STATE OF MICHIGAN
COURT OF CLAIMS

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MACKINAC CENTER FOR PUBLIC POLICY,
a domestic nonprofit corporation,

Plaintiff,

v.

DEPARTMENT OF LABOR AND ECONOMIC OPPORTUNITY,
a state government entity

Defendant.

No. 25-000082-MM

Hon. Brock A. Swartzle

**PLAINTIFF'S 06/24/2025 REPLY BRIEF**

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**PLAINTIFF'S 6/24/2025 REPLY BRIEF IN SUPPORT OF ITS 5/20/2025 MOTION FOR PRELIMINARY INJUNCTION**

*ORAL ARGUMENT REQUESTED*

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### CONSTITUTIONAL PROVISIONS

## I. Introduction and the basics of the grant process.

Under MCL 600.2041, Plaintiff Mackinac Center for Public Policy, as a "domestic nonprofit corporation organized for civic, protective, or improvement purposes," can file "an action to prevent the illegal expenditure of state funds or to test the constitutionality of a statute relating thereto." Because Plaintiff's suit challenges spending approved through Michigan's budget via "community enhancement grants," a basic understanding of the grant process will provide context.

Defendant Department of Labor and Economic Opportunity received a total of $140,852,000 for community enhancement grants for the fiscal year. 2024 PA 121 at § 113, p 220.[1] Plaintiff challenges two appropriations – each related to a separate professional baseball field – from the general omnibus fiscal year 2024-25 budget ("FY 2024-25 general omnibus budget"). One ballpark is owned by a private entity and the second is owned by a municipality. Each appropriation violates Const 1963, art 4, § 30, which states: "The assent of two-thirds of the members elected to and serving in each house of the legislature shall be required for the appropriation of public money or property for local or private purposes."[2] The FY 2024-25 general omnibus budget, which contains both of the challenged appropriations, did not receive the required 2/3rds vote necessary to satisfy this constitutional requirement.

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[1] Defendant uses the term "special grant intended for a single recipient" in its Response. This is not a statutory term but instead comes from Defendant's grant-application form. See Response, Exhibit A at 1. While not clearly articulated, it appears Defendant's internal term includes the statutory "community enhancement grant." See generally, Response at 12.

[2] The language of that provision has remained largely unchanged since the 1850 Constitution.

Article 9, § 222(1) of 2024 PA 121, indicates that Defendant may circumvent the normal "procurement statutes . . . including any bidding requirements" for "any grant program or project funded in part 1 intended for a single recipient organization or unit of local government." To do so, Defendant must "fully validate" the organizational or government recipient and the funds that will be "administered and expended." *Id*.

Where such a circumvention occurs, Defendant:

> [S]hall perform at least all of the following activities to administer the grants described in subsection (1):
>
> . . .
>
> (c) Verify to the extent possible that a grant recipient will use funds for a public purpose that serves the economic prosperity, health, safety, or general welfare of the residents of this state.
>
> . . .
>
> (f) Make an initial disbursement of up to 50% of the grant to the grant recipient not later than 60 days after a grant agreement has been executed. . . .
>
> (g) Disburse the funds remaining after the initial disbursement under subdivision (f) per the grant disbursement schedule in the executed grant agreement on a reimbursement basis after the grantee has provided sufficient documentation, as determined by the department, to verify that expenditures were made in accordance with the project purpose.

2024 PA 121, art 9, § 222(2).

Either a legislator or Defendant must sponsor each community enhancement grant. *Id*. at § 222(3). The sponsorship process is as follows:

> A legislative sponsor must be identified through a letter submitted by that legislator's office to the department and state budget director containing the name of the grant recipient, the intended amount of the grant, a certification from that legislator that the grant is for a public purpose, and specific citation of the section and subsection of the public act that authorizes the grant, as applicable. If a legislative sponsor is not identified before December 13, 2024, the department shall do 1 of the following:

(a) Identify the department as the sponsor.
(b) Decline to execute the grant agreement and lapse the associated funds at the end of the fiscal year.

*Id.* A grant agreement must be in place by June 1, 2025, and projects must be completed by September 30, 2029. *Id*. at § 222(7), p 225.

## II. Defendant's arguments are unpersuasive.

Defendant makes three main arguments: (1) Plaintiff named the wrong governmental entity as the only defendant in this action; (2) Plaintiff's claims are moot because the intended grant recipients now have vested rights in those grants due to executed grant agreements; and (3) declaratory relief is more appropriate than injunctive relief.

### A. Defendant is the proper party.

Defendant is the proper party. As noted in 2024 PA 121, art 9, § 222(2)(f) and (g), Defendant controls the disbursement of the funds for the unconstitutional appropriations, including the two challenged items in the instant lawsuit. While Defendant does not name the entity it believes would be a proper defendant in this suit, it strongly implies it would be the Legislature. But lawsuits are not filed against the Legislature for enacting laws that contain constitutional flaws; rather, lawsuits are filed against the governmental entity implementing those laws.

Perhaps the State of Michigan could be an appropriate defendant, but that would require the Attorney General to agree with Plaintiff that the appropriations violate Const 1963, art 4, § 30. For example, in *Mothering Justice v Attorney General*, ___ Mich __, (2024), the plaintiffs challenged the Legislature's adopt-and-amend strategy designed to blunt the impact of initiated legislation. The Attorney General was named as a defendant but agreed with the plaintiffs that the Legislature's action was unconstitutional. This Court requested an amended complaint:

> Because the Attorney General agreed with plaintiffs on the substantive issues, however, the Court of Claims ordered plaintiffs to amend their complaint to

> add the state of Michigan (the State) as a defendant (i.e., as the party defending the Legislature's actions) and to indicate that the Attorney General is a named defendant solely as a representative of the State. Plaintiffs amended their complaint in accordance with that order.

*Mothering Justice*, Slip Opinion at 9. Unlike in *Mothering Justice*, however, here the Attorney General's Office makes no explicit indication that it agrees with Plaintiff, and in its representational role of Defendant instead states: "At best, LEO is neutral as to the outcome of the constitutional claims and will defer to and respect any final adjudication by our courts." Defendant's 6/17/2025 Response at 12.[3]

Defendant has the money for the two challenged appropriations, and disbursement of the money would be an unconstitutional, and therefore illegal, expenditure of state funds. Defendant was properly named. Its purported indifference to the outcome of this suit does not change that, and the Attorney General has not indicated support for Plaintiff's position such that a special appearance by the State of Michigan is required.[4]

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[3] In *Northland Family Planning Center v Dana Nessel*, Court of Claims No. 24-000011-MM, the Attorney General, the director of Michigan Licensing and Regulatory Affairs, and the Director of Health and Human Services were sued over whether various state statutes related to abortion were enforceable after Const 1963, art 1, § 28 took effect. None of three were willing to defend the statutes and the "State of Michigan" (as staffed by the Attorney General's Office) appeared specially to do so. Again, that was another instance of the Attorney General indicating it agreed with the challenge – which has not occurred here.

[4] In making this argument, Defendant contends "LEO does not have a sufficient stake in the appropriations process that would justify carrying the banner of defending the merits against these constitutional challenges." Response at 12. Defendant's Gross Appropriation for FY 2024-25 was $2,430,969,500. 2024 PA 121 at 215. As noted above, "community enhancement grants" constituted $140,852,000 of that budget. Thus, the types of grants at issue here make up 5.8% of Defendant's budget. The legal question of whether at least 5.8% of Defendant's budget in a particular year suffers from a constitutional infirmity is a "sufficient stake."

### B. Plaintiff's claims are not moot, as Defendant has yet to disburse the full amount of the unconstitutional grants.

Defendant's second claim concerns mootness. Defendant indicates that the Utica "grant agreement has been executed," and no grant agreement related to Lansing has been executed. Response at 14. Defendant still has possession of most of the $1.5 million meant for the Utica ballpark, and it has the entire $1 million meant for the Lansing ballpark.[5] This prevents a mootness claim, as Defendant controls money that can be, but has not yet been, spent unconstitutionally. Again, it is Plaintiff's contention that the appropriations to these ballparks violate Const 1963, art 4, § 30. Thus, there is a live controversy over whether those funds can be legally expended, and if Plaintiff prevails, the Court can (and should) prohibit that spending.

### C. The existence of executed grant agreements cannot create vested rights that override constitutional prohibitions.

While Defendant argues that the existence of executed grant agreements create vested rights obligating it to disburse the appropriated funding, the issuance of those agreements is ultimately irrelevant to the constitutional question before this Court. Unconstitutional statutes are generally void *ab initio*. *Mothering Justice*, Slip Opinion at 29. Defendant cannot immunize itself from a Const 1963, art 4, § 30 challenge by entering a contract with a third party. Defendant does not offer any cases supporting its claim the state government can contract away fidelity to the

[5] Defendant's Exhibit D to the Response shows the Utica grant recipient has received payments of $8,215.00, $15,231.50, and $60,376.90, for a total disbursement of $83,823.40. As such, there remains $1,416,176.60 in funds dedicated to that grant, which Plaintiff challenges as being unconstitutional. Further, Defendant's Response indicates that none of the $1,000,000 dedicated to the Lansing grant have been disbursed. At bare minimum, the dispute over whether these remaining funds for the two sites can be disbursed in a manner consistent with the constitution presents a live controversy.

Michigan Constitution. Nor does it take the next step of articulating a limiting principle to such contracts. Nothing in such a contract could cure the illegal appropriation.

**D. Injunctive relief is necessary to prevent the Defendant from engaging in unconstitutional spending.**

Finally, injunctive relief is necessary to prevent disbursement of the funds and what would surely be a subsequent argument by Defendant that this matter is moot following disbursement. MCL 600.2041(3) indicates that Plaintiff can "prevent the illegal expenditure of state funds." If all of the money for the two appropriations had already been spent, Defendant would likely claim that the statute does not explicitly allow for recoupment of unconstitutionally expended funds. Plaintiff crafted its suit narrowly to address the constitutional question with the recognition that other grants might continue while this matter works its way through the court system. In the face of Plaintiff presenting over a century of constitutional case law and pages of discussion of the 1961 Constitutional Convention debates, Defendant's only "merits" argument on the most important injunctive factor[6] – likelihood of success on the merits – is its claim that it should not have to defend this suit. That is insufficient to prevent an injunction.

**RELIEF REQUESTED**

For the reasons stated above and in its May 20, 2025 brief in support of its preliminary injunction request, Plaintiff requests that this Court enter a preliminary injunction order prohibiting the Department from disbursing any additional funds appropriated to the grants challenged herein.

Respectfully Submitted,

/s/ Patrick J. Wright
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Date: June 24, 2025

[6] *Higuchi Int'l Corp v Autoliv ASP, Inc*, 103 F 4th 400, 409 (6th Cir 2024).