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 VANDERKLOCK,

Plaintiffs-Appellants,

v

TREASURER OF MICHIGAN, RACHAEL EUBANKS, in her official capacity,

Defendant-Appellee.
_____/

Court of Appeals No. 369314

Court of Claims No. 23-000120-MB

BRIEF OF APPELLEE TREASURER OF MICHIGAN

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Dated: February 16, 2024

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STATEMENT OF JURISDICTION

Defendant-Appellee Treasurer of Michigan, Rachel Eubanks, does not dispute that Plaintiffs-Appellants' claim of appeal is timely filed and agrees that this Court has jurisdiction. See MCL 205.22(3); MCR 7.203(A).

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Standing requires an injury. Appellants have failed to articulate an injury in fact based on their disagreement with the Treasurer's interpretation of MCL 206.51, including individual taxpayers because they have not been assessed or paid tax for the 2024 tax year. Do Appellants lack standing?

   Appellants' answer: No.

   Appellee's answer: Yes.

   Trial court's answer: Yes.

2. Ripeness requires an actual controversy, not a merely hypothetical one. To date, no taxpayers have been assessed, or any refunds denied based on the 2024 tax rate, and current and/or future legislatures may yet act and change the provision at issue. Are Appellants' claims ripe for adjudication?

   Appellants' answer: Yes.

   Appellee's answer: No.

   Trial court's answer: Yes.

3. To be entitled to a writ of mandamus, a plaintiff must show that: (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled; (2) the defendant has a clear legal duty to perform the act; (3) the act is ministerial; and (4) no other remedy exists that might achieve the same result. MCL 206.51(1)(c) only requires the Treasurer to work with the house and senate fiscal agency directors to determine "whether the total revenue distributed to general fund/general purpose revenue has increased" based on the comprehensive annual financial report no later than January 2023. Did the Court of Claims correctly rule that Appellants' claims are not eligible for mandamus relief?

   Appellants' answer: No.

   Appellee's answer: Yes.

   Trial court's answer: Yes.

4. MCL 206.51(1)(b) sets forth the default tax rate of 4.25% that applies every year unless certain conditions are met under Subsection (1)(c), which contains exceptional and conditional language specifying when the tax rate changes based on certain economic conditions that may occur. When those conditions occur, the tax rate is reduced from the "current rate." Did the Court of Claims correctly rule that the "current rate" is the default rate that applies every year unless certain conditions are met?

   Appellants' answer: No.

   Appellee's answer: Yes.

   Trial court's answer: Yes.

STATUTE INVOLVED

MCL 206.51

(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 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.

INTRODUCTION

As a threshold matter, this Court cannot issue an advisory opinion on MCL 206.51 because of two distinct justiciability barriers. That is because standing and ripeness are required for adjudication, yet neither are present here. The Legislators and advocacy groups lack standing because they do not advance any specialized injury—they simply argue that their own view of the law is not being followed. Neither Const 1963, art 4, § 31 nor MCL 18.1342 guarantees the Legislators a precise or permanent tax rate; each provides only for revenue *estimates*. And the advocacy groups fail to articulate any legal right to such information that is special or unique from the general public. These claims also are not ripe for adjudication. A tax rate, including the rate Appellants purport to challenge, takes effect only after the statutorily required revenue estimating conferences—a future contingent event. And the Legislature may alter the tax rate before then; indeed, as of the date of filing, House Bill 5399 has been introduced to do just that. Finally, mandamus is improper because the identified duty, MCL 206.51, is for the Treasurer to work with the house and senate fiscal agencies for the January revenue conference, not to set the rate itself. Appellants' claims create separation of powers problems and gloss over the fact that the state budgeting/appropriations process contains any number of statutory mechanisms to account for changes in estimates and revenues, including for shortfalls.

Regarding the merits, this case concerns a question of statutory construction: how is MCL 206.51 to be read? The Treasurer answers this question simply—the statute must be read in accordance with its plain text and structure, which imposes

a default income tax rate of 4.25% for tax years after 2012. The statute also contains an exception to that tax rate if a certain economic contingency is satisfied. That contingency involves the relationship between general fund revenue and the inflation rate—if the former exceeds the latter, the tax rate is reduced for that tax year. In all other years, the default tax rate applies. It is a simple and unremarkable default-exception structure.

By contrast, Appellants assert an argument that relies heavily on past legislative schemes and history, general budget information, and a textual argument that derives all of its force from a single word—"current." But past legislation and budget information do not inform the meaning of the statute's plain text. Further, Appellants' interpretation would turn everything on its head—the exception becomes the rule, the contingency becomes the default. If Appellants are correct, the reduced rate would be permanent, contravening the plain language of the statute and also Michigan's income tax scheme insofar as such reductions would eventually eliminate the income tax through each application of the formula. This would render nugatory the very heart of the income tax scheme.

For these reasons, this Court should affirm the Court of Claims' decision.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

In 2015, the Legislature amended the Income Tax Act of 1967, MCL 206.1 *et seq*. (Income Tax Act). See 2015 PA 180. Relevant to this case, the amendment added a provision for tax years beginning after January 1, 2023, that lowers the individual income tax rate from 4.25% when "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." MCL 206.51(1)(c).[1] In March 2023, State of Michigan Treasurer Rachael Eubanks requested an opinion from Michigan Attorney General Dana Nessel as to whether the individual income tax rate would remain at the reduced rate in subsequent years when the reduction was not triggered. (Apps' Appx, p 72, Compl, Ex 7 (AG Op Req), p 2.) Attorney General Nessel issued a formal opinion concluding that the rate reduction was not permanent. (Apps' Appx, pp 43-46, Compl, Ex 1 (OAG, 2023, No. 7320 (March 23, 2023)).)

After the release of the 2022 Annual Comprehensive Financial Report, Treasurer Eubanks announced on March 29, 2023 that the 2023 individual income tax rate would "decrease to 4.05% for one year" based on the 2015 law. (Apps' Appx,

[1] When the MCL 205.51(1)(c) condition is met:

> 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. [*Id*.]

pp 74-76, Compl, Ex 8 (03/29/2023 Announcement), p 1.) The March 29 announcement referenced Attorney General Nessel's formal opinion. (*Id.* at 2.) The following day, Treasury issued a notice that the conditions required for an individual income tax rate reduction in MCL 206.51(1)(c) had been met and that the 2023 individual income tax rate would be reduced to 4.05%. (Apps' Appx, pp 78-79, Compl, Ex 9 (Notice), p 1.)

The Senate Fiscal Agency prepared an economic outlook dated May 16, 2023, which referenced a reduction in the individual income tax rate for 2023, and stated that "[b]ased on an opinion from the Attorney General, the rate reduction is a temporary rate reduction for the tax year 2023 . . . ." (Apps' Appx, p 88, Compl, Ex 12 (Michigan's Economic Outlook and Budget Review), p 36.[2]) On May 19, 2023, the Treasurer and heads of the Senate Fiscal Agency and House Fiscal Agency released the Consensus Revenue Agreement Executive Summary, which stated that the calculated 2023 individual income tax rate would be 4.05%. (Appx, pp 30-32, Consensus Revenue Agreement; Appx, pp 33-34, Economic and Revenue Forecasts (excerpt).[3]) See also Apps' Appx, p 17, Compl, ¶¶ 32–33 (discussing the May 2023 revenue conference).

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[2] The full text of this publication is available at House Fiscal Agency, *Consensus Revenue Estimating Conference* <https://www.house.mi.gov/hfa/Consensus.asp> (accessed February 14, 2024).

[3] These public documents are being offered for background purposes only and to the extent this Court reaches the merits under MCR 2.116(C)(10) in the Argument, Section IV. They are not relevant or necessary for reaching the jurisdictional and justiciability issues under MCR 2.116(C)(4) or MCR 2.116(C)(8). They are also available online at the same source as footnote 2.

Approximately five months after the March announcement from Treasurer Eubanks, and more than three months after the release of the Consensus Revenue Agreement, Appellants filed a two-count complaint. Count I of the complaint requests a declaratory ruling that the 4.05% individual income tax rate is "capped" until a subsequent reduction is triggered. (Apps' Appx, pp 13-17, Compl, ¶¶ 69–90.) Count II seeks a writ of mandamus that would require Treasury to apply Appellants' interpretation of MCL 206.51(1)(c). Appellants also filed an *ex parte* motion to show cause under MCR 3.305(C) and requested an expedited schedule, seeking a decision of the Michigan Supreme Court by December 15, 2023. (Apps' Appx, p 19, Compl, ¶ 41.)

Opinion of the Court of Claims

Following the filing of cross-motions for summary disposition, the Court of Claims issued its Opinion and Order. (Opinion and Order.) After summarizing the facts, procedural history, and the parties' arguments, the Court of Claims first analyzed whether it had jurisdiction under MCL 205.22. (*Id*., p 11.) Concluding that Treasury had not issued an assessment, order, or determination, but instead that Appellants were seeking prospective declaratory relief, the Court of Claims held that MCL 205.22(1) did not apply. (*Id*., pp 12–13.)

The Court of Claims then held that the Legislators and advocacy groups lacked standing. (*Id*., p 14.) After reviewing the relevant caselaw, as well as Const 1963, art 4, § 31, the Notice to the Address of the People, Committee Proposal 46b, and MCL 18.1367b, the Court of Claims held that those authorities did not support

the Legislators' claim that they are entitled to "precise revenue estimates." (*Id.*, pp 15–21.) The Court of Claims also explained that the Legislators had not met their heavy burden to "establish a specialized interest peculiar to them" because neither alleged that they were on the appropriations committee and a "general reduction in a legislator's ability to do his or her job does not confer standing." (*Id.*, p 21, citing *House Speaker*, 441 Mich at 554–555.) With respect to the advocacy-group Appellants, the Court of Claims explained that the groups had no "constitutional right to accurate budget information" and that Appellants had not supported the notion that the advocacy groups had suffered a specialized injury or had a legal interest distinct from the general public. (*Id.*, pp 21–22.)

The Court of Claims then analyzed whether Appellants' claims were ripe, noting that Appellants' arguments overlooked the fact that the 2024 tax rate had not been set. (*Id.*, pp 22–23.) Under MCL 206.51(1)(c), the tax rate would be set after the January revenue estimating conference. (*Id.*) The Court also noted that none of the taxpayer Appellants had paid, had withheld, or been assessed a tax based on the 2024 rate. (*Id.*)

Although it held that Appellants' claims were not ripe, the Court of Claims nevertheless opined on the merits of the dispute, stating that the claims may have become ripe "in the near future." (*Id.*, p 24.) Because subsection (1)(b) provides that the rate is 4.25% "[e]xcept as provided in subsection (1)(c)," the text suggests that 4.25% is the default rate. (*Id.*, p 25.) And subsection (1)(c) includes the phrase "for each tax year," so the text supports the conclusion that the determination must

be made each year. (*Id.*) Further, inclusion of the word "if" leads to the conclusion that the rate reduction will only happen when the specified conditions are met. (*Id.*)

In construing the meaning of the word "current," the Court of Claims explained that, reading the phrase in context, "existing at the present time" is the proper definition. (*Id.*, pp 26–27.) The Court of Claims further explained that, reading the statute sequentially, the "current rate" is 4.25% unless certain conditions are met. The Court of Claims also reasoned that Appellants' interpretation could lead to an income tax rate of zero, and that the "trigger" of the rate reduction is a temporary situation. (*Id.*, p 27.) There is no indication within MCL 206.51 of the Income Tax Act that the Legislature intended for there to be no income tax. (*Id.*, p 28.) Although a previous version of MCL 206.51 contained a specific, numeric rate, that previous statute did not explain the legislative intent of the 2015 Legislature. (*Id.*, p 29.) Because the Court of Claims concluded that the statutory language was unambiguous, it properly declined to consult the legislative history cited by Appellants. (*Id.*, pp 30–31.) Finally, because the statute was unambiguous, the Court of Claims denied declaratory and mandamus relief. (*Id.*, p 31.) The Court of Claims granted Treasury's motion for summary disposition, denied Appellants' motion for summary disposition, and denied Appellants' motion for a show-cause order. (*Id.*, p 33.)

This appeal followed.

STANDARD OF REVIEW

This Court reviews the grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118 (1999).

ARGUMENT

I. The Court of Claims properly determined that the individual Legislators and advocacy groups lack standing.

The Court of Claims properly found that the individual Legislators and the advocacy groups lack standing to challenge the interpretation of MCL 206.51(1)(c). (COC Slip op pp 14–22.) The Legislators point to Const 1963, art 4, § 31 as the root of their purported "special injury," which they frame as a constitutional right to "early" and "accurate" revenue forecasts. (App Br, p 20.) True, the Legislature is entitled to revenue *estimates*. Const 1963, art 4, § 31. But wholly absent from the Constitution is the concept of precise revenue figures or a permanent tax rate. This is in part why the Legislature created revenue conferences in both January and May each year. MCL 18.1367b(1). As the Court of Claims astutely pointed out, "the very concept of a precise estimate is oxymoronic considering that an estimate is, by its very nature, imprecise." (COC Slip op p 20.) Appellants provide little to no analysis on how a desire for a permanent tax rate would contravene a constitutional right to revenue *estimates*. As such, the Legislators lack standing because they have not alleged any specialized injury; the constitutionality of MCL 206.51 is not being questioned nor have their legislative votes been nullified. The appropriation process can, and frequently does, involve changes during the fiscal year as better information becomes available. Const 1963, art 5, § 20 (Governor, with approval of House and Senate Appropriation Committees, must reduce expenditures if actual revenue falls below estimated revenue); MCL 18.1342 (preparing revenue estimates

for initial executive budget proposal and "thereafter through final closing of the state's accounts.").

As to the advocacy groups, they concede "they are not constitutionally entitled to accurate budgetary information[.]" (App Br, p 22.) That concession should be dispositive, as an abstract desire for a permanent, individual income tax rate does not confer standing; they have not demonstrated any harm to them. And the advocacy groups provide no analysis as to how the Lobby Act, MCL 4.411 *et seq*.— an act focused on *regulating* lobbying efforts, not bestowing rights—somehow sprouts a right to demand permanent and precise figures to advocate for their interest. (App Br, 22.)[4] If the Lobby Act had any relevance here, Appellants would at least provide the appropriate section(s) and subsection(s), if any, that confer any such rights. They have not done so. The Legislators and advocacy groups seek nothing more than a judicial declaration that the Treasurer enforce the law pursuant to their own view of the law; their remedy, however, is the legislative process, see, e.g., House Bill 5399,[5] not the courts.

A. A generalized complaint that the law is not being followed does not confer standing for the Legislators.

Legislators have a heavy burden to demonstrate standing. *House Speaker v State Admin Bd*, 441 Mich 547, 555 (1993). "[S]tanding refers to the right of a party

[4] Appellants did not raise this argument below. "Generally, for an issue to be preserved for appellate review, it must be raised in or decided by the trial court." *Ayotte v Dep't of Health & Human Servs*, 337 Mich App 29, 39 (2021).
[5] Available at https://www.legislature.mi.gov/documents/2023-2024/billintroduced/House/pdf/2024-HIB-5399.pdf (accessed February 12, 2024).

plaintiff *initially* to invoke the power of the court to adjudicate a claimed injury in fact." *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290 (2006). Standing is assessed when the complaint is filed—the "outset of the case." *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 590 (2020). "[W]hen standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable." *Allstate Ins Co v Hayes*, 442 Mich 56, 68 (1993) (cleaned up).

The proper test for standing was explained in *Lansing Schools Education Association v Lansing Board of Education*:

> [A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605 [i.e., an actual controversy], 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 Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372 (2010).]

The Legislators assert that "the interest the Legislators' claim comes from Const 1963, art 4, § 31[.]" (App Br, p 20.) Below they argued they were entitled to a "precise revenue estimate for budgeting," despite the word "precise" being wholly absent from Const 1963, art 4, § 31 or MCL 18.1342 for developing revenue estimates. (Appx, p 16.) The Legislators now pivot to re-dress their argument. (App Br, p 22 ("At the Court of Claims, Plaintiffs/Appellants used the term "precise revenue estimate" . . . .").) They now assert that the Treasurer's construction of

MCL 206.51 results in an "overstatement in the revenue projection," which, under the Legislators' theory, contravenes Article 4, Section 31. But Appellants have failed to identify any constitutional or statutory provision that provides them with precise revenue information through implementing a permanent tax rate—there is no right to a crystal ball for tax revenue as evident by MCL 206.51(1)(c). Const 1963, art 4, § 31; MCL 18.1391. Hence, the word "estimate" in our Constitution, which means "a rough or approximate calculation." *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020). Appellants' alleged injury through the constitutional right asserted is incongruent with their request for relief. Therefore, there is no "actual controversy" consistent with MCR 2.605 or any cognizable special injury, as the right asserted is simply the right to an estimate.

The Appellant Legislators' dispute is more akin to a generalized grievance that their interpretation of MCL 206.51(1)(c) is not being applied. See *House Speaker*, 441 Mich at 556 ("For these reasons, plaintiffs who sue as Legislators must assert more than a generalized grievance that the law is not being followed.") (cleaned up). Once a statute is enacted into law, Legislators' "special interest as lawmakers has ceased." *Killeen v Wayne Co Rd Comm*, 137 Mich App 178, 189 (1984) Indeed, Justice Clement opined that "a legislative declaratory-judgment action against an executive officer is [not] justiciable when the Legislature seeks nothing more than a judicial declaration that the executive must implement a law as the Legislature prefers." *League of Women Voters of Mich*, 506 Mich at 605 (CLEMENT, J., concurring in part and dissenting in part). That is exactly the

situation here. Granting standing to Legislators to sue members of the executive branch implicates issues of separation of powers; any perceived concern about the interpretation of the statute can be rectified through the legislative process. This is especially true since the Legislature retains constitutional authority to do what it does best: introduce a bill to change MCL 206.51(c) if they so desire—which process is currently being used in House Bill 5399. See Const 1963, art 4, § 1 (vesting of legislative power); Const 1963, art 9, § 1 ("The legislature shall impose taxes sufficient with other resources to pay the expenses of state government.").

Appellant Legislators' generalized political grievance is not enough. Below, the Legislators' asserted a right to "precise" revenue estimates, (Appx, p 16), but now they recast the argument as a right to "an orderly budget process where expenditures and revenue align as early and as consistently as possible." (App Br, p 23.) No matter how they couch their desires, they fail to cite any authority to suggest that any part of our Constitution guarantees a permanent tax rate for the revenue estimating conferences. Unlike Chair of the House Appropriation Committee in *House Speaker*, the Legislators here have no special right to revenue estimates based on their interpretation of MCL 206.51. See App Br, 19; see also *House Speaker*, 441 Mich at 561. Nor would their interpretation make a "precise" estimate more likely, as the statute would still contain conditions under which the tax rate would be subject to variance. It is important to note that the budget process typically begins with each chamber of the Legislature's respective appropriation committees and subcommittees. (Apps' Appx, p 85.) Neither

Legislator is currently listed on the appropriation committee for the House of Representatives. See The Michigan House of Representatives, *Appropriations*.[6] And any perceived issue that the revenue estimates are not "precise"—and may potentially lead to imperfect budget forecasts—is rectified through the established procedures to correct any shortfalls already mandated. Const 1963, art 4, § 20; MCL 18.1342, 18.1391–1392. Appellants do not articulate how the established process is not sufficient.

Appellants also misconstrue several cases, namely, *House Speaker*, *League of Women Voters of Michigan,* and *Killeen,* in arguing that the Legislators have a specialized injury. They do not. Standing requires scrutiny of the actual interests the Legislators are advancing.

For example, in *House Speaker*, our Supreme Court rejected standing for several Legislators because, except for one legislator on the House Appropriation Committee, they were simply complaining that the State Administrative Board was not following the law when it transferred appropriated funds. 441 Mich at 560–561. The Court, however, found that one legislator had standing as a member of the House Appropriation Committee because the transfer purportedly deprived him of the ability to vote to approve or disapprove the transfer. *Id.* Consistent with *House Speaker*, Appellant Legislators here are advancing a generalized grievance that the Treasurer is not following their interpretation of MCL 206.51(1)(c). That is not

[6] Available at <https://www.house.mi.gov/Committee/HAPPR> (accessed February 14, 2024).

sufficient to confer standing because "plaintiffs who sue as Legislators must assert more than a generalized grievance that the law is not being followed." *House Speaker*, 441 Mich at 556 (cleaned up). As a general matter, legislator or legislative standing is limited. They have standing to challenge an executive action that would nullify their vote similar to the facts described above in *House Speaker*. See *Raines v Byrd*, 521 US 811, 823 (1997) ("Legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified."). No Legislator's vote is being nullified in this case where the Treasurer is acting in accordance with the plain language of the statute.

Then there are other limited circumstances where legislator or legislative standing exists because of constitutional challenges to statutes. See *League of Women Voters of Mich*, 506 Mich at 592 (opinion of the court) (Legislative standing due to executive nondefense of legislation).[7] Those circumstances where our Courts have granted legislative or legislator standing have typically involved constitutional challenges or a decision by executive branch to not defend enacted legislation. But neither situation is present here.

[7] To the extent Appellants rely on the Attorney General's opinion to confer standing, our Supreme Court in *League of Women Voters of Michigan* rejected the argument that a formal opinion of the Attorney General could create standing. *League of Women Voters of Mich*, 506 Mich at 597–598. That same logic would equally apply to the advocacy groups since the opinion itself does not cause any harm to give rise to standing.

Consistent with *Killeen,* the Legislators lack standing and have not demonstrated any special interest outside of a generalized complaint that their view of the law is not being followed. Once MCL 206.51(1)(c) was enacted into law, the Legislators' "special interest as lawmakers has ceased." *Killeen*, 137 Mich App at 189.

B. The advocacy groups fail to identify any cognizable legal right that has harmed or injured them that would give rise to standing.

As to the Appellant advocacy groups, they concede "they are not constitutionally entitled to accurate budgetary information[.]" (App Br, p 22.) That concession should end the inquiry because without an identifiable legal right, they lack standing to assert the right to "precise" revenue information based on a permanent tax rate. "A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." *Fieger v Comm'r of Ins*, 174 Mich App 467, 471 (1988). "[A] plaintiff must still allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." *Id.* at 472.

The advocacy groups fail to point to any legal authority suggesting that they have a right that can be asserted here. Recall from above that standing requires some articulated right or injury. "An 'actual controversy' under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve [that plaintiff's] *legal rights*." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495 (2012). The advocacy groups never identify what

legal right they have to "precise" revenue information based on a permanent tax rate. A party cannot simply announce their position and "leave it up to this Court to discover and rationalize the basis for his claims[.]" *Mitcham v Detroit*, 355 Mich 182, 203 (1959).

In addition to failing to demonstrate an actual controversy, the advocacy groups posture their case as a hypothetical or anticipated controversy over which they might not have "precise" enough information to advocate their interests. No facts are alleged as how their current lobbying efforts have been harmed by the Treasurer's interpretation of MCL 206.51(1)(c). Without more, their mere desire for "instruction" going forward is insufficient to establish standing. See *League of Women Voters of Mich*, 506 Mich at 588. Because there is no specialized right for a lobbyist to have "precise" information, they lack standing. To hold otherwise would open the door for any lobbyist group to file suit whenever it did not agree with how a statute was being implemented and administered. The same holds true for the named Legislators.[8]

[8] Appellants appear to address the standing of individuals taxpayers in the context of a ripeness argument. (App Br, p 24 n 21.) As the Court of Claims recognized, "no individual taxpayer-plaintiff has paid income tax, had any income tax withheld, or received a tax assessment based on the 2024 tax rate." (COC Slip Op, p 23.) Accordingly, the individual taxpayers have not demonstrated an injury in fact. See *Federated Ins Co*, 475 Mich at 290.

II. The Court of Claims properly determined that this action is not ripe for adjudication.

This action is not ripe because there is no actual controversy and Appellants have not articulated a particularized or cognizable injury, but instead only a hypothetical, contingent, or anticipated one that may not occur. "As a threshold matter, the Michigan Constitution permits the judiciary to exercise only 'judicial power,' the 'most critical element' of which is the requirement that a genuine controversy exist between the parties." *Mich Chiropractic Council v Comm'r of Office of Fin & Ins Servs*, 475 Mich 363, 381 (2006), overruled on other grounds *Lansing Sch Education Ass'n v Lansing Bd of Educ*, 487 Mich 349 (2010). The Court of Claims is correct that "at this stage, we do not know if the 2024 tax rate will be 4.25%, 4.05%, or some other rate." (COC Slip Op, p 23.)

Ripeness concerns "whether or not there is an actual controversy, as opposed to a merely hypothetical one." *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 554 (2017). "[R]ipeness focuses on the timing of the action." 475 Mich at 379. "A claim lacks ripeness, and there is no justiciable controversy, where 'the harm asserted has [not] matured sufficiently to warrant judicial intervention.' " *Id*. at 381 (citation omitted). Further, "[t]he doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained." *Huntington Woods v Detroit*, 279 Mich App 603, 615–616 (2008) (quotation marks and citation omitted). An issue is not ripe for adjudication if "it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id*.

Here, as Appellants acknowledge, "future legislatures," (App Br, p 37), may yet act and change the provision at issue. This is not merely academic—HB 5399 has been introduced in the Michigan House of Representatives to change the tax rate to 3.9% after January 1, 2024, which only reinforces that Appellants' claims are better suited for legislative as opposed to judicial intervention. "It is a fundamental principle that one Legislature cannot bind a future Legislature or limit its power to amend or repeal statutes. Absent the creation of contract rights, the later Legislature is free to amend or repeal existing statutory provisions." *LeRoux v Secretary of State*, 465 Mich 594, 615 (2002). Neither do taxpayers have a "vested interest in tax laws that exist at any particular moment." *Gillette Commercial Operations North America & Subsidiaries v Dep't of Treasury*, 312 Mich App 394 (2015), citing *United States v Carlton*, 512 US 26, 30 (1994).

Therefore, even assuming Appellants' interpretation of MCL 206.51(1)(c) is correct, the possibility of a legislative change before the rate defaults to 4.25% per Subsection (1)(b) negates any justiciability of this matter; it only becomes ripe when Treasury takes action that adversely affects Appellants' interests. The Revenue Act provides that "[a] taxpayer aggrieved by an assessment, decision, or order of the department" may appeal the same. MCL 205.22(1). As to the individual taxpayers, these actions include issuing assessments, denying refund claims, and the like. As to Appellant Legislators and advocacy groups, while they assert that they "have been, and will continue to be, injured" because "the fiscal 2023-24 budget has been passed and priorities were set with what [Appellants] believe to be erroneous

information"—i.e., a 4.25% income tax rate (App Br, p 25)—this too is hypothetical and subject to the contingency of intervening legislative enactments. And even if Appellants were correct as to the meaning of MCL 206.51(1)(c), their assertion that they have been cognizably injured ignores the statutory scheme for appropriation adjustments. See e.g., MCL 18.1391–1392. (See Argument, Section IV.B below.)

Appellants argue that this matter is ripe for review because "the budget has been passed and priorities were set" with what the Legislators and lobbyists "believe to be erroneous information," which will purportedly result in a $527.6 million shortfall. (App Br, p 25.) This is fundamentally hypothetical and contingent upon what the Appellant Legislators and lobbyists happen to "believe."

With respect to individual taxpayers, Appellants posit a non-ripe scenario that demonstrates the flaw in their argument. Specifically, Appellants assert that taxpayers "will have to make decisions about whether to challenge an income tax rate" using certain procedures under the Revenue Act. (*Id.*) But this ignores that these are hypothetical future claims that are categorically non-ripe.[9] This case involves the income tax rate for 2024, and individual income tax returns for that year will not be due until April 2025, after which time Treasury may or may not issue assessments. See MCL 206.315(1); MCL 205.21(1). Appellants have not asserted that they have been issued any assessments, nor could they, given that the

[9] Appellants' admonition also ignores that the purported 100,000 cases that will all involve the same issue could be administratively consolidated into a single lead case. (App Br, p 25.)

rate for tax year 2024 is not yet effective. If they are issued assessments, their claims would be ripe at that time.

Appellants also cite *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119 (1995) in support of their purported "prospective relief." (App Br, p 26.) But that case did not involve a question of ripeness. Instead, it involved a tax that had already been assessed and paid; the plaintiff sought to enjoin the continued assessment and levy of an allegedly unconstitutional tax. *Taxpayers Allied*, 450 Mich at 121, 122. The Supreme Court rejected the notion that the statute of limitations had run on a claim for injunctive relief when the plaintiff would generally be able to seek a refund. *Id*. at 127–128. In other words, the Supreme Court did not prevent injunctive relief in situations where there was ongoing tax assessment. But *Taxpayers Allied* did not address whether an action is ripe when Legislators, lobbyists, and taxpayers seek to have a law interpreted in the manner they wish, and where no tax had yet to be assessed. Accordingly, *Taxpayers Allied* provides no support for Appellants' argument. Neither does Appellants' argument concerning tax withholding tables for tax year 2023, (App Br, p 27), have any import as to the issue presented in this case—i.e., the meaning and implications of MCL 206.51(1)(b)-(c) for the 2024 tax year.

III. The Court of Claims correctly determined that mandamus is not an appropriate remedy.

Aside from the merits, mandamus is not appropriate in this matter because Appellants do not have a clear legal right to the performance of a duty by the Treasurer. Further, Appellants' claims run afoul of separation of powers principles.

A. Appellants have not shown that they have a clear legal right to performance of a duty by the Treasurer.

The Court of Claims correctly observed that the meaning of MCL 206.51 is clear and none of the Appellants "have established a clear legal right to 'correct information' about the income tax rate," and Appellants "have not articulated a clear legal duty to implement plaintiffs' interpretation of the statute." (COC Slip Op, p 31.)

"A writ of mandamus is an extraordinary remedy." *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 366 (2012). Appellants must show that: (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled; (2) the defendant has a clear legal duty to perform the act; (3) the act is ministerial; and (4) no other remedy exists that might achieve the same result. *Id*. See also *Stand Up For Democracy v Secretary of State*, 492 Mich 588, 618 (2012).

Here, the Court of Claims is correct: Appellants "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. . . . " (COC Slip Op, p 32.) Appellants have not articulated a specific duty for the Treasurer to perform.

Mandamus requires a plaintiff to articulate a specific duty to be performed by a specific state defendant. *Taxpayers for Mich Constitutional Gov't v Dep't of Technology, Mgt & Budget*, 508 Mich 48, 86 (2021). Appellants have failed to do so because MCL 206.51(1)(c) does not impose any specific duty on the Treasurer with respect to the income tax rate. Nor could it—the Legislature is constitutionally designated as the branch of government that levies taxes. Const 1963, art 9, § 1. Instead, the statute imposes a duty on the Treasurer to work with the house and senate fiscal agency directors to determine "whether the total revenue distributed to general fund/general purpose revenue has increased" based on the comprehensive annual financial report no later than January 2023. And Appellants' assertion that the Treasurer "has a clear legal duty to charge the proper tax" ignores that the *Legislature levies* taxes, the Treasurer does not *charge* taxes. MCL 206.51(1) ("For . . . income from any source . . . *there is levied* . . . upon the taxable income of every person" a tax at certain rates. (Emphasis added).).

While Appellants argue that they "do not want to change MCL 206.51(1)(c); rather, they want it to be interpreted correctly," this assertion is belied by the very next sentence: "This Court can – and should – require the Treasurer to apply and execute the statute as properly interpreted." (App Br, 49.) This request raises separation of powers problems. (See Section IV.B, below). Further, even taking Appellants' assertions at face value, merely having a contrary interpretation of a statute is not grounds for mandamus, i.e., performance of a clearly articulated duty.

In support of their claims, Appellants cite an election law case that is distinct from the issue here. (App Br, p 47.) Specifically, Appellants cite *Berdy v Buffa*, 928 NW2d 204 (2019) for the proposition 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.

In *Berdy*, the plaintiffs brought a mandamus action against the Warren city elections commission to remove challenged contestants from election ballots. The city charter provided for term limits, which certain candidates exceeded. 928 NW2d at 205. The case involved whether the Warren Charter granted the city commission the authority to determine which candidates were eligible to run for office. *Id*. In the context of this legal question, the Michigan Supreme Court observed that "plaintiff's ability to show a clear legal right or a clear legal duty for purposes of mandamus does not depend upon the difficulty of the legal question presented." *Id*. Relying on the Charter's language that "[t]he council shall be the judge of the election and qualifications *of its members*," the Court ultimately determined that the city elections commission did have that authority and "had a clear legal duty to perform the ministerial act of removing the names of the challenged contestants from the ballots." *Id*. at 207.

Berdy relied on *Berry v Garrett*, 316 Mich App 37 (2016), another election law case that dealt with a highly specific duty to be performed, i.e., removal of ineligible candidates for defective paperwork. *Berry* involved a township supervisor and trustee candidates who filed defective affidavits of identity in a primary election.

Id. at 40. The plaintiff brought a mandamus action seeking removal of the candidates on account of their defective affidavits. *Id*. The pertinent statute provided that the defendant clerks and commissions "not certify to the board of election commissioners the name of a candidate who [had] fail[ed] to comply" with the affidavit requirements. *Id*. at 45.

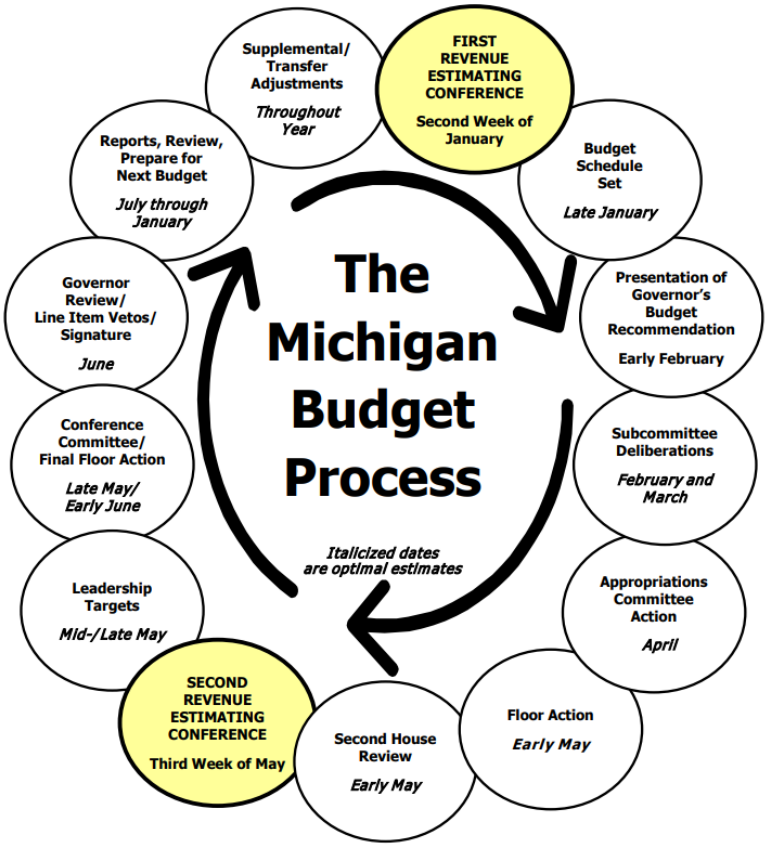
Both *Berdy* and *Berry* involved specific duties to be performed in a ministerial way, i.e., removal of ineligible candidates from ballots for patent candidacy defects (term limits and affidavit errors). Unlike those cases, this case does not involve a specific statutory duty to be performed by the Treasurer as to the tax rate. Appellants generally assert that the Treasurer has a duty to "charge" the proper tax rate. Even if this were accurate concerning how taxes are levied and what branch of government is responsible—it is not, MCL 206.51(1); Const 1963, art 4, §§ 1, 32; art 9, § 1—the purported "duty" they identify is so nonspecific as to be incognizable. And while Appellants argue that the Michigan Supreme Court gave no indication that the holding of *Berdy* was limited factually, (App Br, p 48), that does not change the nature of the duty at issue in *Berdy* or how it is fundamentally distinct from the purported duty Appellants assert in this matter.

Similarly, as the Court of Claims determined, (COC Slip Op, p 32), Appellants have not demonstrated a clear legal right to performance of a duty. They assert that they "have a clear legal right to correct information as to the amount the state will garner in tax revenue for the fiscal 2023-24 year."

(App Br, p 46.) They also assert that the Legislators have a duty under Michigan's Constitution to vote on "future appropriations bills and supplementals." (*Id*. at 47.) But the budget and appropriations process contemplates that tax revenues are estimated throughout the year and state accounts are closed at the end of the year. Specifically, MCL 18.1342 provides that:

> The state budget director or state treasurer shall establish and maintain an economic analysis, revenue estimating, and monitoring activity. The activity shall 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.

Thus, while Appellants seek "correct information as to the amount the state will garner in tax revenues," (App Br, p 47), actual revenues will not be available until the state's accounts close after the 2023 fiscal year and are estimated until then. MCL 18.1342. Close of the state's books for a fiscal year may not occur until March, as it did for 2023. In the meantime, the state budgeting/appropriations process contains any number of statutory mechanisms to account for changes in estimates and revenues, including for shortfalls. For example, MCL 18.1391 provides for a review and recommendation for expenditure reductions for all appropriations in the event of a shortfall. (See also MCL 18.1392 (allowing for line-item reductions in subsequent legislation).)



[Apps' Appx, p 85, Compl, Ex 11, p 8.]

Therefore, even assuming there would be a shortfall of $714.2 million in a budget of $86.7 billion, (Apps' Appx, pp 19, 26, Compl, ¶¶ 40, 89), the statutory process is the mechanism for adjustments, not judicial intervention.

Concerning the final element of mandamus, Appellant individual taxpayers would have another remedy that would achieve the same result. Specifically, a taxpayer aggrieved by a Treasury decision may appeal that decision to the Court of Claims or to the Michigan Tax Tribunal in accordance with the Revenue Act. MCL 205.22. Here, assuming Appellants' legal position is correct, if the Appellant individual taxpayers are wrongly assessed for tax year 2024 based on an inaccurate tax rate, they will have every ability to challenge those tax determinations under

the Revenue Act. Appellants concede as much in their own complaint. (Apps' Appx, p 28, Compl, ¶ 104 n 11.) As for the Appellant Legislators and lobbyists, if this Court determines they have standing, the power to change a law lies with the Legislative Branch under Michigan's Constitution. Const 1963, art 9, § 1. Given this power, the Appellant Legislators and lobbyists also have another remedy "that might achieve the same result." *Coalition for a Safer Detroit*, 295 Mich App at 366.

B. Appellants' claims seek to insert the courts in tax and budget decisions, in violation of separation of powers.

Appellants' mandamus claims ignore this statutory mechanism and instead seek to position the courts as the arbiters of budget/appropriations discrepancies, contrary to Michigan's Constitution. Const 1963, art 5, § 20. *These shortfall/adjustment events can happen in any given fiscal year and at any time for a variety of reasons.* If Appellants' claims succeed based on a hypothetical shortfall as alleged in this case, any legislator or lobbyist group in any given year could circumvent the statutory budget/appropriations process via mandamus challenge in court. This would encroach on the Legislature's constitutional responsibility for taxation, and, therefore, violate separation of powers.

IV. The Court of Claims properly determined that the tax rate reduction provided for in MCL 206.51(1)(c) is not permanent.

Should Appellants' claim proceed to the merits, this Court should affirm the Court of Claims because, per MCL 206.51(1)(b), 4.25% is the default rate in all years unless the exception/contingency in MCL 206.51(1)(c) is satisfied.

To begin, MCL 206.51(1)(b) sets forth the default tax rate of 4.25%. Reading MCL 206.51 as a whole, it provides that "there is levied and imposed . . . a tax at the following rates[:] . . . on and after October 1, 2012, 4.25%." The provision (1)(b) begins with "[e]xcept as otherwise provided," which anticipates Subsection (1)(c)—that subsection contains conditional language specifying when the tax rate changes based on certain conditions that may occur. Subsection (1)(c) provides as follows:

> 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.

Appellants essentially advocate that any time it is triggered, Subsection (1)(c) becomes the default individual tax rate, rendering Subsection (1)(b) mere surplusage. But the plain language, and the Legislature's use of the phrase "[e]xcept as otherwise provided under subdivision (c)" demonstrates that these provisions must be read in harmony such that the triggering conditions in Subsection (1)(c) must be evaluated "[f]or *each* tax year" to determine *if* the correct conditions exist to warrant adjusting the default tax rate from that specified in Subsection (1)(b). MCL 206.51(1)(c) (emphasis added). In other words, Subsection (1)(c) cannot be read in isolation but must be considered within the structure of the entire section, which demonstrates that the default rate in Subsection (1)(b) is evaluated "[f]or each tax year" based on the conditions in Subsection (1)(c).

A. Subsection (1)(b) is a default provision for all tax years after October 1, 2012.

Statutes must be read as a whole. "Words of a statute are to be given their plain and ordinary meaning, which in part requires consideration of the context in which the words are used, as well as the placement of the words in the statutory scheme." *Ketchum Estate v Dep't of Health & Human Servs*, 314 Mich App 485, 500 (2016) (cleaned up).

To begin with, Subsection (1)(a) was effective "on and after October 1, 2007 and before October 1, 2012." This brings us to Subsection (1)(b), which is now effective and must be read as the beginning point of the statute every year. That provision contains exceptional language ("[e]xcept as otherwise provided under subdivision (c)"), and mandatory/default language ("on and after October 1, 2012, 4.25%"). The mandatory language governs unless the exception is triggered. See, e.g., *Mich Ass'n of Home Builders v City of Troy*, 497 Mich 281, 286 (2015) (the phrase "except as otherwise provided" generally connotes an exception to the statutory text). The Legislature specifically intertwined these two sections together: if the conditions exist under Subsection (1)(c), then the rate in Subsection (1)(b) is modified for that tax year.

Accordingly, the tax rate every year—by default—is 4.25% in accordance with the plain text and structure of MCL 206.51. This is true unless, in any given year, certain conditions set forth in Subsection (1)(c) are satisfied.

B. Subsection (1)(c) is a conditional provision that must be examined "[f]or each tax year".

The parties do not dispute that Subsection (1)(c) is a conditional provision that is triggered only if a certain contingency arises. But contrary to Appellants' interpretation, Subsection (1)(b) remains the operative tax rate unless the conditions in Subsection (1)(c) apply for that tax year. This is evident by the phrase "[f]or each tax year beginning on and after January 1, 2023"—a dependent clause—which is followed by the conditional term "if." "If" means "in the event that." *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020). "If" is a conjunction that joins a conditional (or antecedent) clause and a dependent (consequent) clause, and, thereby, sets forth a contingency that may or may not be triggered in any given tax year.

As explained by this Court *In re Casey Estate*, 306 Mich App 252, 260 (2014), the Legislature's use of the term "if" sets forth a condition that triggers the remainder of the subsection:

> *The Random House Webster's College Dictionary* (2001) offers several definitions of "if," the more pertinent being: "1. In case that; granting or supposing that; on condition that[.]" See *Hottmann v Hottmann*, 226 Mich App 171, 178 (1997) (a dictionary definition is appropriately used to construe undefined statutory language according to common and approved usage). Thus, the use of "if" in the first and second clauses of MCL 700.2114(1)(b) sets forth the alternative conditions upon which the rest of that subsection is premised. Absent satisfaction of one of those conditions, the remainder of subsection (1)(b) does not come into play. [*In re Casey Estate*, 306 Mich App at 260.]

Here, the phrase "[f]or each tax year beginning on and after January 1, 2023" is the dependent/consequent clause, while the "if the percentage increase" language is the conditional/antecedent clause. As such, the tax rate in Subsection (1)(b) is

examined "[f]or each tax year" to determine if the rate reduction in Subsection (1)(c) applies based on the conditions articulated in Subsection (1)(c). If those conditions are satisfied, Subsection (1)(c) contains a formula to calculate the adjustment from the default rate set forth in Subsection (1)(b), and is not itself a new permanent rate. This is the most natural reading that gives effect to every term in the statute. *South Dearborn Environment Improvement Ass'n Inc v Dep't of Environment Quality*, 502 Mich 349, 361 (2018) (Statutes should be read "together so as to harmonize their meaning, giving effect to the act as a whole.") (cleaned up).

Appellants' interpretation, by contrast, would render Subsection (1)(b) nugatory. The conditional language of Subsection (1)(c)—which is anticipated by the exception language of Subsection (1)(b) ("Except as provided . . . .")—cannot override and, thereby, become the default/mandatory language in Subsection (1)(b), which would be rendered nugatory. *People v Seewald*, 499 Mich 111, 123 (2016) ("When possible, [courts] strive to avoid constructions that would render any part of the Legislature's work nugatory."). In other words, reading the conditional language of Subsection (1)(c) as setting a new permanent default rate would mean what is designed to be only an exception in Subsection (1)(b) now becomes the rule. This is because the exception would render Subsection (1)(b) thereafter inoperable, contrary to the plain text and contrary to how courts have construed exception language. See *Mich Ass'n of Home Builders*, 497 Mich at 286; *In re Casey Estate*, 306 Mich App at 260 ("Absent satisfaction of one of those conditions, the remainder of subsection (1)(b) does not come into play.").) It would also make the introductory

language of Subsection (1)(b) of "[f]or each tax year" unnecessary because it would apply to *all* tax years once it displaces (1)(c) as the default rate.

Appellants argue that "properly construed, MCL 206.51(1)(b) would be no more nugatory than MCL 206.51(1)(a)." (App Br, p 33.) This argument, however, fails to recognize that, under the Treasurer's construction, Subsection (1)(a) is not nugatory—the Legislature unambiguously sunset that provision by specifying a time frame for when it was operative. In other words, the Treasury gives Subsection (1)(a) the effect intended by the Legislature. Subsection (1)(b), on the other hand, must operate "on and after October 1, 2012," MCL 206.51(1)(b), and, therefore, remains in effect. Finally, the word "current" emphasizes the limited nature of the rate reduction, i.e., for only "that year," which comports with the beginning of Subsection (1)(c) ("[f]or each tax year . . . ."). In other words, as explained in III.C below, the sense communicated by the phrase "then *the current rate* shall be reduced by an amount" from Subsection (1)(c) (emphasis added) is that "then *the rate for that year* shall be reduced by an amount." This comports with the ordinary meaning of "current." See *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020) ("exist at the present time").

Appellants argue that Treasury does not give meaning to every term in the statute because "that rate" should be read as "the rate." (App Br, p 32.) But the Treasurer's construction gives the correct meaning to the word "that," as "the person, thing or idea indicated mentioned, or understood from the situation." *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020). The sentence where "that

rate" appears explains that a fraction is multiplied by "that rate," which must refer to something, i.e., a "thing or idea mentioned." See MCL 206.51(1)(c). The word "that" serves to reference the "current rate," which is a natural antecedent previously mentioned in the sentence. The construction does not replace "that rate" with "the rate"; instead, it gives full effect to Subsection (1)(b) as the current rate arrived at by reading the statute as whole and giving effect to "on and after October 1, 2012." By contrast, Appellants' interpretation writes Subsection (1)(b) entirely out of the statute.

Appellants also argue that this Court should look to a previous legislative enactment (i.e., 1983 PA 15) that set the income tax rate by formula, citing *Honigman Miller Schwartz & Cohn LLP v Detroit*, 505 Mich 284, 310–311 (2020). (Pls' Br, pp 33–34.) But *Honigman* offers no support for Appellants' argument. *Honigman* did not look to a prior legislative scheme for guidance. Instead, it analyzed the language of Detroit's Uniform City Income Tax Ordinance, i.e., concerning "services rendered in the city," among other terms. The Supreme Court explained that:

> [h]ad the Legislature intended to ground the calculation of "services rendered in the city" upon where the service was delivered, it could have expressed this intention in plain terms, or even in similar terms to those it used with regard to the sale of goods and then provided similar examples that would serve as a guide for determining services rendered in the city. [*Honigman*, 505 Mich at 311 (cleaned up).]

In its analysis, the Supreme Court looked to concurrent legislation with similar terms. It did not rely on a prior legislative enactment or otherwise determine that if the Legislature opts to carry out its intent in one way, a subsequent method must

mean that the intent was different. And the Supreme Court has explained that the intent of a previous Legislature "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 (2008) (emphasis added). In this way, *Honigman* has no comparable application, and 1983 PA 15 is irrelevant to this matter.

By contrast, the legislative scheme here is clear: in enacting MCL 205.51, the 2015 Legislature intended to provide a step-by-step process of reading the statute from Subsection (1) downward. Subsection (1)(a) has sunset; in light of that sunset, Subsection (1)(b) is the new default tax rate that must be applied every year subject to certain contingencies set forth in Subsection (1)(c). Because the statute is clear, the Court of Claims correctly rejected Appellants' argument that the 1983 statutory scheme has any instructive value here. (COC Slip Op, pp 29–30; citing *Gardner*, 482 Mich App at 65–66.)

In short, Appellants' reading contravenes the plain language of the statute, well established rules of statutory construction, and common sense in terms of how the statute—understood as a whole—is designed to operate.

C. Reading the language of the statute as a whole, it is clear that the "current rate" is the default rate in Subsection (1)(b).

The plain text and structure of the Income Tax Act support the Treasurer's interpretation of the statute. Specifically, the meaning of the word "current" in

MCL 206.51(1)(c) is unambiguous in that it refers to the rate that "exist[s] at the present time," *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020), which is set by Subsection (1)(b) and—until amended by the Legislature—stands at 4.25% after October 1, 2012. Subsection (1)(c) is placed and must be understood in the structure of the whole of the Income Tax Act and MCL 206.51. That structure provides a prescribed/default rate, see MCL 206.51(1)(b), and Subsection (1)(c) decreases the individual income tax "current rate" evaluated for that year, i.e., "[f]or each tax year" in which the terms of Subsection (1)(c) apply. See MCL 206.51(1)(c). The "current rate" is a fixed rate, set forth in Subsection (1)(b). This rate is modified as provided in Subsection (1)(c) to reduce the tax burden on individual income taxpayers in any year when the general fund grows faster than the rate of inflation. But that does not mean that the current rate becomes the new default tax rate, as if Subsection (1)(c) created the new rate for not just that year but all subsequent years. If the Legislature had intended this result, it would not have inserted the limitation "for each tax year" in the beginning of (1)(c), a limitation that appears in neither Subsection (1)(a) nor (1)(b).

In effect, in the years where the State of Michigan receives a tax windfall, the burden of taxpayers is reduced. The reduction in the rate is premised on a single event, not a continuing one, so the statute's structure indicates that the rate reduction should be a single year event. An interpretation of "current" that carries previous reductions forward would transform a single-year windfall into a permanent reduction and even eliminate the tax in its entirety.

"Current" must also be read within the structure of MCL 206.51(1)(a) and (b), which provide for different rates effective at different times. In particular, the rate was 4.35% "[o]n and after October 1, 2007 and before October 1, 2012," and 4.25% "[e]xcept as otherwise provided under subdivision (c), on and after October 1, 2012." MCL 206.51(1)(a) and (b). "Current," then, recognizes that Subsections (1)(a) and (b) provide a different rate for different years, and ensures that the rate reduction applies to the base rate arrived at by reading the statute beginning at Subsection (1)(a) and then (1)(b), i.e., the rate that "exist[s] at the present time." *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020). In short, on or after October 1, 2012, the "current" rate of 4.25% set in Subsection (1)(b) is reduced for the tax year in which the economic conditions outlined in Subsection (1)(c) are met, as Subsection (1)(c) is expressly limited to the specific tax year based on the phrase "[f]or each tax year."

Further, Appellants' interpretation could render the entire Income Tax Act null and void. The Income Tax Act states that "[f]or receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed under this part upon the taxable income of every person other than a corporation a tax at the following rates in the following circumstances." MCL 206.51(1). If Appellants' interpretation is correct, then MCL 206.51(1)(c) could be triggered multiple times, ultimately compounding reductions until the rate became zero. That interpretation would render the provision imposing the income tax nugatory, which must be avoided. See *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 714 (2003).

Appellants raise counterarguments to what they characterize as the purported policy arguments against absurd results set forth by the Attorney General and the Treasurer. (App Br, pp 35–38.) But the Attorney General did not mention absurd results in her opinion. Likewise, the Treasurer did not mention absurd results in her motion for summary disposition and does not raise that argument here. And neither the Attorney General nor the Treasurer mentions policy. Rather, as explained in the previous paragraph, the Treasurer considers the structure of MCL 206.51, and points out that Michigan law provides an income tax, and that Appellants' construction could result in a zero tax rate, rendering the entire Income Tax Act nugatory. Appellants engage strawmen, which do not address the structure of the statute.

Finally, Appellants argue that ambiguities in the statute should be resolved in favor of taxpayers. (App Br, p 42.) But the Treasurer does not assert that the statute is ambiguous (it is not). And although the Supreme Court has stated that "ambiguities in the language of a tax statute are to be resolved in favor of the taxpayer," *Mich Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 477 (1994), the Appellant Legislators and lobbyists are not parties in their capacities as taxpayers. Neither did the *Michigan Bell* Court hold that a disagreement on the construction of a statute means that a taxpayer's view must prevail. Rather, courts still must "determine the most reasonable meaning of statutory language," even when the parties "appear to articulate plausible interpretations of the statute." *Honigman*, 505 Mich at 307. This rule should be understood similarly to the canon requiring

strict construction of tax exemption statutes, employed "only when an act's language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity." *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 343 (2020). As the Court of Claims agreed, there is no ambiguity here, and in any case, resolving an ambiguity in a taxpayer's favor is a canon of last resort, i.e., only to be used when the meaning cannot be understood otherwise. Thus, the "ambiguity" rule is not dispositive or even applicable in this case.

CONCLUSION AND RELIEF REQUESTED

Appellants' claims are non-justiciable, and their mandamus claim lacks merit and would otherwise create separation of powers problems. Further, mandamus is not an appropriate remedy. Finally, the Treasurer's interpretation of the Income Tax Act is faithful to its text and should be affirmed. By contrast, Appellants' interpretation would violate the plain text of the statute, render certain provisions of the Act nugatory, and contravene common sense application of Michigan's income tax scheme.

For these reasons, this Court should affirm the Court of Claims.

Respectfully submitted,

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Dated: February 16, 2024

WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.212(B)(1), (3) because, excluding the part of the document exempted, this merits brief contains no more than 16,000 words. This document contains 10,110 words.

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