and so the rules that apply to corporate attorneys apply to city attorneys, which here is corporation counsel. MRPC 1.13(a) states, "A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders, or other constituents." Defendant is therefore correct that, in general, corporation counsel represents the interests of the City. But defendant appears to believe that this means that corporation counsel can *only* represent the interests of the City. This is not so. MRPC 1.13(e) states, "A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders, or other constituents, subject to the provisions of Rule 1.7," which address conflicts of interest. Thus, under the MRPC, corporation counsel (including Ottenwess under the revised retainer agreement) can represent a constituency within the City (like plaintiff) so long as doing so does not create a conflict of interest.

Based on the foregoing, we conclude that defendant had a clear legal duty to sign the revised retainer agreement once plaintiff voted to override his veto. Defendant does not challenge the trial court's conclusions that his signing of the veto was a ministerial act and that no other remedy exists that would allow plaintiff to hire Ottenwess to assist plaintiff in its financial investigation. Because plaintiff had a clear legal right to hire Ottenwess as explained above, plaintiff satisfied the four elements necessary for the court to issue a writ of mandamus.

III. RELIEF FROM JUDGMENT

Defendant argues that the trial court abused its discretion by denying his motion for relief from judgment. We disagree.

A. STANDARD OF REVIEW

This Court reviews the decision to grant or deny a motion for relief from judgment for an abuse of discretion. *Limbach v Oakland Co Bd of Co Road Comm'rs*, 226 Mich App 389, 393-394; 573 NW2d 336 (1997). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007). To the extent that defendant's challenge requires us to review the interpretation of a court rule, our review is de novo. *Bint v Doe*, 274 Mich App 232, 234; 732 NW2d 156 (2007).

B. ANALYSIS

Defendant argues that he is entitled to relief from judgment under MCR 2.612(C)(1)(e), which states in relevant part that a court may relieve a party from a final judgment if "it is no longer equitable that the judgment should have prospective application."

Defendant argues that it is no longer equitable to apply the writ of mandamus because plaintiff's override of defendant's veto was invalid. According to defendant, a veto can only be overridden at a regular meeting, and he contends that the July 30, 2019 meeting where plaintiff overrode his veto of the revised retainer agreement was not a regular meeting because he vetoed plaintiff's July 24, 2019 resolution scheduling the July 30, 2019 meeting. We need not reach the substance of defendant's argument because we conclude that defendant has not met the requirements to warrant equitable relief under MCR 2.612(C)(1)(e).

The portion of subsection (e) that defendant relies upon requires that it be "*no longer* equitable" to enforce the judgment. MCR 2.612(C)(1)(e) (emphasis added). For it to be *no longer* equitable to enforce a judgment, there must have been a change in circumstances that made enforcement of a once equitable judgment now inequitable. See 3 Longhofer, Michigan Court Rules Practice (7th ed), § 2612.14, commentary ("The subrule also authorizes relief from judgment on the ground that changed circumstances have made its prospective application inequitable."). We therefore conclude that this portion of MCR 2.612(C)(1)(e) only applied if there has been a change in circumstances from when the judgment was entered.

Nothing changed between the trial court's entry of judgment and defendant's motion for relief from that judgment. Instead, defendant thought of a new argument, and he is attempting to

use MCR 2.612(C)(1)(e) to assert that argument. Subsection (e) is not a tool for parties to use to raise new arguments that they simply failed to raise before. Because there was no change in circumstances making application of the trial court's judgment inequitable, defendant was not entitled to equitable relief under MCR 2.612(C)(1)(e).

But even if we are wrong and there need not be a change in circumstances for a party to move for equitable relief under MCR 2.612(C)(1)(e), we would nonetheless conclude that the trial court did not abuse its discretion by finding that defendant was not entitled to relief. It is well established that "one who seeks equity must do equity." *Windisch v Mtg Security Corp of America*, 254 Mich 492, 493-494; 236 NW 880 (1931). Defendant sat through, and even participated in, the July 30, 2019 meeting without raising any objections to plaintiff overriding his July 25, 2019 veto. As a result, plaintiff filed the instant action on August 9, 2019. Defendant filed his response on August 23, 2019, the parties appeared before the trial court on August 30, 2019, and the trial court issued its opinion on September 3, 2019. Defendant did not raise his current argument—that the July 30, 2019 meeting was not a regular meeting and therefore plaintiff could not override defendant's veto—until his September 24, 2019 motion. Thus, even if defendant's argument is meritorious, he delayed raising it (without reason) until after plaintiff prevailed, thereby attempting to undo over a month of litigation and overturn a ruling that was unfavorable to him. In so doing, defendant not only unnecessarily wasted plaintiff's time and resources, but caused an unnecessary drain on judicial resources. Such conduct, even if unintentional, is clearly not equitable. Because one who seeks equity must do equity, we conclude that the trial court did not abuse its discretion by declining defendant's request for relief from judgment under MCR 2.612(C)(1)(e).[4]

Briefly, we note that plaintiff requests this Court to award it sanctions against defendant "for filing this frivolous appeal." Plaintiff failed to file the proper motion requesting sanctions under MCR 7.211, so we decline to award plaintiff sanctions. See MCR 7.211(C)(8).

Affirmed.

/s/ Anica Letica
/s/ Cynthia Diane Stephens
/s/ Colleen A. O'Brien

[4] We also note that defendant's argument is a procedural irregularity that plaintiff could have corrected, and doing so would have only delayed plaintiff's cause of action, not defeated it on the merits.