STATE OF MICHIGAN

IN THE COURT OF APPEALS

Associated Builders and Contractors of Michigan, National Federation of Independent Business, Inc., Senator Edward McBroom in his official capacity, Representative Dale Zorn, in his official capacity, Rodney Davies, Kimberley Davies, Owen Pyle, William Lubaway, Barbara Carter, and Ross VanderKlok

Plaintiffs/Appellants,

v.

Treasurer of Michigan, Rachael Eubanks, in her official capacity

Defendant/Appellee

Court of Appeals No. _____

Court of Claims Case No.: 23-000120-MB

ORAL ARGUMENT REQUESTED

THIS CASE INVOLVES AN INVALID EXECUTIVE ACTION UNDER MCR 7.204(D)(3)(c)

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PLAINTIFFS/APPELLANTS' NOTICE OF APPEAL

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1. Plaintiffs Associated Builders and Contractors of Michigan, National Federation of Independent Business, Inc., Senator Edward McBroom in his official capacity, Representative Dale Zorn, in his official capacity, Rodney Davies, Kimberley Davies, Owen Pyle, William Lubaway, Barbara Carter, and Ross VanderKlok claim an appeal from a final judgement or final order entered on December 21, 2023, in the Court of Claims by Judge Elizabeth L. Gleicher.

2. Bond is not required.

3. The case was decided on dispositive motions and no transcript was made.

4. This case involves a challenge to Treasurer Eubank's announcement that the income tax rate from 2023 that was determined to be 4.05% after an application of the formula from MCL 206.51(1)(c) reverts to 4.25% for the application of that formula for tax year 2024. The principal types of relief sought are declaratory and mandamus.

Date: January 9, 2024

/s/ Patrick J. Wright

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Trial Court/Tribunal Name: Court of Claims	**Court of Appeals, State of Michigan** **Jurisdictional Checklist**	CASE NO. Trial Court/Tribunal: 23-000120-MB Court of Appeals:

Case Name: Associated Builders and Contractors of Michigan et. al. v Rachel Eubanks

INSTRUCTIONS: Please complete this checklist and file with your claim of appeal. **ALL** of the numbered items are required. Check each box as you confirm that each item is being filed.

☑ 1. A **signed** claim of appeal showing the correct lower court number(s). [MCR 7.204(B)(1) & (D).]

☑ 2. A filing fee of $375.00 or appropriate fee substitute. [MCR 7.202(3) & 7.204(B)(2).] (Where multiple lower court or tribunal numbers are involved, an additional filing fee may be required. Appellants will be advised of any additional amount required.)

☑ 3. A copy of the order you are appealing. [MCR 7.204(C)(1).] (This is the order deciding the merits and not an order denying reconsideration, new trial, or other post-judgment relief.)

☑ 4. Evidence that the necessary transcript has been ordered. [MCR 7.204(C)(2).] (Only one item from a through g is required).

- ☑ a. No transcript will be filed. [MCR 7.204(C)(2) & AO 2004-5 ¶ 8(A)(1).]
- ☐ b. The transcript has already been filed. [MCR 7.210(B)(1)(a).]
- ☐ c. The complete transcript has been ordered. [MCR 7.210(B)(1)(a).]
- ☐ d. This appeal is from a probate court proceeding which does not require a complete transcript. [MCR 7.210(B)(1)(b).]
- ☐ e. A motion has been filed in the lower court or tribunal for submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(c).]
- ☐ f. The parties have stipulated to submission of the appeal on less than the complete transcript. [MCR 7.210(B)(1)(d).]
- ☐ g. The parties have stipulated to a statement of facts. [MCR 7.210(B)(1)(e).]

☑ 5. Proof of service demonstrating that all other parties have been served. [MCR 7.204(C)(3).] (***Even if a party is not an appellee, they must be served.***)

☑ 6. A **current** register of actions from the lower court or tribunal. [MCR 7.204(C)(5).]

Finality of Order Being Appealed (Check the box that demonstrates your claim of appeal is by right. If neither applies, you do not have an appeal by right.)

☑ The claim of appeal is from an order defined as a final order by MCR 7.202(6) or MCR 5.801(B)(1). [MCR 7.203(A)(1).] Please specify which category of final order applies: MCR 7.202(6)(a)(i)

☐ The claim of appeal is from an order which is designated by statute, court rule, or case law as an order appealable by right to the Court of Appeals. Please specify the authority under which you have an appeal by right: _____

1-9-24
Date

P54052
Preparer's Signature

6/07

STATE OF MICHIGAN

COURT OF CLAIMS

ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., SENATOR EDWARD McBROOM, in His Official Capacity, REPRESENTATIVE DALE ZORN, in His Official Capacity, RODNEY DAVIES, KIMBERLEY DAVIES, OWEN PYLE, WILLIAM LUBAWAY, BARBARA CARTER, and ROSS VANDERKLOK,

Plaintiffs,

v

Case No. 23-000120-MB

RACHAEL EUBANKS, in Her Official Capacity as Treasurer of Michigan,

Hon. Elizabeth L. Gleicher

Defendant.
_____/

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFFS' COUNTERMOTION FOR SUMMARY DISPOSITION AND MOTION FOR A SHOW-CAUSE ORDER

Pending before the Court are defendant's motion for summary disposition under MCR 2.116(C)(4), (8) and (10), and plaintiffs' countermotion for summary disposition under MCR 2.116(C)(9) and (10), in this action for declaratory and mandamus relief. Also pending before the Court is plaintiffs' ex parte motion for a show-cause order under MCR 3.305(C) and for an expedited schedule. For the reasons discussed, the Court GRANTS defendant's motion for summary disposition and DENIES plaintiffs' countermotion for summary disposition and plaintiffs' ex parte motion to show cause.

I. BACKGROUND

Plaintiffs include two advocacy groups, Associated Builders and Contractors of Michigan (ABC), and National Federation of Independent Business, Inc. (NFIB) (collectively, the advocacy group-plaintiffs); Michigan Senator Edward McBroom and Michigan Representative Dale Zorn in their official capacity (collectively, the legislator-plaintiffs); and six individual Michigan taxpayers (collectively, the individual taxpayer-plaintiffs)

This matter concerns the interpretation of MCL 206.51(1), which sets Michigan's income tax rate. Specifically, the parties dispute whether defendant's announcement that, under MCL 206.51(1)(c), the income tax rate will decrease from 4.25% to 4.05% for tax year 2023 rendered 4.05% the default rate on a going-forward basis, or whether the rate will revert back to 4.25% after the 2023 tax year. According to plaintiffs, the difference between a 4.25% rate and a 4.05% rate amounts to an approximate $714 million difference in state revenue per calendar year. They allege that the rate should remain at 4.05% and that the Legislature relied on the lower rate when passing the 2023-2024 fiscal-year budget. Therefore, plaintiffs request that the Court conclude that the state income tax rate is capped at 4.05%, and ask that the Court issue a writ of mandamus requiring defendant, State Treasurer Rachael Eubanks, to apply that rate for tax year 2024.[1]

MCL 206.51(1) provides, in relevant part:

> (1) For receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed under this part upon the taxable income of

[1] The statute has been amended four times since 2015, but, as plaintiffs note in their complaint, those amendments are not material to this case. See MCL 206.51, as amended by 2016 PA 266, 2018 PA 588, 2020 PA 75 and 2023 PA 4. The statute was amended in 2023, but the changes will not impact the relevant language once they go into effect in February 2024. See MCL 206.51, as amended by 2023 PA 4 (effective February 13, 2024).

every person other than a corporation a tax at the following rates in the following circumstances:

(a) On and after October 1, 2007 and before October 1, 2012, 4.35%.

(b) Except as otherwise provided under subdivision (c), on and after October 1, 2012, 4.25%.

(c) For each tax year beginning on and after January 1, 2023, if the percentage increase in the total general fund/general purpose revenue from the immediately preceding fiscal year is greater than the inflation rate for the same period and the inflation rate is positive, then *the current rate* shall be reduced by an amount determined by multiplying *that rate* by a fraction, the numerator of which is the difference between the total general fund/general purpose revenue from the immediately preceding state fiscal year and the capped general fund/general purpose revenue and the denominator of which is the total revenue collected from this part in the immediately preceding state fiscal year. For purposes of this subdivision only, the state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall determine whether the total revenue distributed to general fund/general purpose revenue has increased as required under this subdivision based on the comprehensive annual financial report prepared and published by the department of technology, management, and budget in accordance with section 23 of article IX of the state constitution of 1963. The state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall make the determination under this subdivision no later than the date of the January 2023 revenue estimating conference . . . and the date of each January revenue estimating conference conducted each year thereafter. [Emphasis added.]

The parties dispute the meaning of the phrase "the current rate" in Subsection (1)(c). In plaintiffs' view, "the current rate" means the "most recent" rate, or the rate that is in effect when the analysis outlined in MCL 206.51(1)(c) is conducted. Because the tax rate was reduced to 4.05% for tax year 2023 based on a determination that the economic conditions outlined in the statute were met, plaintiffs argue that the 4.05% tax rate is the default rate for all subsequent years. Defendant maintains that the phrase "the current rate" refers to the 4.25% rate in Subsection (1)(b), which took effect beginning on October 1, 2012. So, in defendant's view, any reductions in the tax rate based on the economic conditions outlined in Subsection (1)(c) are temporary, and the tax rate reverts back to 4.25% for each tax year.

On March 23, 2023, Attorney General Dana Nessel issued an opinion, at defendant's request, that addressed this issue. Defendant asked the Attorney General to address the following question in a formal opinion: "If the income tax rate for a particular year is reduced under MCL 206.51(1)(c), does the income tax rate return to 4.25% as described in MCL 206.51(1)(b) in the subsequent year, or does the rate remain at the reduced rate calculated under MCL 206.51(1)(c)?" (Bolded emphasis omitted.)

The Attorney General concluded, "[E}xamining MCL 206.51(1) as a whole, it is apparent that the Legislature intended any income tax reduction under subsection (1)(c) to be for that tax year only, where the conditions described in subsection (1)(c) apply." OAG, 2020, No. 7320, at (March 23, 2023), p 2. The Attorney General explained that under Subsection (1)(c), the rate that is subject to reduction is the "current rate." *Id.* She concluded that the term "current" means " 'existing at the present time' " *Id.*, quoting *www.merriam-webster.com/dictionary/current.* After "considering the physical and logical relation of the subsections and subdivisions in MCL 206.51," the Attorney General concluded that Subsection (1)(b) established the default tax rate that applied unless the triggering event outlined in Subsection (1)(c) reduced temporarily the current rate. *Id.* at 3. In other words, for each tax year, a determination must be made whether a reduction of the rate in Subsection (1)(b) is warranted. "[A]ny reduction in that rate that occurred by operation of the triggering event is for a single tax year only, as provided in subsection (1)(c)." *Id.*

The Attorney General explained that MCL 206.51(10), which defines the terms used in the statute, does not contain a definition of "current rate" that would require a permanent change to the tax rate. *Id.* The Attorney General further reasoned that her conclusion was supported by the purpose of the triggering conditions outlined in Subsection (1)(c): "Essentially, the Legislature has determined that if a situation exists where a percentage increase in state revenue in the immediately

proceeding fiscal year is greater than the rate of inflation for that same year and the inflation rate is positive, then the State can afford to provide relief to taxpayers." *Id.* She reasoned that because the economic situation allowing for a reduction in the tax rate would only be temporary, the Legislature intended for that relief to be temporary as well. *Id.*[2]

Then, on March 29, 2023, defendant stated, in a Department of Treasury announcement, that the 2023 income tax rate would be reduced from 4.25% to 4.05% for one year, only. According to defendant, the timing of her announcement corresponded with the release of the 2022 Annual Comprehensive Financial Report. The next day, the Department of Treasury issued a notice to taxpayers in relation to the 2023 income tax reduction. Relevant to this matter, the Department indicated that its withholding-rate tables for the 2023 tax year would not be updated to accommodate the revised tax rate.

These two announcements prompted plaintiffs to sue defendant in this Court about five months later, on August 25, 2023. In their two-count complaint, plaintiffs request (1) a declaratory judgment that the term "current" in MCL 206.51(1)(c) means "most recent," so that the income tax rate is capped at 4.05% until the triggering event occurs again; and (2) a writ of mandamus requiring defendant to apply plaintiffs' interpretation of MCL 206.51(1)(c) to the current and future tax years. In their briefing, plaintiffs state that their declaratory-judgment claim relates only to the individual plaintiffs and the advocacy group-plaintiffs in their role as "membership organizations." The mandamus claim is limited to the legislator-plaintiffs and the advocacy group-plaintiffs in their role as "advocacy organizations." Along with their complaint, plaintiffs moved,

[2] Attorney General opinions are not binding on the Court but may be considered persuasive. *Risk v Lincoln Charter Twp Bd of Trustees*, 279 Mich App 389, 398-399; 760 NW2d 510 (2008).

on an ex parte basis, for a show-cause order under MCR 3.305(C), requesting a "final resolution" of the issue by December 15, 2023, as well as a speedy hearing under MCR 2.605(D).

Defendant's response to the complaint was a motion for summary disposition under MCR 2.116(C)(4), (8), and (10). First, defendant argues that this Court lacks jurisdiction over the case, and dismissal is warranted under MCR 2.116(C)(4), because plaintiffs filed an untimely complaint under MCL 205.22 of the Revenue Act. Defendant further argues that plaintiffs lack standing to sue defendant because they have no specialized injury, and their claims are not ripe for review because the tax rate for tax year 2024 will not be set until after the January 2024 revenue estimating conference.[3] Next, defendant argues that mandamus is not a proper remedy because the state treasurer does not have a duty to set the tax rate; her obligation is to work with the House and Senate Fiscal Agencies in relation to the January 2024 revenue conference. As for the merits, defendant argues that the plain language of MCL 206.51(1)(c) supports that the 4.25% rate is the default rate for each year in which the contingency is not satisfied. Defendant notes that, if plaintiffs' interpretation were current, then the tax rate would continue to decrease each year the contingency is triggered until the tax rate reaches zero.

Plaintiffs countermove for summary disposition under MCR 2.116(C)(9) and (10). Plaintiffs respond that MCL 205.22 does not apply because plaintiffs are not appealing " 'an assessment, decision or order of the department.' " As for standing, plaintiffs argue that the legislator-plaintiffs have a constitutional right, under Const 1963, art 4, § 31, to receive a "precise revenue estimate" for budgeting purposes. So they are entitled to know the correct income tax

[3] The first revenue estimating conference occurs during the second week of January and is generally the first step in the budget cycle. See MCL 18.1367b(1).

rate. They contend that the advocacy group-plaintiffs often advocate for their members during the budgeting process and, therefore, require accurate revenue estimates. Plaintiffs contend that their claims are ripe for adjudication because the Legislature recently passed the fiscal 2023-2024 budget, which was impacted by defendant's interpretation of MCL 206.51(1). They argue that the individual taxpayers will need to make decisions soon about whether to challenge an income tax assessment.

On the merits, plaintiffs argue that the word "current" means "most recent." They argue that defendant's reading of the statute would render the word "current" superfluous because, up until January 1, 2023, the only rate that could exist was the 4.25% rate. Plaintiffs also point out that, in earlier versions of the statute, the Legislature limited rate adjustments to particular tax years, showing that the Legislature knows how to limit rate adjustments when it wants to. They argue that the tax rate is unlikely to decrease over time because when the tax rate decreases, so will revenue, making the contingency in Subsection (1)(c) less likely to occur. And, they argue, it is not unreasonable for the income tax rate to be zero, as it was until 1967. As for their request for mandamus, plaintiffs argue that defendant executes the income tax rate and has a clear legal duty to do so accurately.

Finally, in their show-cause motion, plaintiffs repeat their arguments on the substantive issues and request a final resolution of the matter by December 15, 2023. They ask that the Court rule that the 4.05% tax rate remains in effect until the conditions in MCL 206.51(1)(c) trigger another decrease in the income tax rate.

II. STANDARDS OF REVIEW

Defendant requests summary disposition under MCR 2.116(C)(4) on the basis that plaintiffs failed to timely sue defendant under MCL 205.22. Summary disposition under MCR 2.116(C)(4) is appropriate when the Court lacks subject-matter jurisdiction over the case. *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 362094); slip op at 4, lv pending. " 'For jurisdictional questions under MCR 2.116(C)(4), this Court determines whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate a lack of subject matter jurisdiction.' " *Id.* (citation omitted).

A motion to dismiss under MCR 2.116(C)(8) tests the legal sufficiency of the claim as alleged in the complaint. *Bailey v Antrim Co*, 341 Mich App 411, 421; 990 NW2d 372 (2022). "A motion under MCR 2.116(C)(8) may . . . be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery." *Id.* (citation and quotation marks omitted). The Court will consider the factual allegations in the complaint as true for purposes of a (C)(8) motion. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 206; 920 NW2d 148 (2018).

Similarly, a motion for summary disposition under MCR 2.116(C)(9) tests the sufficiency of the defendant's pleadings. *Allen Park Retirees Ass'n, Inc v Allen Park*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket Nos. 357955 & 357956); slip op at 5. " 'When deciding a motion under MCR 2.116(C)(9) . . . the trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim.' " *Id.* at ___; slip op at 5 (citation omitted). Summary disposition is proper when the

defendant's pleading is "so clearly untenable" that, as a matter of law, no factual development could deny the plaintiff's ability to recover. *Id.* at ___; slip op at 5.

When considering a (C)(10) motion, the Court reviews the evidence in the light most favorable to the party opposing the motion. *Johnson v VanderKooi*, 502 Mich 751, 761; 918 NW2d 785 (2018). "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Prod, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (citation and quotation marks omitted). A genuine issue of material fact exists when the "record which might be developed . . . would leave open an issue upon which reasonable minds might differ." *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013) (cleaned up). "Generally, summary disposition under MCR 2.116(C)(10) is premature if it is granted before discovery on a disputed issue is complete." *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009). The relevant inquiry is whether additional discovery will stand a fair chance of uncovering additional factual support for the nonmovant's position. *Id.*

Plaintiffs also request a show-cause order under MCR 3.305(C). MCR 3.305 governs mandamus actions in the Court of Claims. MCR 3.305(A). MCR 3.305(C) provides, "On ex parte motion and a showing of the necessity for immediate action, the court may issue an order to show cause. The motion may be made in the complaint. The court shall indicate in the order when the defendant must answer the order."

The parties ask the Court to interpret MCL 206.51(1)(c), a tax statute within the Income Tax Act of 1967, MCL 206.1 *et seq.*, as well as a section of the Michigan Constitution of 1963.

Interpretation of a statute is a question of law. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 155; 802 NW2d 281 (2011). When interpreting a statute, the primary goal of the Court is to determine and give effect to the Legislature's intent. *O'Connor v Dep't of Treasury*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 360002); slip op at 2. The Court considers provisions of a statute in the context of the entire statute and "must 'give effect to every word, phrase, and clause . . . [to] avoid an interpretation that would render any part of the statute surplusage or nugatory.' " *Id.* at ___; slip op at 2 (citation omitted; alteration in original). If the statutory terms are not defined, the Court will examine and determine their plain and ordinary meaning, considering the context, and may consult a dictionary. *Id.* at ___; slip op at 2.

Only when there is an ambiguity in the plain language will the Court engage in judicial construction of the statute. *Zug Island Fuels Co, LLC v Dep't of Treasury*, 341 Mich App 319, 327; 989 NW2d 879 (2022). "A statute is ambiguous when an irreconcilable conflict exists between statutory provisions or when a statute is equally susceptible to more than one meaning." *Id.* (cleaned up). When faced with two reasonable alternative interpretations of an ambiguous statute, the Court must utilize the interpretation that "more faithfully advances" the statutory purpose. *Id.* (cleaned up). And, in the context of a tax statute, ambiguities are to be resolved in favor of the taxpayer. *Menard Inc v Dep't of Treasury*, 302 Mich App 467, 472; 838 NW2d 736 (2013). Additionally, when the Court concludes that the statute's plain language is ambiguous, the Court may refer to legislative history to determine the Legislature's intent. *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 410; 987 NW2d 501 (2022).

When interpreting a constitutional provision, the Court's goal is to effectuate the intent of the people who ratified the Constitution by applying a standard known as the rule of "common understanding." *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich 42,

61; 921 NW2d 247 (2018). This is the meaning that " 'reasonable minds, the great mass of people themselves' " would assign to the constitutional provision. *Wayne Co v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004). Words should generally be given their plain meaning at the time the Constitution was ratified. *Id.* at 468-469.

III. ANALYSIS

Plaintiffs assert claims for a writ of mandamus and a declaratory judgment.

> 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. In relation to a request for 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. [*Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016) (cleaned up).]

As for the request for a declaratory judgment, it is governed by MCR 2.605. *Davis v Wayne Co Election Comm*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket Nos. 368615 & 368628); slip op at 14, lv pending. The court rule states, in relevant part, "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." MCR 2.605(A)(1). The decision whether to grant a declaratory judgment is within the trial court's "sound discretion." *Davis*, ___ Mich App at ___; slip op at 15 (cleaned up). The court rule incorporates the doctrines of standing, mootness, and ripeness. *Id.* at ___; slop op at 15.

A. JURISDICTION UNDER MCL 205.22

Before reaching the merits of plaintiffs' claims, defendant raises several challenges to the justiciability of the issues before the Court. Defendant first argues that this Court lacks jurisdiction

because plaintiffs did not appeal an adverse tax decision, order, or assessment to this Court within 90 days of her March 29, 2023 notice (or by June 28, 2023), as required under MCL 205.22. The Court disagrees because MCL 205.22 does not apply to plaintiffs' claims.

MCL 205.22 provides, in relevant part:

> (1) A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 60 days, or to the court of claims within 90 days after the assessment, decision, or order. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal. . . .
>
> * * *
>
> (4) The assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.
>
> (5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section.

Defendant cites MCL 205.20 in support of her position that the Revenue Act, MCL 205.1 *et seq.*, applies to plaintiffs' claims. MCL 205.20 provides, "Unless otherwise provided by specific authority in a taxing statute administered by the department, all taxes shall be subject to the procedures of administration, audit, assessment, interest, penalty, and appeal provided in sections 21 to 30 [of the Revenue Act]." Defendant reasons that, because no provision of the Income Tax Act provides a different appeal procedure, plaintiffs are bound by the time frame outlined in MCL 205.22 of the Revenue Act.

The issue with defendant's argument is that plaintiffs are not appealing an adverse tax decision, assessment, or order of the Department of Treasury. Defendant's March 29, 2023 notice

and the Department's March 30, 2023 announcement are not tax assessments on any of the plaintiffs. Nor are they orders or decisions of the Department of Treasury, such as a final decision upholding a tax assessment. At this time, defendant has not assessed any tax against any of the individual plaintiffs for the 2024 tax year. Rather, plaintiffs are requesting declaratory and mandamus relief, on a prospective basis, regarding defendant's interpretation of the tax rate for tax year 2024. Plaintiffs' lawsuit is an original action before the Court, rather than an appeal of an agency's order or decision. Defendant has not cited any legal source that would extend the application of MCL 205.22 to a notice announcing defendant's anticipated tax policy for a future tax year.

Other language in MCL 205.22 provides context about the scope of the statute. MCL 205.22(5) refers to the fact that a person is not entitled to any "refund of any tax, interest, or penalty" paid under a tax assessment unless they appeal that assessment as required under MCL 205.22. The statute, therefore, contemplates that the tax assessment, decision, or order will relate to the assessment of a tax. Moreover, MCL 205.22 appears in the context of several statutes outlining the procedures for payment of taxes. MCL 205.21 governs the failure or refusal to file a tax return or pay tax, as well as the procedure for contesting liability for a tax assessment. MCL 205.21. MCL 205.23 relates to the Department's determination that a taxpayer has not satisfied a tax liability or that a claim was excessive. MCL 205.23(1). MCL 205.24 relates to the assessment of tax against a taxpayer who fails or refuses to file a tax return or pay timely a tax under the Revenue Act. MCL 205.24(1). So the surrounding sections of the Revenue Act also relate to the assessment of tax. This lends further support to plaintiffs' position that MCL 205.22 only applies

once the Department of Treasury assesses a tax.[4] The Court concludes, therefore, that MCL 205.22 did not apply to plaintiffs' claims, and plaintiffs were not subject to the time restrictions outlined in that statute.

B. STANDING

Next, defendant argues that the legislator-plaintiffs and advocacy group-plaintiffs lack standing to challenge the interpretation of MCL 206.51(1)(c). The Court agrees.

The Michigan Supreme Court has articulated the test for standing as follows:

> [A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Lansing Sch Educ Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).]

To establish standing, the plaintiff must have " 'a present legal controversy, not one that is merely hypothetical or anticipated in the future.' " *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 586; 957 NW2d 731 (2020) (citation omitted). In general, standing is determined at the outset of the case. *Id.* at 590. Standing does not depend on the merits of the case. Rather, "[w]hen a party's standing is contested, the issue becomes whether the proper party is seeking adjudication, not whether the issue is justiciable." *Tennine Corp v Boardwalk Commercial, LLC*, 315 Mich App 1, 7; 888 NW2d 267 (2016).

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[4] Defendant does not argue that plaintiffs failed to timely notify her of their claims, as required under MCL 600.6431.

Plaintiffs request declaratory and mandamus relief. MCR 2.605 incorporates the doctrine of standing. *T & V Assoc, Inc v Dir of Health & Human Servs*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 361727); slip op at 5. To assert a declaratory-judgment claim, "the plaintiff (1) must allege a case of actual controversy within the jurisdiction of the court, and (2) the [plaintiff] must be an interested party seeking a declaratory judgment." *Id.* at ___; slip op at 6 (cleaned up). "An 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." *Id.* at ___; slip op at 6 (cleaned up). An interested party is one that "has a legally protected interest that is in jeopardy of being adversely affected," and "a special injury or right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large." *Id.* at ___; slip op at 6 (cleaned up). In other words, the plaintiff must "plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised." *Davis*, ___ Mich App at ___; slip op at 15 (cleaned up)

Beginning with the legislator-plaintiffs, resolution of this issue requires the Court to examine several appellate cases analyzing when legislators have standing to challenge the interpretation of a statute. In *Killeen v Wayne Co Rd Comm*, 137 Mich App 178, 181; 357 NW2d 851 (1984), a group of plaintiffs sued the Wayne County Road Commission for declaratory relief and superintending control in relation to a six-year agreement between the defendant and a newly formed labor organization, arguing that the agreement was contrary to law and public policy. One of the plaintiffs was a state senator who was initially described in the complaint as merely a taxpayer residing in the county. *Id.* at 182. When the plaintiffs' standing to sue was challenged, it was revealed that the state senator was suing the defendants in his official capacity, and the complaint was amended to reflect that he had permission to sue on behalf of the Michigan Senate.

Id. at 182-183. On appeal, the Court of Appeals noted that federal caselaw had permitted legislators to sue when they alleged their votes had been nullified. *Id.* at 189. In that case, however, the Senator's vote had been counted and his "legislative work-product" was enacted. *Id.* Thus, by the time of the lawsuit, his "special interest" as a lawmaker had "ceased." *Id.* So the Court affirmed the trial court's ruling that he lacked standing. See *id.* at 185-186, 190.

In *House Speaker v State Administrative Bd,* 441 Mich 547, 550; 495 NW2d 539 (1993), four members of the Legislature challenged the authority of the State Administrative Board to transfer funds appropriated for one program to another program within a department of state government. Like in this case, the plaintiffs sued as individual members of the Legislature, and their lawsuit was not authorized by either the Michigan House or Senate. *Id.* at 553. And, like in this case, the plaintiffs sought equitable relief. *Id.* The plaintiffs alleged they had standing because the transfers "reduced their effectiveness as legislators" and worked to nullify "the effect of their votes." *Id.* at 554-555. They asserted that the defendant's conduct interfered with certain plaintiffs' ability to approve or disapprove of intradepartmental transfers, or to appoint members to their respective appropriations committees. *Id.* at 555.

When deciding the issue, the Michigan Supreme Court explained that legislators must overcome a heavy burden to establish standing in light of the potential separation-of-powers implications. *Id.* The Court expressed its reluctance to decide issues that would affect "the allocation of power" between the legislative and executive branches of government, which may prevent resolution of the conflict through the "normal political process." *Id.* at 555-556. Thus, rather than asserting " 'a generalized grievance that the law is not being followed,' " legislator-plaintiffs must establish that they were "deprived of a 'personal and legally cognizable interest peculiar to [them].' " *Id.* at 556 (citations omitted; alteration in original).

The Court held that only one of the plaintiffs had demonstrated a personal injury that was sufficient to establish standing. *Id.* at 561. That plaintiff was the Chair of the House Appropriations Committee, who had a specific statutory right to approve or disapprove of the transfers. *Id.* at 559-560. Thus, the board's actions, as alleged, deprived the Chair " 'of that specific statutory right to participate in the legislative process.' " *Id.* at 560 (citation omitted). In contrast, another legislator (an appropriations committee member) alleged that he did not have the opportunity to vote on the disputed transfer. *Id.* The Court held that he lacked standing because he was not suing to "maintain the effectiveness of his vote" but instead, was "suing to reverse the outcome of a political battle that he lost." *Id.* at 560-561.

Most recently, in *League of Women Voters*, 506 Mich at 570, 572, the Michigan Supreme Court addressed the issue of legislative standing in the context of a constitutional challenge to recent amendments to the Michigan Election Law, MCL 168.1 *et seq.*, that the Attorney General had concluded were unconstitutional. The issue in *League of Women Voters* involved the standing of the Legislature as a whole, as opposed to the standing of individual legislators. *Id.* at 592. The Court reasoned that whether the Legislature had a sufficient interest to sue an executive officer in light of that officer's "actual or threatened nondefense of legislation" was a "thorny issue." *Id.* The Court declined to reach the issue, however, concluding that it was moot because the Court had vacated the lower-court decisions for other reasons. *Id.* at 595.[5]

[5] Nevertheless, the Court reasoned that the Legislature did not have standing to pursue its case on the basis of the Attorney General's opinion, reasoning that a holding that Legislature has standing to sue for a declaratory judgment any time the Attorney General issued a formal opinion concluding that a statute is unconstitutional would be an "outlier." *Id.* at 596, 598.

Justice CLEMENT disagreed, reasoning that the Court needed to address legislative standing. *Id.* at 604 (CLEMENT, J., concurring in part and dissenting in part). Justice CLEMENT explained, "I do not believe a legislative declaratory-judgment action against an executive officer is justiciable when the Legislature seeks nothing more than a judicial declaration that the executive must implement a law as the Legislature prefers." *Id.* at 605. She reasoned that doctrines like the political-question doctrine exist to avoid interference with the separation of powers between the branches of government. *Id.* at 607. In Justice CLEMENT's view, the issue was properly viewed through the lens of jusiticability rather than standing, but she nevertheless concluded that the Legislature's claims were nonjusticiable. *Id.*

Plaintiffs argue that Const 1963, art 4, § 31 grants them a special interest in this matter. That constitutional section provides:

> The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an *itemized statement of estimated revenue* by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed. [Emphasis added.]

Plaintiffs rely on the historical background of the Michigan Constitution to support their interpretation of the constitutional provision. In addition to citing various committee reports, discussions, and proposed amendments, plaintiffs cite the Notice to the Address to the People,[6]

[6] The Address to the People is among the historical records that may be considered when interpreting constitutional provisions. See *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 309; 806 NW2d 683 (2011).

which was issued in relation to the passage of the 1963 Michigan Constitution. The Address to the People indicated that the purpose of Article 4, § 31, was twofold:

> 1. To focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation.
>
> 2. To require the legislature (as well as the governor by a subsequent provision) to set forth by major item its own best estimates of revenue.
>
> The legislature frequently differs from executive estimates of revenue. It is proper to require that such differences as exist be specifically set forth for public understanding and future judgment as to the validity of each. [2 Official Record, Constitutional Convention 1961, p 3375.]

Plaintiffs also cite Committee Proposal 46b, a proposal of the Committee on the Executive Branch, which proposed what would later become Const 1963, art 4, § 31. That proposal noted that the purpose and intent of the proposal was "to establish a constitutional executive budget process for the orderly management of the state's fiscal affairs." 1 Official Record, Constitutional Convention 1961, p 1635. The rationale behind the provision was "(a) to focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills . . . [and] (b) to require the legislature . . . to set forth by major item its own best estimates of revenue." *Id.* at 1636. The proposal explains, "The legislature frequently differs from executive revenue estimates. It seems only proper to require that such differences as exist be specifically set forth for public understanding and future judgment as to the validity of each." *Id.*

Plaintiffs also note that, in the early 1990s, Michigan created a process known as the revenue estimating conference, which is attended by the state budget director or the treasurer, and the Directors of both the Senate Fiscal Agency and the House Fiscal Agency, or their designees. See MCL 18.1367b(2). The statute requires the entities present at the revenue estimating conference to "establish an official economic forecast of major variables of the national and state

economies," as well as "a forecast of anticipated state revenues as the conference determines," which includes "[s]tate income tax collections." MCL 18.1367b(3)(a).

Based on art 4, § 31 and MCL 18.1367b(3), the legislator-plaintiffs contend that they "need to know how much is going to be collected in tax-collection revenue for the 2023-24 fiscal year and beyond" so that they can "engage in budget discussion and voting." They argue that, based on their estimate, defendant's interpretation of MCL 206.51(1)(c) will lead to a $714.2 million overstatement in the revenue projection, and the Michigan Constitution guarantees legislators a "precise revenue estimate for budgeting."

Plaintiffs do not support their claim that they are entitled to "precise revenue estimates" for budgeting. As defendant notes, the very concept of a precise estimate is oxymoronic considering that an estimate is, by its very nature, imprecise.[7] Article 4, § 31 does not contain such a requirement. Rather, the Constitution simply requires that the Legislature estimate revenues and refrain from passing an appropriations bill that exceeds the revenue estimates. See Const 1963, art 4, § 31. Nor does the Address to the People support plaintiffs' position. That document simply referred to a "best estimate" of revenue. The other historical documentation plaintiffs cite do not support that the Legislature is entitled to any precision in the revenue estimate. As defendant notes, the budget process involves numerous steps, including the revenue estimating conference, and estimates are provided throughout the year. See MCL 18.1342 (requiring the state budget

[7] The *Merriam-Webster* Online Dictionary, a source cited by both parties, defines the term "estimate," in relevant part, as "a rough or approximate calculation." Merriam-Webster Online Dictionary, *Definition of "Estimate,"* available at <https://www.merriam-webster.com/dictionary/estimate> (accessed on December 19, 2023). Considering this definition, the Court agrees with defendant that a concept that is rough or approximate is not reasonably understood to also require precision.

director or treasurer to "establish and maintain an economic analysis, revenue estimating, and monitoring activity," which must "include the preparation of current estimates of all revenue by source for state operating funds for the initial executive budget proposal to the legislature and thereafter through final closing of the state's accounts"). Plaintiffs cite no source that would entitle them to a "precise" revenue estimate.

As far as whether the legislator-plaintiffs have a specialized interest, while the two legislator-plaintiffs both served in the Legislature in 2015 when the relevant amendment to MCL 206.51 was passed, they clarify in their brief that neither is suing as a voting member of the 2015 Legislature. Rather, they contend that defendant's interpretation of the statute affects their ability as current legislators to perform their duty of creating a budget. But as our Supreme Court concluded in *House Speaker*, 441 Mich at 554-555, a general reduction in a legislator's ability to do his or her job does not confer standing. Neither legislator-plaintiff alleges that he is on the appropriations committee, and neither asserts that he has a specific statutory right, as did the legislator-plaintiff in *House Speaker* who had standing. See *id.* at 559-561. Thus, they have not met their heavy burden to establish a specialized interest peculiar to them. See *id.* at 555-556.

Plaintiffs do not provide a detailed analysis as it relates to the advocacy group-plaintiffs. They assert that the advocacy groups have both "institutional interests" as organizations that engage in lobbying efforts during the budgeting process, as well as "associational interests" as membership organizations with members who pay income tax. Plaintiffs argue that these entities are "well-known organizations that often advocate during the budget process on behalf of their members." But they recognize that the advocacy groups have no constitutional right to accurate budget information, and provide no other legal source that would grant them standing in this context. Plaintiffs also assert that these groups "participate in the budget process in a manner

different from that of the general public," but once again they do not support that the advocacy groups suffer from a specialized injury or have a legally protected interest distinct from the public at large. Additionally, the advocacy group-plaintiffs' claims are hypothetical, as these entities argue that defendant's interpretation of MCL 206.51(1)(c) will make their lobbying efforts more difficult. Accordingly, the legislator-plaintiffs and advocacy group-plaintiffs lack standing to sue defendant.

C. RIPENESS

Defendant also contends that plaintiffs' claims are not ripe for adjudication. The Court agrees.

The Court of Appeals has held that the doctrine of ripeness is "closely related" to the standing doctrine because both concepts focus on the timing of the lawsuit. *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 553; 904 NW2d 192 (2017). For a claim to be ripe, the plaintiff must have "sustained an actual injury." *Id.* at 554. "A party may not premise an action on a hypothetical controversy." *Id.* Once again, because plaintiffs request a declaratory judgment, they must plead and establish facts that would indicate an adverse interest that would necessitate a "sharpening of the issues raised." *Davis*, ___ Mich App at ___; slip op at 15 (cleaned up). " 'The doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained. A claim that rests on contingent future events is not ripe.' " *Id.* at ___; slip op at 15 (citation omitted). Thus, the timing of the action is the Court's "primary focus." *Id.* at ___; slip op at 15.

Plaintiffs assert that the legislator-plaintiffs and the advocacy group-plaintiffs have been injured by defendant's interpretation of MCL 206.51(1)(c) because the Legislature already passed

the 2023-2024 fiscal-year budget based on what plaintiffs allege was "bad information" about the income tax rate. They assert that this injury (an alleged $714 million difference in the revenue estimate) will have "wide-ranging policy impacts" both for tax year 2024 and beyond. As noted earlier, these groups lack standing. As for the individual taxpayer-plaintiffs, defendant argues that "in about 3 months or less, 5 million taxpayers (including ABC and NFIB members) will have to make decisions whether to challenge an income-tax assessment" through informal dispute-resolution, filing a Tax Tribunal claim, or suing in this Court.

Plaintiffs overlook one key fact: the tax rate for the 2024 tax year has not been determined. In other words, although defendant (and the Attorney General) have opined that the tax rate will revert back to 4.25% for the 2024 tax year, a determination whether to reduce that rate under the exception outlined in MCL 206.51(1)(c) may occur as late as the January 2024 revenue estimating conference (for 2023, the new rate was not announced until late March 2023). See MCL 206.51(1)(c) ("The state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall make the determination under this subdivision no later than the date of the January 2023 revenue estimating conference . . . and the date of each January revenue estimating conference conducted each year thereafter."). So, at this stage, we do not know if the 2024 tax rate will be 4.25%, 4.05%, or some other rate. The rate may even be *lower* than 4.05%. Therefore, it is not clear whether (and to what extent) the 2024 tax rate will impact the 2023-2024 fiscal-year budget. And no individual taxpayer-plaintiff has paid income tax, had any income tax withheld, or received a tax assessment based on the 2024 tax rate. As even plaintiffs acknowledge, defendant's interpretation of the 2024 tax rate will not begin to affect Michigan taxpayers until at least January 1, 2024. Thus, while plaintiffs argue that they can request forward-looking relief,

this Court cannot craft a remedy without knowledge of what the 2024 tax rate will be.[8] Plaintiffs' claims are unripe.

D. MEANING OF MCL 206.51(1)(c)

Plaintiffs' claims are not ripe for adjudication as of the date of this Court's decision. However, because the Court recognizes that plaintiffs' claims may become ripe for adjudication in the near future, the Court will analyze the merits of plaintiffs' claims in the event that the tax rate reverts back to 4.25%. In short, the Court agrees with defendant's interpretation of the Income Tax Act.

MCL 206.51(1) of the Income Tax Act imposes income tax on individuals and outlines the applicable tax rates. MCL 206.51(1)(a) provides that a 4.35% income tax rate was in effect between October 1, 2007, and October 1, 2012. For income taxes imposed on or after October 1, 2012, the applicable tax rate is 4.25%. MCL 206.51(1)(b). Subsection (1)(b) provides, "Except as otherwise provided under subdivision (c), on and after October 1, 2012, 4.25%." Defendant argues that the language "except as otherwise provided" anticipates the condition outlined in Subsection (1)(c). That Subsection provides, in relevant part:

[8] This fact distinguishes the matter from *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119; 537 NW2d 596 (1995), a case on which plaintiffs rely to support their argument that they may obtain an injunction in relation to future tax years. In *Taxpayers Allied*, the issue was an increase in the real-property transfer tax, which the plaintiff challenged under the Headlee Amendment, Const 1963, art IX, § 25. *Id.* at 120. The statute permitted a county to increase the real estate transfer tax, and the defendant (Wayne County) had already increased the tax rate by the time of the lawsuit. *Id.* at 121. The Court determined that the plaintiff's refund claim was barred by the applicable statute of limitations, but that the plaintiff could obtain an injunction to enjoin the imposition of future taxes that violated the Michigan Constitution. *Id.* at 125-127. However, unlike in this case, the county had already started to assess tax at the increased rate, and the increased rate was certain.

> For each tax year beginning on and after January 1, 2023, if the percentage increase in the total general fund/general purpose revenue from the immediately preceding fiscal year is greater than the inflation rate for the same period and the inflation rate is positive, then *the current rate* shall be reduced by an amount determined by multiplying *that rate* by a fraction, the numerator of which is the difference between the total general fund/general purpose revenue from the immediately preceding state fiscal year and the capped general fund/general purpose revenue and the denominator of which is the total revenue collected from this part in the immediately preceding state fiscal year. [MCL 206.51(1)(c) (emphasis added).]

Defendant argues that the phrase in Subsection (1)(b) that the 4.25% rate applies "[e]xcept as otherwise provided under subdivision (c)" suggests that the two provisions must be read in harmony, and that the triggering conditions in Subsection (1)(c) must be evaluated each year. Otherwise, the 4.25% rate is the default rate. The Court agrees.

The fact that Subsection (1)(b) provides that the 4.25% rate applies "except" as provided in Subsection (1)(c) suggest that the 4.25% is the default rate unless the triggering conditions in Subsection (1)(c) are met. Unlike Subsection (1)(a), Subsection (1)(b) does not provide an end date for the 4.25% tax rate or suggest that the rate expires once the conditions in Subsection (1)(c) are triggered.

Moreover, Subsection (1)(c) provides for conditions that apply "[f]or each tax year" beginning after January 1, 2023, which further supports that a determination must be made each year whether the triggering conditions are met to lower the income tax rate. Then, subdivision (c) adds that "*if*" certain conditions are met, then the current rate will be reduced as specified in the statute. See MCL 206.51(1)(c) (emphasis added). The common understanding of the term "if" is that something must happen before something else will occur. The use of the term "if" suggests that the reduction will only occur when the specified conditions are met, further supporting defendant's interpretation that the rate defaults to 4.25% each year. See also *In re Casey Estate*,

306 Mich App 252, 260; 856 NW2d 556 (2014) (consulting a dictionary to define the term "if" as " 'in case that; granting or supposing that; on condition that[.]' ") (alteration in original).

The parties dispute the meaning of "current rate" in Subdivision (c). The word "current' is not defined in the definitions listed in MCL 206.51(10), or in the general provisions and definitions section for the Income Tax Act, see generally MCL 206.1 through MCL 206.30. Thus, the parties consult dictionary definitions to determine the meaning of the term. Both parties consult Merriam-Webster's Online Dictionary. The relevant dictionary definitions of the word "current" include (1) "occurring in or existing at the present time"; (2) "presently elapsing"; and (3) "most recent." Merriam-Webster's Online Dictionary, *Definition of Current*, <https://www.merriam-webster.com/dictionary/current> (accessed on December 14, 2023). Defendant advocates for the "existing at the present time" definition, while plaintiffs argue for the "most recent" definition.

In *Honigman Miller Schwartz & Cohn LLP v Detroit*, 505 Mich 284, 307; 952 NW2d 358 (2020), the Michigan Supreme Court outlined the following legal standard to assist the Court with determining the meaning of a statutory term when the parties provide differing statutory definitions that render plausible interpretations of a statute. The Court explained:

> [I]n order to determine the most reasonable meaning of statutory language, such language cannot be read in isolation or in a manner disregardful of context; this Court will not extract words and phrases from within their context or otherwise defeat their import as drawn from such context. A statute should be interpreted in light of the overall statutory scheme, and [a]lthough a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context. [*Id.* (cleaned up; alteration in original).]

When the word "current" is read in context, the Court concludes that defendant's definition is the more appropriate understanding of the term. Reading the term "current" as "existing at the present time," it becomes clear that Subsection (1)(b) sets the default rate on or after October 1,

2012, which remains in effect each year unless the triggering events in Subsection (1)(c) occur. Reading the statute sequentially, Subsection (1)(a) is a rate with a definite start and end date. Subsection (1)(b) outlines the current tax rate of 4.25% unless the conditions in Subsection (1)(c) trigger a reduction. Subsection (1)(c) then provides for a reduction of the rate that exists at the present time (4.25%) if certain conditions are met. The reference to "that rate" in Subsection (1)(c) refers to the "current" rate, which is the 4.25% rate outlined in Subsection (1)(b).

Plaintiffs argue that, if defendant's interpretation is correct, then the word "current" would be superfluous. They argue that if the rate defaulted back to 4.25% each year, then there would only be one rate, and so the term "current" would not be required. Instead, the statute would have simply read "the rate." However, plaintiffs' argument overlooks that the income tax rate has changed over time. For example, before 2012, the tax rate was set at 4.35%. MCL 206.51(1)(a). The Legislature may amend the statute at any time to set a new "current rate." As a hypothetical example, in 2024, the Legislature could amend the statute to set a new income tax rate of 4.15%. If that were the case, then the 4.15% would become the "current rate" for purposes of Subsection (1)(c).

On the other hand, the Court is persuaded by defendant's argument that under plaintiffs' interpretation, the tax rate would continue to decrease each time the condition in Subsection (1)(c) is triggered, which could ultimately reduce the income tax rate to zero. As the Attorney General explained in her opinion, which the Court finds persuasive, the triggering condition is based on economic circumstances that change each year. OAG 7320, p 3. When the percentage increase in state revenue in the previous fiscal year is greater than the inflation rate, and the inflation rate is positive, then the Legislature has determined that the state can provide relief to taxpayers. *Id.* That situation is temporary. Logically, it would make little sense to provide a permanent tax cut based

on economic circumstances that exist in one calendar year. The Legislature did not indicate in the language of MCL 206.51 that it intended a continuous reduction in the income tax rate.

Plaintiffs further argue that it is not an "absurd" result to have no income tax, as this state did not have a broad-based income tax until 1967, and several states still do not assess income taxes. But, once again, there is no indication in the language of MCL 206.51 (or the Income Tax Act) as a whole that the Legislature sanctioned the prospect of no income tax. The language of the statute merely suggests that, for tax years 2023 and beyond, when certain economic conditions are met, a lower tax rate may be warranted based on those economic conditions.

Finally, plaintiffs note that the Legislature previously used a numeric income tax rate in 1983 PA 15, a previous iteration of MCL 206.51. Plaintiffs explain that, in that version of the statute, the Legislature created a formula for setting the income tax, establishing a tax rate of 3.9% as the starting point. MCL 206.51(1), as amended by 1983 PA 15, provided, in relevant part:

> (1) For receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed a tax at the following rates for the following periods upon the taxable income of every person, other than a corporation:
>
> (a) Through March 31, 1982: 4.6%.
>
> (b) From April 1, 1982 through September 30, 1982: 4.6% plus a temporary emergency surcharge of 1% of the taxable income of every person other than a corporation.
>
> (c) From October 1, 1982 through December 31, 1982: 4.6%.
>
> (d) January 1, 1983 and thereafter, 3.9% plus the following rates for the specified periods:
>
> *(i)* Except as provided by subsection (12), 2.2%, as adjusted pursuant to subsection (11), or the following rate for the respective period, whichever is the lesser:
>
> (A) From January 1, 1984 through December 31, 1984: 1.95%.

(B) From January 1, 1985 and thereafter: 1.2%.

(ii) 0.25% until the first of the month following the month in which the state treasurer makes the certification required by subsection (10), or through September 30, 1986, whichever date is earlier.

Plaintiffs argue that because the previous version of MCL 206.51 contained a specific, numeric income tax rate, the Legislature "intentionally chose a definition with the flexibility to handle a rate, which could be lower each and every year after the formulaic rate-setting process was applied." Plaintiffs also cite Subsection 9, which provided, "The rates provided in subsection (1), as limited by subsection (12), shall be annualized as necessary by the department for tax years that end after March 31, 1982 and the applicable annualized rate shall be imposed upon the taxable income of every person, other than a corporation, for these tax years." MCL 206.51(9), as amended by 1983 PA 15. Plaintiffs argue that the statute contains the phrase "these tax years," which further supports the Legislature knows how to limit a rate adjustment to a particular tax year. Finally, plaintiffs note that Subsection (11) of the 1983 version of the statute contained another "identified constant"—the statute used a 14.5% unemployment rate to allow for certain additional income tax adjustments. MCL 206.51(11), as amended by 1983 PA 15.

The Court disagrees that the 1983 version of the statute explains the Legislature's intent in relation to the 2015 amendment. The only thing that can be determined from the language of 1983 PA 15 is the fact that the Legislature intended for specific rates to apply for specific time periods. The same can be said for the current iteration of MCL 206.51, which sets specific rates for the period from October 1, 2007 to October 1, 2012, see MCL 206.51(1)(a), and sets another tax rate from October 1, 2012 to the present, see MCL 206.51(1)(b).

Moreover, the Michigan Supreme Court has explained that "to whatever extent courts correctly divined past legislatures' intents using previously enacted language, those intents should

not guide our interpretation of the *unambiguous* language of the current versions of the statutes; the acts of past legislatures do not bind the power of successive legislatures to enact, amend, or repeal legislation." *People v Gardner*, 482 Mich 41, 65-66; 753 NW2d 78 (2008). Plaintiffs' reliance on *Honigman*, 505 Mich at 311, is misplaced when, in that opinion, the Supreme Court compared the language in one tax statute with the language in two different tax statutes (rather than a previous iteration of the same statute). The 1983 version of the statute is not persuasive.

Plaintiffs also point to legislative history. Plaintiffs rely on House and Senate Fiscal Agency Legislative Analyses for the 2015 amendment to MCL 206.51. The House Fiscal Agency Analysis indicated that any revenue reductions resulting from a lowering of the tax rate "would continue in subsequent years." House Legislative Analysis, SB 414 (November 3, 2015). Plaintiffs also rely on the Senate Consensus Revenue Estimate Conference document corresponding with the 2023 Revenue Estimating Conference. Senate Fiscal Agency, Michigan's Economic Outlook and Budget Review, January 11, 2023, p 29. Plaintiffs note that the Senate Fiscal Agency stated, in its report, that a reduction in the tax rate was likely and that the reduction in the income tax rate would be "permanent." *Id.* Plaintiffs also rely on remarks by certain legislators during the debate process to support their interpretation of the statute.

Because the Court concludes that the language of the statute is unambiguous, the Court need not consult legislative history as a guide. See *Rouch World*, 510 Mich at 430 n 19 (explaining the "practical difficulties" with determining legislative intent from legislative history); *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 318 Mich App 338, 350 n 6; 897 NW2d 768 (2016) (noting that our Supreme Court has concluded that "[r]esort to legislative history of any form is proper only where a genuine ambiguity exists in the statute. Legislative history cannot be used to create an ambiguity where one does not otherwise exist.") (cleaned up), aff'd 502 Mich 695 (2018).

As our Supreme Court has explained, "sources like bill analyses, committee reports, and floor debate, which may reflect the views of some group of legislators, are of dubious value." *Rouch World*, 510 Mich at 430 n 19. As even plaintiffs acknowledge, the Michigan Supreme Court has held that legislative analyses, in particular, are weak indicators of legislative intent. See *id.* ("(1) [S]uch analyses are not an official form of legislative record in Michigan, (2) such analyses do not purport to represent the views of legislators, individually or collectively, but merely to set forth the views of professional staff offices situated within the legislative branch, and (3) such analyses are produced outside the boundaries of the legislative process as defined in the Michigan Constitution.") (cleaned up); *People v Byczek*, 337 Mich App 173, 186 n 6; 976 NW2d 7 (2021) (noting that a legislative analysis is " 'nothing more than the summaries and interpretations of unelected employees of the legislative branch' ") (citation omitted). For these reasons, the Court declines to consider external sources, such as legislative materials, to determine the meaning of MCL 206.51(1).

E. MANDAMUS RELIEF

Because the meaning of MCL 206.51(1) is clear from its language, declaratory relief is not warranted. Nor is mandamus relief. Plaintiffs acknowledge that their request for mandamus relief relates only to the legislator-plaintiffs and the trade-association plaintiffs "as advocacy organizations" (but not as "membership organizations"), neither of which have standing (as noted earlier). As discussed earlier, neither of these sets of plaintiffs have established a clear legal right to "correct information" about the income tax rate. Additionally, plaintiffs have not articulated a clear legal duty to implement plaintiffs' interpretation of the statute.

Plaintiffs rely on *Berdy v Buffa*, 504 Mich 876, 876 (2019),[9] a binding Michigan Supreme Court order. In *Berdy*, an election case which involved the interpretation of a city charter, the Supreme Court cited 55 CJS, Mandamus, § 74, p 107, for the position that " '[t]he requirement that a duty be clearly defined to warrant issuance of a writ does not rule out mandamus actions in situations where the interpretation of the controlling statute is in doubt. As long as the statute, *once interpreted*, creates a peremptory obligation for the officer to act, a mandamus action will lie.' " (Emphasis added.) The Court determined that the defendant (the city elections commission) had a clear legal duty to remove names of challenged candidates from the ballot in an election for city council, which the Court concluded was a ministerial task. *Id.* at 879.

Here, however, the Court has determined that the statute, as interpreted, does not obligate defendant to perform any action. Nor does Const 1963, art 4, § 31. Because plaintiffs have not established a clear legal right to their requested interpretation of the statute, and have established no legal duty to impose a 4.05% tax rate for 2024, the Court does not address whether the act would be ministerial in nature or whether no other adequate legal or equitable remedy exists that might achieve the same result. See *Berry*, 316 Mich App at 41. Additionally, because summary disposition is granted on both of plaintiffs' claims, the Court DENIES plaintiffs' motion for a show-cause order.

[9] A Michigan Supreme Court order is binding precedent if it is a final disposition on an application for leave to appeal and contains a "concise statement" of the facts and rationale for the decision. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 371; 817 NW2d 504 (2012).

IV. CONCLUSION

For the reasons discussed, IT IS ORDERED that defendant's motion for summary disposition is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' countermotion for summary disposition is denied.

IT IS FURTHER ORDERED that plaintiffs' motion for a show-cause order is DENIED.

This is a final order that dispenses with the final claim and closes the case.

Date: December 21, 2023

Elizabeth L. Gleicher
Judge, Court of Claims

CASE

Judicial Officer	Date Filed	Adjudication	Status
GLEICHER, ELIZABETH	8/25/23	ORDER ENTERED 12/21/23	CLOSED 12/21/23

PARTICIPANTS

PLAINTIFF 1	ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 2	NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC.	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 3	SENATOR EDWARD MCBROOM IN HIS OFFICIAL CAPACITY	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 4	REPRESENTATIVE DALE ZORN IN HIS OFFICIAL CAPACITY	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 5	DAVIES, RODNEY	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 6	DAVIES, KIMBERLEY	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 7	PYLE, OWEN	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 8	LUBAWAY, WILLIAM	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 9	CARTER, BARBARA	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 10	VANDERKLOK, ROSS	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
DEFENDANT 1	TREASURER OF MICHIGAN, RACHAEL EUBANKS, IN HER OFFICIAL CAPACITY	FILED: 8/25/23
	ATTY: DAVID WENTLAND THOMPSON # 75356 PRIMARY RETAINED	

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN	$195.00	$195.00	$0.00

	Assessed	Paid/Adjusted	Balance
DEF 1 TREASURER OF MICHIGAN, RACHAEL EUBANKS, IN HER OFF	$20.00	$0.00	$20.00

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity		User	Entry Date
8/25/23	WRIT	$175.00	amd	8/29/23
			kj	8/30/23
	PTF 1			

Activity Date	Activity		User	Entry Date
	PTF 2			
	PTF 3			
	PTF 4			
	PTF 5			
	PTF 6			
	PTF 7			
	PTF 8			
	PTF 9			
	PTF 10			
	DEF 1			
8/25/23	JUDICIAL OFFICER ASSIGNED TO GLEICHER, ELIZABETH L. 30369		amd	8/29/23
8/25/23	RECEIVABLE ELECTRONIC FILING SYSTEM FEE	$25.00	amd	8/29/23
8/25/23	RECEIVABLE FILING FEE	$150.00	amd	8/29/23
8/25/23	EX PARTE MOTION WITH BRIEF		amd amd	8/29/23 8/29/23
	PTF 1			
	PTF 2			
	PTF 3			
	PTF 4			
	PTF 5			
	PTF 6			
	PTF 7			
	PTF 8			
	PTF 9			
	PTF 10			
8/29/23	CERTIFICATE OF SERVICE		amd	8/29/23
	DEF 1			
8/30/23	PAYMENT	$175.00	kj	8/30/23
	RECEIPT NUMBER: COC-LAN.0007169			
	METHOD: ELECTRONIC FUND TRANSFER $175.00			
	Bundle: TEMP-ZXKLMKHW-35742644			
8/31/23	APPEARANCE APPEARANCE AND NOTICE OF APPEARANCE WITH PROOF OF SERVICE		kj	9/1/23
	DEF 1			
9/14/23	STATUS CONFERENCE VIA ZOOM	SET 9/18/23 3:00 P	kj	9/14/23
9/14/23	ORDER FOR ZOOM STATUS CONFERENCE		kj kj	9/14/23 9/14/23
9/19/23	PROPOSED STIPULATED ORDER		kj	9/20/23
	PTF 1			
	PTF 2			
	PTF 3			
	PTF 4			
	PTF 5			
	PTF 6			
	PTF 7			

Activity Date	Activity		User	Entry Date
	PTF 8			
	PTF 9			
	PTF 10			
	DEF 1			
9/21/23	ORDER		kj kj	9/21/23 9/25/23
9/25/23	ORDER DENYING PLAINTIFF'S EX PARTE MOTION TO SHOW CAUSE		kj	9/25/23
10/2/23	MOTION FOR SUMMARY DISPOSITION IN LIEU OF ANSWER TO COMPLAIUINT	$20.00	amd	10/3/23
	DEF 1			
10/2/23	RECEIVABLE MOTION FEE	$20.00	amd	10/3/23
10/17/23	MOTION - CROSS-MOTION FOR SUMMARY DISPOSITION	$20.00	kj kj	10/17/23 10/17/23
	PTF 1			
	PTF 2			
	PTF 3			
	PTF 4			
	PTF 5			
	PTF 6			
	PTF 7			
	PTF 8			
	PTF 9			
	PTF 10			
10/17/23	RECEIVABLE MOTION FEE	$20.00	kj	10/17/23
10/17/23	PAYMENT	$20.00	kj	10/17/23
	RECEIPT NUMBER: COC-LAN.0007296			
	METHOD: ELECTRONIC FUND TRANSFER $20.00			
	Bundle: 23-000120-MB-37037239			
10/18/23	PROPOSED STIPULATED ORDER		kj	10/18/23
	PTF 1			
	PTF 2			
	PTF 3			
	PTF 4			
	PTF 5			
	PTF 6			
	PTF 7			
	PTF 8			
	PTF 9			
	PTF 10			
	DEF 1			
10/19/23	ORDER		kj	10/19/23
11/6/23	RESPONSE TO PLAINTIFFS' 10/17/2023 CROSS-MOTION FOR SUMMARY DISPOSITION AND IN SUPPORT OF 10/02/2023 MOTION FOR SUMMARY DISPOSITION		kj	11/7/23
	DEF 1			

Activity Date	Activity	User	Entry Date
11/16/23	REPLY BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION IN SUPPORT OF ITS CROSS-MOTION FOR SUMMARY DISPOSITION PTF 1 PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7 PTF 8 PTF 9 PTF 10	kj	11/17/23
12/21/23	OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFFS' COUNTERMOTION FOR SUMMARY DISPOSITION AND MOTION FOR A SHOW-CAUSE ORDER DEF 1	kj	12/21/23
12/21/23	CLOSE CASE STATUS	kj	12/27/23