STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

MOTHERING JUSTICE, MICHIGAN ONE FAIR WAGE, MICHIGAN TIME TO CARE, RESTAURANT OPPORTUNITIES CENTER OF MICHIGAN, JAMES HAWK, and TIA MARIE SANDERS,

Plaintiffs/Appellants,

v.

DANA NESSEL, in her official capacity as the Attorney General and head of the Department of Attorney General,

Defendant/Appellants,

STATE OF MICHIGAN,

Defendant/Appellee.

Supreme Court No. 165325

Court of Appeals No. 362271

Michigan Court of Claims
Case No. 21-000095-MM

THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.

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AMICUS CURIAE BRIEF OF THE
SMALL BUSINESS FOR A BETTER MICHIGAN COALITION
IN SUPPORT OF APPELLEE THE STATE OF MICHIGAN
OPPOSING THE APPLICATIONS FOR LEAVE TO APPEAL
OF APPELLANTS MOTHERING JUSTICE AND THE ATTORNEY GENERAL

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Small Business for a Better Michigan Coalition (the "Coalition") respectfully submits this proposed amicus curiae brief in support of the position of Defendant-Appellee, the State of Michigan, that Public Act 368 of 2018 ("Act 368") and Public Act 369 of 2018 ("Act 369") (collectively, "Public Acts 368 and 369") are constitutional.[1] The Coalition urges the Court to leave the decision of the COA undisturbed and deny leave to appeal. The Coalition is comprised of the following members:

Michigan Chamber of Commerce (the "Chamber"): The Chamber is the leading voice of business in Michigan. The Chamber advocates for job providers in the legislative and legal forums and represents approximately 5,000 employers, trade associations, and local chambers of commerce of all sizes and types in every county of the state. The Chamber's member firms employ over 1 million Michiganders. The Chamber and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Chamber also has an interest in maintaining the integrity of the legislative process, especially when it lobbies and advocates to create jobs and free enterprise in Michigan.[2]

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[1] Pursuant to MCR 7.312(H)(5), no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than the amicus curiae and its members contributed money that was intended to fund preparing or submitting the brief.

[2] In *In re Request for Advisory Opinion Regarding 2018 PA 368 and 2018 PA 369*, 505 Mich 884; 936 NW2d 241 (2019), Docket Nos. 159160 and 159201, the Michigan Manufacturers Association, Michigan Restaurant and Lodging Association, National Federation of Independent Businesses, Small Business Association of Michigan, the Chamber, Associated Builders and Contractors, Grand Rapids Area Chamber, Homebuilders Association of Michigan, Lansing Regional Chamber of Commerce, Mackinac Center for Public Policy, Michigan Farm Bureau, Michigan Retailers Association, West Michigan Policy Forum and the Michigan Freedom Fund, asserting the same interests cited here, were authorized to participate as amici curiae before the

The Michigan Manufacturers Association ("MMA"): The MMA is the state's leading advocacy voice dedicated to the interests of Michigan manufacturers consisting of over 1,700 members ranging from small manufacturers with fewer than 50 employees to the world's largest and most well-known corporations. Manufacturers employ 605,700 people and produce $99.6 billion in total manufacturing output. The MMA and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The MMA also has an interest in maintaining the integrity of the legislative process, especially when it lobbies and advocates for a strong economic environment for Michigan manufacturing.

National Federation of Independent Businesses—Michigan ("NFIB"): NFIB is the voice of small business in Michigan. NFIB is a member-driven organization advocating for small and independent business owners in Washington, DC, and all 50 states. Small businesses in Michigan represent over one million jobs. NFIB and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. NFIB also has an interest in maintaining the integrity of the legislative process, especially when it lobbies and advocates for small businesses in Michigan.

Small Business Association of Michigan ("SBAM"): SBAM is the premier organization for Michigan's small business owners with over 30,000 diverse members from every industry, spread across all 83 of Michigan's counties. It has advocated for Michigan's small businesses since 1969. SBAM's members are as diverse as the state's economy, ranging

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Court in support of the Legislature's request for an advisory opinion (1) on the constitutionality of Public Acts 368 and 369, and (2) that these laws were enacted in accordance with article 2, § 9. The Legislature's request was ultimately denied.

from accountants to appliance stores, manufacturers to medical, and restaurants to retailers. SBAM and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. SBAM also has an interest in maintaining the integrity of the legislative process, especially when it lobbies and advocates for small businesses in Michigan.

Associated Builders and Contractors of Michigan ("ABC"): ABC is a statewide trade association dedicated to providing Michigan with high-quality, affordable, safe and on-time construction. ABC is an equal opportunity organization that opposes all discrimination in the construction industry including discrimination based on union affiliation. A leading construction industry voice within state government, ABC provides many member services including legislative advocacy, networking opportunities, member benefits, legal updates, business development and educational opportunities. ABC and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. ABC also has an interest in maintaining the integrity of the legislative process, especially when it lobbies and advocates for its members.

Community Bankers of Michigan: The Community Bankers of Michigan is a 300+ member trade association serving community banks, and their financial services partners, throughout Michigan. Headquartered in East Lansing, the Community Bankers of Michigan is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, professional education programs and high-quality products and services. The Community Bankers of Michigan has one mission—community

banks. The Community Bankers of Michigan and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Community Bankers of Michigan also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Detroit Regional Chamber: Serving the business community for more than 100 years, the Detroit Regional Chamber is one of the oldest, largest, and most respected chambers of commerce in the country. As the voice for business in the 11-county Southeast Michigan region, the Detroit Regional Chamber's mission is carried out by creating a business-friendly climate and providing value for members. The Detroit Regional Chamber leads the most comprehensive education and talent strategy in the state. The Detroit Regional Chamber also executes the statewide automotive and mobility cluster association, MICHauto, and hosts the nationally recognized Mackinac Policy Conference. The Detroit Regional Chamber and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Detroit Regional Chamber also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Grand Rapids Area Chamber of Commerce ("Grand Rapids Chamber"): The Grand Rapids Chamber leads the business community in creating a dynamic, top-of-mind West Michigan region. Together with over 2,500 member businesses (80% of which are small businesses with fewer than 50 employees), it works to expand the influence, access, and information required to actively encourage entrepreneurial growth and community leadership. It offers the connections, resources, and insights needed to develop strong leaders, engage a diverse

workforce, foster an inclusive and welcoming community, and advance a vibrant business environment that nurtures economic prosperity for all. The Grand Rapids Chamber and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Grand Rapids Chamber also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Jackson Area Manufacturers Association ("JAMA"): JAMA is a not-for-profit association of manufacturers and associate members located or doing business in Jackson County, Michigan, and the surrounding region. It has one goal in mind: the continued prosperity of its manufacturing members and the broader regional community as a whole. JAMA focuses on helping to improve the manufacturing climate of south-central Michigan and positioning it as a leading provider of technology information, training, workforce and economic development support services, and issue advocacy at the local, state and federal levels. JAMA and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. JAMA also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Jackson Chamber of Commerce ("Jackson Chamber"): The Jackson Chamber is a local association to promote and protect the interests of the business community in the Jackson area. The Jackson Chamber and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Jackson Chamber

also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Lansing Chamber of Commerce ("Lansing Chamber"): The Lansing Chamber serves as the voice of Lansing businesses on issues and policies that impact the business community and economic climate of the Greater Lansing region. The Lansing Chamber and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Chamber also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Michigan Chemistry Council: The Michigan Chemistry Council is the state industry association for Michigan's business of chemistry, one of the state's largest manufacturing sectors and one that directly touches 96% of all manufactured goods. The Council and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Council also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Michigan Golf Course Association (the "Association"): As the voice of Michigan golf business, Michigan Golf Course Association represents owners and operators of golf courses throughout the state. The 800 golf courses in Michigan represent 60,000 seasonal jobs and a $4.2 billion economic impact. The Association and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force.

The Association also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Michigan Licensed Beverage Association ("MLBA"): The MLBA was established in 1939 and is Michigan's first and only bar, restaurant and tavern owners' association. The MLBA's purpose is promoting the general welfare of licensees, improving business standards, discouraging harmful trade practices, and further legitimizing the business of selling alcoholic beverages in a lawful and upright manner. The MLBA and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The MLBA also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Michigan Realtors®: Michigan Realtors® is one of Michigan's largest nonprofit trade associations, comprising 40 local boards and a membership of approximately 36,500 individual associate brokers and salespersons licensed under Michigan law. Brokerage firms across the state, and many of the independent contractors who work for those brokerage firms, are employers such that this decision will impact the terms and conditions under which they operate. These terms and conditions directly impact budgeting and the labor force. Michigan Realtors® also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Michigan Retailers Association ("Retailers Association"): The Retailers Association is the voice of Michigan's retail industry which provides more than 790,000 jobs to Michigan workers. The Retailers Association represents more than 5,000 businesses and 15,000 stores and online retailers. The Retailers Association and its members have a direct interest in this matter

since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Retailers Association also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Midland Business Alliance ("MBA"): The MBA represents more than 3,000 businesses as Midland County's comprehensive business hub, leading the attraction, development, and growth of businesses. By bringing together economic development and the chamber of commerce, the MBA is a leader and catalyst for growth, building and cultivating a strong and diverse economy. The MBA serves as a voice for all business and is a leader in advocacy for Midland and the entire Great Lakes Bay Region. The MBA and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The MBA also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Saginaw County Chamber of Commerce ("Saginaw Chamber"): The Saginaw Chamber is a business membership-based organization of nearly 1000 members. It leads on behalf of business. It communicates, connects, and influences. Its vision is to create a thriving economy in Saginaw County and beyond. The Saginaw Chamber and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The Saginaw Chamber also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Southwest Michigan Regional Chamber ("SMRC"): SMRC is a member-driven business advocacy organization working to grow existing industry and improve the region's overall business climate. As the region's leading "Voice for Business," SMRC has a responsibility to advance policies that will position Southwest Michigan for economic success and to oppose policies that will harm their members and deprive the region of future growth opportunities. SMRC and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. SMRC also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

Three Rivers Area Chamber of Commerce ("TRA Chamber"): The Three Rivers Area Chamber of Commerce is St. Joseph County's premier business organization representing the interests of approximately 300 members across a broad cross section of services and industries in Southwest Michigan. The TRA Chamber and its members have a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for its member employers. These terms and conditions directly impact budgeting and the labor force. The TRA Chamber also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

West Michigan Policy Forum ("Policy Forum"): The Policy Forum strives to create jobs and opportunities through identifying and removing barriers to competitiveness to help Michigan become a top 10 state in the nation. The Policy Forum has a direct interest in this matter since the Court's decision would impact the terms and conditions of operation for employers. These terms and conditions directly impact budgeting and the labor force. The

Policy Forum also has an interest in maintaining the integrity of the legislative process, especially when it advocates for its members.

This is the second time Public Acts 368 and 369 have come before the Court. *In re House of Representatives Request of Advisory Opinion Regarding Constitutionality of 2018 PA 368 and 369*, 505 Mich 884; 936 NW2d 241 (2019) (denying request for an advisory opinion because the Court was "not persuaded that granting the requests would be an appropriate exercise of the Court's discretion."). While the posture of this case has changed, the issues still do not warrant the Court's review. The COA's published opinion is based on settled cannons of constitutional analysis and corrects the outcome-driven opinion of the trial court.[3] *Mothering Justice v Attorney General*, __ Mich App __; __ NW2d __ (2023), Docket No. 362271.

The Coalition's members are predominately small businesses that have carefully budgeted for their goods, services, and labor costs in accordance with Public Acts 368 and 369—and have done so since the Acts' adoption—for almost 5 years. If given effect, the Court of Claims' July 19, 2022 Order ("COC Order") striking down Public Acts 368 and 369 (and reviving Public Acts 337 and 338 of 2018) would have multiple immediate, adverse and irreversible impacts on the Coalition's members and their employees.

Under Public Act 337 of 2018, the Improved Workforce Opportunity Wage Act ("IWOWA"), Michigan businesses—no matter their size—would be forced to quickly raise minimum wages with annual adjustments for inflation. For the hospitality industry, tipped

[3] Judges Kelly and Riordan also wrote concurring opinions.

employees would have to earn 80% of the minimum wage in 2022 with the tip credit completely phased out by 2024.[4]

The immediate increase of the minimum wage would adversely impact the workers that it purports to support. The Harvard Business Review found a $1 minimum wage hike resulted in reduced hours worked for employees, reductions in eligibility for benefits, and more inconsistent scheduling in order for employers to handle the increased strain on their budgets. The same study found that that for every $1 increase in the minimum wage, the result was net losses of "at least $1,590 per year per employee—equivalent to 11.6% of workers' total wage compensation (and this is assuming that workers were able to use their reduced hours to work a second job—an assumption which may not hold true for many employees.)."[5]

The impact would be equally devastating to businesses across Michigan. "Large and sudden increases in the minimum wage have the potential to shock the economy and have ripple effects that hurt both low-wage workers and everyone else."[6] A study of a $15 minimum wage mandate found that, if implemented, Michigan would lose approximately 200,000 full-time jobs.[7] Sudden wage hikes impact the ability of the Coalition's members to stay fully staffed and remain productive. According to a study done by researchers at the Harvard Business School, a

[4] The dates cited are those in the original Act and clearly demonstrate the impossibility of now coherent implementation should the COA be reversed.

[5] Quiping Yu, Shawn Mankad, and Masha Shunko, *Research: When a Higher Minimum Wage Leads to Lower Compensation*, The Harvard Business Review (June 10, 2021) available at https://hbr.org/2021/06/research-when-a-higher-minimum-wage-leads-to-lower-compensation#:~:text=For%20every%20%241%20increase%20in,per%20week%20decrease%20by%2020.8%25.

[6] James M. Hohman, *A Look at What Happens After Minimum Wage Hikes in Michigan*, Mackinac Center for Public Policy (Nov 19, 2018) available at https://www.mackinac.org/a-look-at-what-happens-after-minimum-wage-hikes-in-michigan.

[7] James Sherk, *How $15-per-Hour Minimum Starting Wages Would Affect Each State*, The Heritage Foundation (Aug 17, 2016), available at https://perma.cc/BAQ6-6X5Q.

$1 minimum wage increase leads to a 14% increase in the likelihood of closure for certain businesses.[8] A sudden wage hike impacts not only employers, but also impacts employees and the health of the overall economy.[9] Another study specific to the restaurant industry found that increases in cash wages cause restaurants to reduce service levels and reduce employment of workers who are typically eligible for tip credits.[10] The compelled re-enactment of IWOWA would cause these immediate, adverse consequences. These changes would apply equally to all employers, including hospitals, schools, local governments, and universities. An increase in costs to governmental entities in turn increases costs for employers through inevitable increased taxation.

Public Act 338 of 2018, the Earned Sick Time Act ("ESTA"), requires that employees earn a minimum of one hour of sick time for every 30 hours worked. Employees of "small businesses" (employers with fewer than 10 employees and which includes many of the Coalitions' members) accrue up to 40 hours of paid sick time and 32 hours of unpaid sick time each year. Earned sick time would carry over from year to year up to the annual maximums. Under the ESTA, employers cannot require employees to arrange for coverage during an absence and employees are not required to give documentation for an absence until three days after the absence is incurred. Further, the ESTA definition redefines the term "employee" to include anyone that performs a service for an employer—which may even include contract employees. Because employers must allow employees to accrue paid sick leave as they work (as opposed to

[8] Dara Lee Luca and Michael Luca, *Survival of the Fittest: The Impact of the Minimum Wage on Firm Exit*, Harvard Business School (2018), available at https://www.hbs.edu/ris/Publication%20Files/17-088_9f5c63e3-fcb7-4144-b9cf-74bf594cc308.pdf

[9] Hohman, *supra* n 5.

[10] William Even & David Macpherson, *Tip Credits and Employment in the U.S. Restaurant Industry*, Employment Policies Institute (Nov 2011), available at https://perma.cc/V7EX-6AXB.

front-loading annual sick time at the beginning of the year), employers would face increased administrative burdens allocating and tracking the new system. These higher benefit costs would also force employers to reduce workers' pay by approximately the cost of providing the benefit, and employers would need to spend more on leave benefits and less on wages—often hurting their employees.[11]

The ESTA prohibits employers from "retaliating" against an employee for engaging in activity protected by the act. Importantly, there is a rebuttable presumption that an employer violated the act if any adverse personnel action against an employee is taken within 90 days after the employee engages in protected activity. This would likely create additional litigation and liability concerns for employers who need to terminate employees within 90 days of their use of a sick day for unrelated reasons. The ETSA creates a private cause of action for employees without any administrative exhaustion requirement, which will likely unnecessarily burden both the courts and employers.

As the COA observes, the Court of Claims' decision reached a strained result. The Court of Claims decision claims to support the "will of the people" and, as evidence of this will, cites the filing of 372,105 and 377,650 signatures, respectively, in support of the proposed initiatives (out of a Michigan population of approximately 10 million).[12] But the Court of Claims possessed no crystal ball to prophesy whether Michigan's 10 million voters would have adopted the proposed initiative as originally drafted—it cannot know whether IWOWA and ESTA

[11] See James Sherk, *Understanding Mandatory Paid Sick Leave*, Heritage Foundation (Jan 12, 2012), available at https://perma.cc/5RMA-LJGF.

[12] United States Census Bureau, *Quick Facts: Michigan* (last accessed Sept. 20, 2022), available at https://www.census.gov/quickfacts/MI. This Court may take judicial notice of the total population in Michigan under MRE 201. See *AFSCME Council 25 v Co of Wayne*, 292 Mich App 68, 92; 811 NW2d 4 (2011) (taking judicial notice of the population of Wayne County).

actually represent the will of the People. In reversing the Court of Claims, the COA recognized that the Legislature *also* represents the will of the People through representative democracy. Slip Op at 16 ("with initiated laws the people and the legislature are considered co-ordinate legislative bodies[.]"). The COA's decision gives effect to the clear language of the Constitution and the Legislature's plenary authority to both enact and amend laws. In comparison, the Court of Claims' decision erroneously reads into the Constitution limitations on legislative authority that do not exist. The judiciary should not be in the business of shaping the state's economic policies that impact all businesses and employees—under the Constitution, such activities fall within the powers of the legislative branch. The internal affairs and procedural rules of the Legislature should not be interfered with. The Legislature is best positioned to represent the "will of the people" and the interests of its constituents, just as it did in 2018 by lawfully passing Public Acts 368 and 369.

The Coalition is well-positioned to provide this Court with the perspective of businesses and employers that will be impacted most by the outcome of this case. Because of these interests, the Coalition has been permitted to participate in this matter before the COA and before this Court in *In re House of Representatives Request of Advisory Opinion Regarding Constitutionality of 2018 PA 368 and 369, supra.* In addition to consideration of this brief, if the Court decides to accept Appellants'[13] applications, the Court should permit the Coalition to also participate as amicus.

[13] Both Mothering Justice and the Attorney General have separately filed applications for leave to appeal to this Court. However, both applications contain similar arguments that need not be separately addressed. Therefore, at times both Mothering Justice and the Attorney General are referred to collectively as the "Appellants."

STATEMENT OF JURISDICTION

This Court has jurisdiction over the Applications for Leave to Appeal pursuant to MCR 7.303 and MCR 7.305.

The Coalition's proposed amici curiae brief in support of the State is timely pursuant to MCR 7.312(H).

STATEMENT OF QUESTIONS INVOLVED

I. "The legislative power of the State of Michigan is vested in a senate and a house of representatives." Const 1963, art 4, § 1. Because the Legislature has plenary authority granted under the Constitution, did the Legislature lawfully enact the IWOWA and ESTA and then amend these laws in the same legislative session?

The State of Michigan answers:	Yes
Appellants answer:	No
The Coalition answers:	Yes
The Court of Claims answered:	No
The Court of Appeals' answered:	Yes

II. Were Public Acts 368 and 369 of 2018 enacted in accordance with article 2, § 9 of the Michigan Constitution?

The State of Michigan answers:	Yes
Appellants answer:	No
The Coalition answers:	Yes
The Court of Claims answered:	No
The Court of Appeals' answered:	Yes

CONSTITUTIONAL PROVISIONS INVOLVED

Article II, Sec. 9 Initiative and Referendum; Limitations; Appropriations; Petitions

[1] The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. The power of referendum does not extend to acts making appropriations for state institutions or to meet deficiencies in state funds and must be invoked in the manner prescribed by law within 90 days following the final adjournment of the legislative session at which the law was enacted. To invoke the initiative or referendum, petitions signed by a number of registered electors, not less than eight percent for initiative and five percent for referendum of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required.

[2] No law as to which the power of referendum properly has been invoked shall be effective thereafter unless approved by a majority of the electors voting thereon at the next general election.

[3] Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

[4] If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a yea and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

[5] Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more

measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

[6] The legislature shall implement the provisions of this section.

Article IV, Sec. 1 Legislative Power

Except to the extent limited or abrogated by article IV, section 6 or article V, section 2, the legislative power of the State of Michigan is vested in a senate and a house of representatives.

INTRODUCTION

When deciding the constitutionality of Public Acts 368 and 369, the Court of Appeals ("COA") made plain that the legislature clearly has the constitutional authority to amend initiated legislation it adopts in the same legislative session. As the State of Michigan points out in its brief, there could be "immediate and broad-based effects" if this Court overturns COA's decision. (State's Answer to Mothering Justice at 2.) When deciding whether to hear this case, the Court should consider, in addition to the lack of legal basis presented by Appellants, the direct impact on the welfare of the Coalitions' members—the parties tasked with paying employee wages and implementing employee benefits programs. Michigan businesses are facing historic challenges including record inflation and the ongoing effects of economic damage inflicted by the Covid-19 pandemic. To be required to suddenly implement a new law, almost 5 years after compliance in good faith with a facially legitimate enactment of the Legislature, would lead to an immediate and drastic adverse impact on both businesses and employees (and the government officials required to figure out a way to administer the morass). The COA decision should stand.

The COA (contrary to the allegations of Appellants) properly focused on the common understanding of the Michigan Constitution supported by the plain language of its provisions and further confirmed by the records of the Constitutional Convention and case law. The role of the judiciary is not to engage in policymaking—that is the purview of the Legislature, a body that directly represents the People. *Kyser v Kasson Twp*, 486 Mich 514, 536; 786 NW2d 543 (2010) ("policy-making is at the core of the legislative function"). Ignoring this precept, the Court of Claims' Order, largely based on policy and outcome considerations, would have voided Michigan's current laws governing sick leave and the minimum wage contrary to the

Constitution's clear language. The Court of Claims determined that an initiative petition signed by a small fraction of Michigan voters (and never voted on statewide by the electorate) represents the "will of the People" more effectively than elected representatives who collectively represent all of the state—not only a small fraction of the electorate who signed petitions. The Court of Claims' unsupported conclusion created a limitation on legislative power contrary to the Michigan Constitution.

Relying on the actual language, case law, and the history of article 2, § 9, the COA determined that based on the common understanding of the language, the Legislature is free to amend an initiated law it adopts in the same session. Slip Op at 11. Unlike the Court of Claims, the COA was careful to note that the "motives of the Legislature in adopting and amending are irrelevant." Slip Op at 11.

Appellants' attempts to use the "court of public opinion," to create new limits on the Legislature's power and facially attack Public Acts 368 and 369 should be rejected. The Court should also reject the Appellants' attempt to transform an indirect form of democratic expression into a direct form of democratic expression by relying in large part on cases addressing amendments to the constitution—the mechanics of initiating legislation are decidedly different than the mechanics of initiating a constitutional amendment. The Legislature, as a directly-elected representative body, manifests the will of its constituents. *People v Taylor*, 495 Mich 923, 931; 844 NW2d 707 (2014), MARKMAN, J. concurring ("The Legislature represents the whole of the people in the broadest possible manner, and the laws that it produces must pass muster by the support of at least a majority of legislators, representing constituencies that are urban, rural, and suburban; constituencies of every socioeconomic, racial, and ethnic

composition; constituencies in which different businesses, interests, and political and partisan philosophies are reflected and balanced[.]").

The Constitution acts not as a *grant* of power to the Legislature, but as a *limitation* on its inherent (plenary) authority. Const 1963, art 4, § 1; *Taxpayers of Mich Against Casinos v Michigan*, 471 Mich 306, 327; 685 NW2d 221 (2004). If the Constitution does not limit or prohibit an action of the Legislature, then the Legislature has plenary power to exercise its authority. The Legislature's plenary authority, including its power to adopt and amend laws--even an initiated law that it enacted and amended during the same session, is not abrogated by article 2, § 9. Finally, to the extent that any ambiguity regarding the constitutionality of Public Acts 368 and 369 exists, (and Amicus does not believe there is any ambiguity) mandates of constitutional construction require an interpretation in favor of the constitutionality of the Legislature's actions. See *O'Brien v Hazelet & Erdal*, 410 Mich 1, 17; 299 NW2d 336 (1980).

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COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Proposed Amicus adopts the counter-statement of facts and proceedings provided by the State of Michigan in its Answer to Appellant Mothering Justice's Application. (State's Answer to Mothering Justice at 4.) However, a short summary is provided of the most relevant facts.

Laws proposed by initiative were submitted by two groups. Michigan One Fair Wage's ("MOFW") petition proposed a new Michigan minimum wage law. The second group, Michigan Time To Care ("MTTC") proposed mandatory sick leave to be granted under various circumstances. In order to initiate legislation, each was required to submit 252,523 valid signatures.[14] Both petitions filed enough valid signatures and, per Const 1963, art 2, § 9, were submitted to the Legislature for its consideration.[15]

On September 5, 2018, the initiative petitions were approved by a majority of both the House and Senate and enacted as Acts 337 and 338.[16] Months later, amendments to Acts 337 and 338 were adopted by the Senate on November 28, 2018 and by the House on December 4, 2018. The Governor signed Public Act 369 into law on December 12, 2018 and Public Act 368 into law on December 13, 2018. Prior to final adoption of the amendments by the Legislature, Attorney General Schuette had affirmed the legality of the process. [17]

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[14] Signatures of at least 8% of the total votes cast for governor at last general election are required to initiate a law. Const 1963, art 2, § 9.

[15] The COA, after a Board of Canvassers deadlock ordered the MOFW petition certified. *Mich Opportunity v Bd of State Canvassers*, unpublished Order of the COA in Docket No 344619 (Aug. 22, 2018), lv den 503 Mich 918, 920 NW2d 137 (2018).

[16] The signature of the Governor is not required on laws proposed by initiative petition and adopted by the legislature. Const 1963, art 2, § 9.

[17] "[A]rticle 2, § 9 of the Michigan Constitution does not prohibit the Legislature from amending a legislatively enacted initiated law during the same legislative session in which the Legislature enacted the initiated law." OAG, 2017-2018, No. 7306, p 9 (December 3, 2018).

Additionally, on February 20, 2019, before the March 29, 2019 effective date of the Public Acts, the Legislature requested an advisory opinion from this Court regarding the constitutionality of the amended acts. The Court, on December 18, 2019, stated that "we are not persuaded that granting the requests would be an appropriate exercise of the Court's discretion." *In re House of Representatives Request for Advisory Opinion Regarding Constitutionality of 2018 PA 368 & 369*, 505 Mich 884; 936 NW2d 241 (2019).

Almost two and one-half years after the Court's denial of the request for opinion, on May 5, 2021, Appellant Mothering Justice filed this case in the Court of Claims.[18] The Court of Claims determined that Public Acts 368 and 369 (the amended acts) violated article 2 § 9 of the Michigan Constitution because "[a]rticle 2, § 9 does not permit the Legislature to adopt a proposed law and, in the same legislative session, substantially amend or repeal it." COC Op, p 1. The Court of Claims concluded that "to hold otherwise would effectively thwart the power of the People to initiate laws and then vote on those same laws—a power expressly reserved to the people in the Michigan Constitution." *Id.* at 25.

The State of Michigan's appeal followed. The COA reversed the Court of Claims finding that its "conclusions are not supported by either the text or intent of art 2, § 9[.]" Slip Op, p 1. Applying the rule of common understanding, the COA found that "the actual language of the proposed Constitution constitutes the best evidence of the common understanding . . . [and article 2, § 9] allows the Legislature to adopt a proposal in toto, and there are no express restrictions on subsequently amending the laws during the same session." Slip Op, p 13.

[18] While charged with defending the Legislature's actions, the Attorney General was also allowed to participate (with another team of lawyers) aligned with Plaintiff/Appellant Mothering Justice.

Appellants Mothering Justice and the Attorney General subsequently filed separate applications for leave to appeal the COA's decision.

STANDARD OF REVIEW

"This Court reviews de novo a question of constitutional law." *People v Kennedy*, 502 Mich 206, 213; 917 NW2d 355 (2018). Whether a statute violates the Michigan Constitution is also a question of law that is reviewed de novo. *Coalition of State Emp Unions v State*, 498 Mich 312, 322; 870 NW2d 275 (2015).

"A statute challenged on a constitutional basis is 'clothed in a presumption of constitutionality,' and the burden of proving that a statute is unconstitutional rests with the party challenging it." *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 479 Mich 1, 11; 740 NW2d 444 (2007) (citation omitted). Only when a statute is so clearly invalid that it leaves "no room for reasonable doubt that it violates some provision of the Constitution" does this court find a statute invalid. *Phillips v Mirac, Inc*, 470 Mich 415, 423; 685 NW2d 174 (2004) (cleaned up).

An application for leave to appeal to this Court must show: (1) the issue involves a substantial question about the validity of a legislative act; (2) the issue has significant public interest and the case is one by or against the state; (3) the issue involves a legal principle of major significance to the state's jurisprudence; or (4) that the decision is clearly erroneous and will cause material injustice or the decision conflicts with a decision of this Court. MCR 7.305.

ARGUMENT

I. The COA correctly determined that Public Acts 368 and 369 are constitutional as they are entitled to a presumption of constitutionality under the Legislative authority granted in article 4, § 1 of the Michigan Constitution.

This Court's standard for a discretionary appeal is high; there must be significant questions of law and public policy involved. MCR 7.305. That is not the case here. The COA found no ambiguity in the language of art 2, § 9 of the Michigan Constitution. Slip Op at 9. There is no significant question of law or public policy when the law is clear.

Appellants brought facial challenges to the constitutionality of Public Acts 368 and 369 and accordingly must clear a high bar for nullifying these laws. They cannot. "Legislation is presumed to be constitutional absent a clear showing to the contrary." *AFT Mich v State*, 497 Mich 197, 214; 866 NW2d 782 (2015). "Acts of the Legislature enjoy a presumption of constitutionality and the legislative judgment must be accepted if it is supported by any state of facts either known or which could reasonably be assumed." *O'Brien v Hazelet & Erdal*, 410 Mich 1, 17; 299 NW2d 336 (1980) (cleaned up). A statute "comes clothed in a presumption of constitutionality" because "the Legislature does not intentionally pass an unconstitutional act." *Cruz v Chevrolet Grey Iron*, 398 Mich 117, 127; 247 NW2d 764 (1976). The Court must "scrupulously sustain the legislative will if within the constitutional limits of its function." *Advisory Opinion Re Constitutionality of 1970 PA 100*, 384 Mich 82, 89; 180 NW2d 265 (1970). The Court must "uphold all laws that do not infringe the state or federal Constitutions and invalidate only those laws that do so infringe" and "not render judgments on the wisdom, fairness, or prudence of legislative enactments." *AFT Mich*, 497 Mich at 214 (cleaned up); see also *People v Collins*, 3 Mich 343, 348-349 (1854) ("It is never to be forgotten that the presumption is always in favor of the validity of the law, and it is only when manifest

assumption of authority and clear incompatibility between the constitution and the law appears, that the judicial power can refuse to execute it.").

Appellants—as the parties challenging Public Acts 368 and 369—bear the burden to overcome this presumption of constitutionality. *Cruz*, 398 Mich at 127. The party challenging the facial constitutionality of an act must "establish that no set of circumstances exits under which the [a]ct would be valid. The fact that the . . . [a]ct might operate unconstitutionally under some conceivable set of circumstances is insufficient." *Council of Orgs & Others for Ed About Parochiaid v Governor*, 455 Mich 557, 568; 566 NW2d 208 (1997).

Appellants seemingly turn the plenary powers of the Legislature on its head. Mothering Justice argues that the people essentially occupy the entire field for the power of initiative and the Legislature is precluded "from altering or amending a legislatively enacted initiative—a "law"—during the same legislative session." (Mothering Justice Application at 14.) Similarly, the Attorney General argues that "in the initiative processes the People reserved power for themselves and gave back only very limited power to the Legislature." (AG Application at 9.) Neither Appellant points to the actual text of art 2, § 9 for support, instead including only general policy arguments. Further, their arguments void the recognized authority of the Legislature's Article 4 power. Nothing in Article 2 suggests, either specifically or by implication, that its provisions act to supersede legislative power that this court has recognized as "plenary."

The Michigan Constitution expressly provides that "[t]he legislative power of the State of Michigan is vested in a senate and a house of representatives." Const 1963, art 4, § 1. "Simply, legislative power is the power to make laws." *In re Rovas Complaint*, 482 Mich 90, 98; 754 NW2d 259 (2008). "The legislative power prescribes rules of action. The judicial power determines whether, in a particular case, such rules of action have been transgressed." *People v*

Konopka, 309 Mich App 345, 362; 869 NW2d 651 (2015). The legislative power of the People is enacted through the Legislature, in which this legislative power "is limited only by the Constitution, which is not a grant of power, but a limitation on the exercise of power[.]" *Oakland Co Taxpayers' League v Bd of Supervisors*, 355 Mich 305, 323; 94 NW2d 875 (1959). The Legislature "can do anything which it is not prohibited from doing by the people through the Constitution of the State or the United States." *Coalition of State Employee Unions v State*, 498 Mich 312, 331–32; 870 NW2d 275 (2015).

The Legislature's broad powers are rooted in article 4, §1 of the Michigan Constitution which provides few limitations on that power. Appellants argue that the legislative authority is subject to article 2, § 9 of the Michigan Constitution—the powers of the public to propose and enact laws through initiative and referendum. But the Legislature's power does not vanish just because a question involves an initiative petition or referendum. Article 2, § 9 does not exist in a vacuum. Michigan courts have long held that the legislative requirements of article 4 of the Michigan Constitution *do apply* to article 2, § 9. *Frey v Dir of the Dep't of Social Servs*, 162 Mich App 586, 600 at n 4; 413 NW2d 54 (1987) ("[o]ther constitutionally mandated procedures of article 4 also necessarily apply to legislation initiated under article 2, e.g., § 14 (quorum requirement), § 20 (open meetings), § 35 (publication and distribution of laws)."). See also *Leininger v Secretary of State*, 316 Mich 644, 648–649; 26 NW2d 348 (1947) (article 4, § 24's title-object clause applied to petitions to initiate legislation under the 1908 Constitution); *Auto Club of Mich Comm for Lower Rates Now v Secretary of State (On Remand)*, 195 Mich App 613, 622; 491 NW2d 269 (1992) (indicating that article 4, § 25's republication requirement applies to petitions to initiate legislation). Appellants urge this Court to carve out an exception to the Legislature's plenary powers under article 4 for article 2, § 9, but fail to demonstrate that such an

exception exists in the Michigan Constitution—certainly no limiting language exists nor was any such limitation recognized at the Constitution Convention. (Mothering Justice Application at 6; Attorney General Application at 23.)

Because article 4, § 1 grants the Legislature plenary powers and because it is not otherwise prohibited, see *infra* II, the Legislature may enact a law proposed by an initiative petition and then subsequently amend that law during the same legislative session. The Legislature adopted IWOWA (2018 PA 337) and ESTA (2018 PA 338) in whole and within 40 session days of receipt of the certified initiative petitions, as required under article 2, § 9. Then, the Legislature—exercising its plenary authority—amended the acts by majority votes during the same session—but after expiration of the 40 days—and the Governor signed these bills into law. Public Acts 368 and 369 were enacted in accordance with article 2, § 9 because that provision places no prohibition on amending (substantial or not) initiated laws enacted by the Legislature during the same session. Because Public Acts 368 and 369 were lawfully enacted under article 4, § 1 and are presumed constitutional, Appellants carry the burden of demonstrating their unconstitutionality. Appellants fail to do so.

II. The COA correctly determined that article 2, § 9 of the Michigan Constitution does not prohibit the Legislature from amending a legislatively enacted initiative law in the same session.

The COA, began its analysis from the premise that the Legislature is empowered to do anything which it is not prohibited from doing by the People. Slip Op at 6. Because the Legislature has plenary legislative authority under the Michigan Constitution, the COA considered whether article 2, § 9 limits the Legislature's power to amend a legislatively enacted initiative law in the same session. Article 2, § 9 admittedly reserves to the People the power for initiatives and referenda of laws. *Woodland v Mich Citizens Lobby*, 423 Mich 188, 214; 378 NW2d 337 (1985). But this reservation, as evidenced by the constitutional text, the controlling

caselaw, the Constitutional Convention discussions, and the superseding Attorney General's opinion does not prevent *amendment* of a legislatively adopted law—even if proposed by petition. The law is clear, was correctly interpreted by the COA, and it is unnecessary for this Court to undertake further review.

When interpreting the Michigan Constitution, courts must "determine the text's original meaning to the ratifiers, the people, at the time of ratification." *Citizens Protecting Mich Const v Secretary of State*, 503 Mich 42, 61; 921 NW2d 247 (2018) (cleaned up). All parties to this case agree that the "primary goal in construing a constitutional provision is to give effect to the intent of the people of the state of Michigan who ratified the Constitution, by applying the rule of 'common understanding.'" *Coalition of State Employee Unions*, 498 Mich at 323. (See also AG Application at 16; Mothering Justice Application at 6; State's Answer to Mothering Justice at 16.) Courts "locate the common understanding of constitutional text by determining the plain meaning of the text as it was understood at the time of ratification." *League of Women Voters of Mich v Secretary of State*, 508 Mich 520, 535; 975 NW2d 840 (2022) (citation omitted). The interpretational exercise is to objectively examine the ratifiers' common understanding, "not to impose on the constitutional text . . . the meaning . . . judges would prefer, or even the meaning the people of Michigan today would prefer, but to search for contextual clues about what meaning the people who ratified the text in 1963 gave to it." *Mich United Conservation Clubs v Secretary of State*, 464 Mich 359, 375; 630 NW2d 297 (2001), YOUNG, J., concurring. The analysis therefore begins with "an examination of the precise language used in art 2, § 9 . . . ." *Id.*; see also *Frey*, 429 Mich at 335 ("This interpretation is . . . in accordance with the 'common understanding rule' [by which we] are limited to the language of the constitution when interpreting its provisions."). "Th[e] reliance on extrinsic evidence [is] inappropriate [when] the

constitutional language is clear." *American Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 362 (2000); see also *Taxpayers for Mich Const Gov't v Dep't of Technology, Mgt & Budget*, 508 Mich 48, 79; 972 NW2d 738 (2021) (holding this Court erred in relying on the drafters' notes of the Headlee Amendment when "the constitutional language is clear").

The COA appropriately applied the rule of common understanding to "give effect to the intent of the people of the state of Michigan who ratified the Constitution[.]" Slip Op at 5. The COA's "primary focus [was] on the language of the constitution itself and the common meaning of the words at the time of ratification, as those words were what people considered when adopting [the Michigan Constitution.]" *Id.* The Attorney General alleges that the COA "approached constitutional text as if it was a statute," but both a constitutional analysis and statutory analysis begin with the actual text of the provision. (AG Application at 17.)

Appellants cite no authority that supports inserting new requirements into art 2, § 9 that are not part of the plain text of the provision. In advocating for a "liberal construction" of constitutional provisions, the Attorney General relies on dissenting authority that in turn relies on a case that actually supports the COA's analysis. (AG Application at 16, citing *Michigan United Conservation Clubs*, 464 Mich at 413, CAVANAGH, J., dissenting, citing *Kuhn v Department of Treasury*, 383 Mich 378, 385 (1971) (declining to "stretch the language ratified by the people" and instead relying on the plain language of art 2, § 9).) Similarly, Mothering Justice argues that the overall "construction" of the Constitution supports its position that an initiated law cannot be amended in the same session, but cites to no express authority as evidence. (Mothering Justice Application at 34-35.) According to Appellants, this Court should ignore the Legislature's plenary powers and instead "reasonably imply a restriction" that is not in the actual text of art 2, § 9. (AG Application at 21, citing *Blank v Department of Corrections*,

462 Mich 103, 142 n 14 (2000) MARKMAN, J., concurring; Mothering Justice Application at 13, quoting the same.) The COA declined to do so.

The COA correctly reversed the Court of Claims' reading of art 2, § 9. The Court of Claims recited the applicable rules of constitutional construction, but then ignored the plain text of article 2, § 9 by reading non-existent limitations on the Legislature's authority into the provision. COC Order at 6–7.[19] Determining the "common understanding" of a constitutional term necessitates looking at the actual language of the provision, not language absent from the provision. "The most obvious way to divine what meaning 'the great mass of the people themselves would give' any word or phrase would be the common meaning *of the language used*." *Walker v Wolverine Fabricating & Mfg Co*, 425 Mich 586, 596; 391 NW2d 296 (1988) (emphasis added). The COA correctly concluded that the "common understanding" of the People cannot mean that the courts can add non-existent limitations on the Legislature to the plain language of art 2, § 9. Slip Op at 9 (" . . . the trial court essentially imposed on the Legislature [a restriction that] . . . was not placed by the people on initiative laws.").

[19] The trial court relied on the general statement that courts "liberally construe[] constitutional initiative and referendum provisions . . . ." COC Order at 8, quoting *League of Women Voters of Mich v Secretary of State*, __ Mich App __; __ NW2d __ (Oct. 29, 2021), Docket Nos. 357984 and 357986, slip op at 9. This rule of construction alone cannot carry the day for many reasons. Public Acts 368 and 369, like all legislation, are presumed to be constitutional. *AFT Mich*, 497 Mich at 214. And a liberal construction of article 2, § 9 cannot mean the Court may read into the law something that is not there. See *People v Williams*, 463 Mich 942; 621 NW2d 214 (2000) (Mem), CORRIGAN, J., dissenting ("I cannot endorse a 'liberal' construction that reads into the statute words that plainly are not there."); 82 C.J.S. Statutes § 504 (liberal construction "does not empower the court to read into a statute something that cannot reasonably be implied from the statute's language."). Finally, this Court "has more recently tended to restrain calls for liberal or strict construction, opting instead for a reasonable construction *of all legal texts*." *Sanford v State*, 506 Mich 10, 18; 954 NW2d 81 (2020) (emphasis added).

A. The COA correctly concluded that Article 2, § 9 places no limitation on legislative authority to amend an initiated law enacted by the Legislature.

Article 2, § 9 provides the following processes for initiatives: (1) a law may be proposed to the Legislature for enactment by gathering a certain number of signatures on a petition; (2) once the initiated law is submitted, the Legislature must either enact or reject it "without change or amendment within 40 session days . . ."; (3) if the Legislature enacts the proposed law, it is subject to referendum, like any other law enacted by the Legislature; (4) if the proposed law is not enacted, the law is submitted to the people on the ballot for a vote during the next general election; and (5) if a law initiated by the people is either enacted by the Legislature or adopted by the people, then it is not subject to the governor's veto power. Const 1963, art 2, § 9. There is no language limiting whether or when the Legislature may amend an enacted initiative law after the 40 session days. *Id*. at ¶ 3.

The trial court acknowledged—but wrongly rejected—the plenary authority of the Legislature, stating "there was no need for the people to specify" that the Legislature could not adopt-and-amend an initiated law and "[t]he People granted the legislature three options that it may take within 40 days when faced with an initiative petition." COC Order at 10. This conclusion is antithetical to the concept of plenary legislative power. The COA disagreed with the Court of Claims and ordered reversal. Slip Op at 11. The People need not *grant* the Legislature any specific power when the People have *already granted* the Legislature plenary authority under the Constitution. *Coalition of State Employee Unions*, 498 Mich at 331–32 (The Legislature "can do anything which it is not prohibited from doing by the people through the Constitution of the State or the United States."). The trial court, though, imposed a legislative restriction by claiming that amendment of the enacted laws was an impermissible "forth option"—even though the so-called option was exercised outside of the 40-day period. COC

Order at 8-9, 10. In the context of article 2, § 9, lacking any specific (or implied) prohibition, the Legislature may amend—by simple majority vote and within the same session—an initiated law that it enacted within 40 session days after receiving a certified initiative proposal.

The COA rejected the trial court's assertion that adopt and amend is a "fourth option" under art 2, §9. Slip Op at 11. Rather, the COA recognized that well-settled precedent puts initiated laws on equal footing with other acts of the legislature. *Id.* There is good reason for this. If the Legislature concludes that an initiated law "was not workable," it retains "the power to make needed changes as otherwise there would be no means of doing so before the next election." *In re Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich 49, 66–67; 340 NW2d 817 (1983) (emphasis added; footnotes omitted). The Attorney General concedes such amendments are permissible. (AG's Application at 13 ("It is true that article 4 places substantial power in the hands of the Legislature and generally allows for the immediate revision of laws because they may "need" to be changed immediately. See *Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich at 66–67 (1983).").) Thus, the Attorney General admits that amendments are appropriate—even necessary sometimes—but here she simply does not like the outcome. Under the Attorney General's theory, the Legislature is prohibited from amending an existing law when it was proposed by an initiative petition, *even though* there is no prohibition in article 2, § 9, *and* amendments are permitted sometimes, *but* only when needed. This is not a workable standard—particularly when it is well settled that "since everything that emerges from the Legislature is legislation, all legislative acts must be on an equal footing." *Frey*, 162 Mich App at 600.

Mothering Justice points to the "construction of the constitution" and the prior (non) actions of the Legislature as evidence. (Mothering Justice Application at 31-32.) There is no "use it or lose it" canon of constitutional interpretation. It is beyond question that a power can continue to exist irrespective of whether it is exercised. See *St Louis v United R Co*, 210 US 266; 28 S Ct 620 (1908). For example, the Legislature did not exercise its authority to request an advisory opinion under art 3, § 8 for approximately 20 years but did so once more in the early 2000's. But, this is not even what the principle of "legislative acquiescence" means. The doctrine of legislative acquiescence presumes that the Legislature passes legislation with knowledge of previous *statutory interpretations*. *Columbia Assocs, LP v Dept of Treas*, 250 Mich App 656, 686; 649 NW2d 760 (2002) (citation omitted). Here, the Legislature passed legislation with knowledge of its own constitutional authority to do so under art 4, § 1. All that Mothering Justice points out here is that this case has a unique fact pattern, not that certain powers do or do not exist under art 2, § 9,

If the ratifiers wanted to limit the Legislature's authority to amend legislatively enacted laws proposed by initiative, it would have and could have said so. See *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 313; 806 NW2d 683 (2011). This is especially true when article 2, § 9 expressly limits when the Legislature may amend laws passed by referendum, which "may be amended by the legislature *at any subsequent session thereof*." Const 1963, art 2, § 9, ¶ 5 (emphasis added). A law approved by referendum has been approved twice: once by the Legislature when enacted and once by the people at the polls when presented for potential rejection. *Id.* The Constitution protects such twice-approved laws by providing for amendment only in subsequent legislative sessions. *Id.* That same protection does not extend to laws initiated by the people and then enacted by the Legislature.

Because article 2, § 9 does not explicitly state that the Legislature must wait until a subsequent legislative session to amend an initiated law that it enacted, this a textual limitation does not exist and the common understanding is that the Legislature may amend a legislatively enacted initiative law if and whenever it so chooses outside of the 40 day window. The trial court's determination that the Legislature's use of its plenary authority "nullified" the People's right to vote on a rejected initiative constitutes an inappropriate policy judgment beyond the scope of judicial review. The "adopt and repeal" scenario contemplated by Appellants and the trial court is not at issue here. (AG Application at 21; Mothering Justice Application at 33.)

B. Article 2, § 9 neither requires a popular vote nor approval of three-fourths of each legislative house to amend an initiated law enacted by the Legislature.

The trial court's erroneous reading of article 2, § 9 creates a singular constitutional requirement applicable to *all* initiated legislation (regardless of whether it has been voted on by the electorate) and then treats any legislative activity as an attempt to "thwart" that (manufactured) constitutional process. COC Order at 16–18. There is not a one-track process for initiated legislation. The COA correctly recognized these distinctions. Slip Op at 9. In contrast to the Legislature's unlimited ability to amend an initiated law that it enacted (*supra* I), if the Legislature rejects an initiated law that is subsequently enacted by the people at the polls, then that law may not be repealed or amended unless: (a) the electors vote to repeal or amend the law; or (b) three-fourths of the members of each house of the Legislature vote to repeal or amend it. Const 1963, art 2, § 9, ¶ 5. The COA correctly recognized that that this requirement does <u>not</u> apply to initiated laws proposed by the people and *enacted by the Legislature* within 40 session days, nor is there any other limitation on legislative prerogatives. *Ibid.*

The trial court's conclusion that the State's reading of article 2, § 9 "would effectively thwart the power of the People to initiate laws and then vote on those same laws" is far-fetched. COC Order at 25. To start, the People's power to initiate laws was not thwarted when the Legislature enacted the initiative laws within 40 session days, which was all that was required under article 2, § 9. Section 9 provides no constitutional right to vote on every initiative petition, presumably because such direct democracy would be unworkable and costly, but more importantly would erode our representative democracy. See *Henry v Dow Chem Co*, 473 Mich 63, 98; 701 NW2d 684 (2005) ("In our representative democracy, it is the legislative branch that ought to chart the state's course through such murky waters."). While the People "desired strong safeguards" with their right to propose laws by initiative, that does not grant the Court the ability to read into the Constitution non-existent restrictions on the Legislature's power.[20] Furthermore, the COA correctly held that these perceived motives and intentions are immaterial to the constitutionality of their actions. Slip Op at 18 ("to the extent the trial court focused on the perceived intent of the Legislature, it has been the law of this state for more than 100 years that the motives in passing legislation are irrelevant.")

[20] The Michigan Supreme Court considers "constitutional convention debates and the address to the people, though not controlling, [] relevant" to interpreting the common understanding of a constitutional provision. *Citizens Protecting Mich's Const*, 503 Mich at 61. The Coalition concurs with the State's reading that the constitutional convention debate supports the common understanding of art 2, §9 in that no limit was placed on the ability of the Legislature to amend a law it enacted in the same legislative session. (State's Answer to Mothering Justice at 21–22.)

C. The COA correctly held that laws initiated by petition and enacted by the Legislature have the same stature as laws enacted solely through the legislative process and, therefore, may also be amended during the same legislative session.

The COA conclusion that the Michigan Constitution does not prohibit the Legislature from amending any act, including one proposed by initiative petition, at the same session it was adopted was based, in part, on this Court's precedent that all duly enacted laws, whether initiated by petition, enacted by the Legislature, or adopted at a general election, are on equal footing, unless the Constitution provides otherwise. That is, no special protection is afforded to laws initiated or enacted by the people.[21] *In re Proposals D & H*, 417 Mich 409, 421–22; 339 NW2d 848 (1983). In *Proposals D & H*, the Court rejected that a law enacted by the people through an initiative petition and ballot vote is on a "higher plane" than a law enacted by the Legislature and submitted for the people's approval by referendum. *Id.* (finding that the Constitution does not "afford[] a 'higher plane' to measures adopted under the initiative provisions of art 2, § 9"). The Court based its holding in part on the "principle that all constitutional provisions enjoy equal dignity." *Id.* at 421. The Court found that an initiated law enacted under art 2, § 9 was on equal footing with a law enacted by the Legislature and conditioned on voter approval under art 4, § 34.

The COA agreed. Slip Op at 19. Because they are on equal footing—because no special protections are afforded to initiated laws unless explicitly stated in the Constitution—laws initiated by the people under art 2, § 9 are subject to amendment during the same legislative session just like laws introduced by legislators. See, e.g., *Detroit United Railway v Barnes*

[21] The two exceptions explicitly provided for in art 2, § 9, ¶ 5 are: (1) the popular vote or three-fourths legislative majority requirement to amend or repeal an initiated law enacted by the people at the polls; and (2) the subsequent legislative session requirement to amend a law approved after a referendum vote by the people at the polls.

Paper Company, 172 Mich 586, 588–89; 138 NW 211 (1912) (holding that when the Legislature enacts two conflicting laws during the same session, "the section stand[s] as last amended"); see also 2018 SB 1162 and 2018 SB 1094, which both amended MCL 437.1517a and were both enacted during December 2018.

As recognized by the COA, well-established case law establishes that an initiated law is subject to the same article 4 constitutional requirements as a legislatively introduced bill. "[O]nce enacted, these public acts were on the same footing as any other legislation passed by the Legislature, *Frey*, 162 Mich App at 600, meaning they are subject to amendment at any time, and not only after the start of the next legislative session or expiration of the 90-day referendum period." Slip Op at 9. In *Frey v Department of Mgt & Budget*, 429 Mich 315, 335; 414 NW2d 873 (1987), this Court held that, despite language in the initiative petition stating that the law would take immediate effect, the law could not take immediate effect without approval of two-thirds of each legislative house, as required by art 4, § 27 of the Michigan Constitution. This is because all procedural provisions of article 4 of the Constitution, which establish constitutional limits on "the legislative power of the State of Michigan . . . vested in a senate and a house of representatives" (article 4, § 1), "apply to the Legislature when it votes to enact an initiated law" under article 2, § 9. *Id.* at 337.

Although not cited by the COA, in *Leininger v Secretary of State*, 316 Mich 644, 648–49 (1947), this Court held that the title–object clause, currently found in art 4, § 24, applies equally to initiated laws and laws introduced by the Legislature.[22] The constitutional limitations of art 4 apply to initiated laws as well as to laws introduced and enacted by the Legislature, and that laws

[22] The title–object clause states, "No law shall embrace more than one object, which shall be expressed in its title." Const 1963, art 4, §24.

enacted through different constitutional processes "enjoy equal dignity." *In re Proposals D & H*, 417 Mich at 421. Because it is also the case that no part of art 2, § 9 or art 4 prohibits the Legislature from amending a legislatively introduced law during the session that it was enacted, initiated laws may also be amended during the same session.

D. The COA correctly determined that the conflicting Attorney General opinions on these exact issues are nonbinding.

The COA observed that the trial court and appellants "place significant emphasis on Attorney General Frank Kelly's opinion from 1964, OAG 1963-1964, No. 4303 (March 16, 1964), which states without discussion that 'the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9." Slip Op at 18 n 15. The COA "place[d] little value on this opinion" and the majority opinion disposed of Appellants' argument relying on AG Kelly's opinion in a single footnote. *Id.* The court explained that "while some persuasive value can be placed on Attorney General opinions that *do* contain a rationale, persuasiveness is greatly diminished by the absence of any supporting rationale." *Id.* Even as a piece of contemporaneous evidence of the people's common understanding, the COA determined that "the most relevant historical evidence is that of the convention delegates, . . . and those comments support our conclusion of the common understanding of art 2, § 9." *Id.* at 19 n 15.

The trial court erred in its reliance on Attorney General Kelley's 1964 conclusory opinion on art 2, § 9 over Attorney General Schuette's 2018 opinion, which thoroughly analyzed this exact issue. COC Order at 15. While not binding on this Court, Attorney General opinions are generally of "persuasive value." *Cheboygan Sportsman Club v Cheboygan County Prosecuting Attorney*, 307 Mich App 71, 83 n 6; 858 NW2d 751 (2014). In addressing the exact issues here, AG Schuette opined that art 2, § 9 permits the Legislature to enact a law proposed by the people

through the initiative process and subsequently amend that law during the same session. See OAG, 2017-2018, No. 7306 (December 3, 2018). The trial court determined that AG Kelley's opinion concluding the opposite was more persuasive because it had "stood for approximately 55 years." COC Order at 22.

The Coalition is unaware of any authority supporting the supposed logic that the vintage of an opinion alone, absent any additional support, is sufficient grounds to find its reasoning more persuasive. AG Schuette's opinion examines relevant caselaw—much of which was determined subsequent to AG Kelley's opinion—and supports its reasoning with cogent constitutional analysis. In contrast, AG Kelley's opinion provides *no* legal analysis to support its conclusions. Even though admittedly not binding on the Courts, summary rejection of AG Schuette's opinion, which is supported by case law and the plain language of the constitution, in favor of an earlier opinion given credence solely because of its age, is not supportable.

III. The COA correctly declined to grant statutes proposed by initiative petitions and adopted by the legislature precedence over subsequent legislative amendments to that law based on "will of the people" arguments.

Appellants argue that the will of the "People" was unconstitutionally violated by the Legislature's actions regarding Public Acts 368 and 369. (AG's Application at 1; Mothering Justice Application at 1.) However, the Legislature equally represents the will of the People—its constituents. *Taylor*, 495 Mich at 931, MARKMAN, J. concurring ("The Legislature represents the whole of the people in the broadest possible manner, and the laws that it produces must pass muster by the support of at least a majority of legislators, representing constituencies that are urban, rural, and suburban; constituencies of every socioeconomic, racial, and ethnic composition; constituencies in which different businesses, interests, and political and partisan philosophies are reflected and balanced[.]"). This case deals with two pieces of legislation that

stand on an "equal footing." See *Frey*, 162 Mich App at 600. IWOWA and ESTA had their genesis as petition initiatives. Acts 368 and 369 were passed under the traditional bi-cameral legislative process with the Governor's approval. The Court should reject attempts to cloak a particular piece of legislation that *has not been voted on by the electorate* with a presumption that it is the "true" will of the People. This case is not about ascertaining which set of acts is *more* representative of the will of the People, it is about the constitutional restrictions on the Legislature's procedures for passing and amending legislation.

A. While all parties argue that the "common understanding" of article 2, § 9 should control here, unlike the Court of Claims and the Appellants, the COA correctly applied the doctrine to the actual text of the constitutional provision.

All the parties in this case identify the common understanding doctrine as the controlling rule in this case. Appellants, however, expand the common understanding to include words and prohibitions *not* included in the actual text of art 2, § 9. (AG's Application at 8; Mothering Justice Application at 6.) This interpretation transforms the rule of common understanding into a generalized conception of the commonly understood spirit of a constitutional provision—an unworkable standard to apply. Appellants extensively quote the rule of common understanding, yet—at the same time—Appellants urge that a technical review of the language should not be applied because the People would not undertake such an analysis. (AG's Application at 23-24.) This reverses how this Court should apply judicial precedent in this case. The Court should look first to the actual text of art 2, § 9 and then apply the common understanding of those words when performing its interpretation. *People v Tanner*, 496 Mich 199, 223; 853 NW2d 653 (2014) (When interpreting the Michigan Constitution, the objective "is to determine the text's original meaning to the ratifiers, the people, at the time of ratification."). See also *Kuhn v Dep't of*

Treasury, 384 Mich 378, 384; 183 NW2d 796 (1971). This is exactly what the COA did. Slip Op at 16-18.

The Attorney General argues that the text of art 2, § 9 is ambiguous and certain interpretive tools are needed to ascertain the intent of the provisions. (AG's Application at 17, requesting the court examine "textual markers".) After applying these tools of interpretation, the Attorney General's analysis still relies on implications and best-guesses. The Attorney General argues that the language of art 2, § 9 "*signals* that adopt-and amend is prohibited," and that the People "*essentially* already said" that amendments to initiatives and referendums should be treated the same. (AG's Application at 20, and 26.)[23] Constitutional analysis must be rooted in what the text of the constitution actually says, not what Appellants desire it to say. *Tanner*, 496 Mich at 220. The Court need not engage in these strained interpretations if it—as the Coalition urges—looks at the unambiguous text of art 2, § 9.

Mothering Justice argues that because art 2, § 9 is self-executing, the plenary powers of the Legislature are guarded against by the courts. (Mothering Justice Application at 16-17.) Appellants cite to *Wolverine Golf Club v Secretary of State*, 24 Mich App 711; 180 NW2d 820 (1970) in support of this proposition. This case, however, does not provide an apt foundation for Mothering Justice's assertion. In *Wolverine Golf Club*, the Court examined the *substance* of an act of the Legislature and its restraints on a constitutional right—where the Legislature's amendments to the Michigan Election Law conflicted with the timelines set in art 2, § 9. *Id* at

[23] Indeed, the Attorney General rejects an overly technical examination of the text of article 2, § 9 but then proceeds to parse the language of the provision such as the words "such" and "it" to reach her conclusion that amendment of legislation adopted by the legislature but initiated by the public is impermissible. (AG's Application at 18-19.) This argument is inconsistent. Either the Attorney General urges that the "spirit" of art 2, § 9 prevails over its actual text or that the actual text supports her position—both cannot be true.

734-736. There is no argument here that the minimum wage or employee benefits fall outside of the Legislature's policymaking authority. Here, rather, Mothering Justice asserts that the Legislature's *procedures* have the effect of curtailing a constitutional right. This is not supported by the facts. The petition advocates were in no way restrained from collecting signatures, use of the secretary of state's approval process, or transmitting the initiatives to the legislature. Mothering Justice takes issue with the way the Legislature exercised its own power—the remedy for which is entirely political.

The language of art 2, § 9 provides a finite number of limitations on the powers of the Legislature. While Appellants argue that the powers of the People under art 2, § 9 are independent of art 4, this Court has already determined that is not the case. *Frey*, 162 Mich App at 598-601 (rejecting that art 4 is "in no way applicable to art 2"). As enacted by the Legislature, IWOWA and ESTA are treated like any other piece of legislation, free to be amended by the Legislature through the ordinary bicameral and presentment procedures. Appellants cannot point to any express provisions of art 2, § 9 that prohibit the Legislature from taking the actions it took. There is unambiguously no prohibition against the Legislature amending a duly enacted piece of legislation—regardless of its origins.

B. The COA correctly rejected Appellants' hyperbole and hypotheticals, making clear that the subject matter of an initiated law is not at issue here.

Appellants rely significantly on slippery slope arguments that this will be "the end of the people's century-old constitutional right of statutory initiative in Michigan[.]" (Mothering Justice Application at 1; AG Application at 23.) Subsequent successful initiatives prove this hypothesis wrong.[24] Additionally, this Court should not address the entire universe of

[24] See 2021 PA 77.

hypothetical circumstances raised by Appellants. "[C]onstitutional issues affecting legislation will not be determined in broader terms than are required by the precise facts to which the ruling is to be applied." *People v Mell*, 227 Mich App 508, 510; 576 NW2d 428 (1998), rev'd on other grounds 459 Mich 881; 586 NW2d 745 (1998), citing *Rescue Army v Muni Ct of Los Angeles*, 331 US 549, 569; 67 SCt 1409 (1947).

Appellants conveniently ignore that a robust form of direct democracy also exists in the power of the People to amend the Michigan Constitution. (AG's Application at 1 (asking "whether the People's voice through initiative has been gutted or still means something."); Mothering Justice Application at 1.) Initiating legislation is simply one mode that the People have to interact with the legislative process. They can approach their Legislator to introduce a new bill, they can initiate legislation, they can petition for a constitutional amendment, and they can vote out any legislator that does not appropriately represent the popular will of his or her constituency. Amending an initiated law does not usurp power from any one of those modes of democratic participation.

Courts traditionally refrain from interfering with the powers of the Legislature that are not otherwise proscribed by the Constitution. In *Hammel v Speaker of the House of Representatives*, 297 Mich App 641 (2012), lv den 493 Mich 973; 829 NW2d 862 (2013), plaintiffs challenged the Legislature's use of a voice vote rather than a record roll call vote under Const 1963, art 4, § 26 (stating that the names and the vote of the members in each house must be entered in the journal on the final passage of a bill). The COA determined that "the omission of any reference to a roll call vote in § 27 was intentional . . . . Thus, to interpret § 27 to require a roll call vote despite the complete absence of language supporting such a conclusion would violate the principles of constitutional interpretation." *Id.* at 649.

In *Gamrat v McBroom*, 822 Fed App'x 331, 333 (CA6 2020), lv den 141 S Ct 1700 (2021), a legislator sued to reverse her expulsion from the Michigan House of Representatives, arguing that her due process had been violated. *Id.* at 334. The Sixth Circuit determined that the legislator was properly expelled because the process was "within the legislature's sole jurisdiction" and "whether an act is legislative turns on the nature of the act,' rather than on motive or intent." *Id.* at 334 (citation omitted). Amending legislation falls squarely within the jurisdiction of the Legislature. Where there is no contrary constitutional language, there is no significant question for this Court to review. The authority of the legislature should be left undisturbed.

The People are not powerless to the Legislature's authority to adopt-and-amend initiated laws. The trial court wrongly stated that "a simple majority" can prevent an initiative from ever becoming law, but the Governor has the veto power over such an amendment. Const 1963, art 4, § 33; see also *United Ins Co v Attorney Gen*, 300 Mich 200, 205; 1 NW2d 510 (1942) ("By virtue of [their] veto power, the governor is part of the law-making power."). And, as thoroughly discussed, the People have the power of referendum against unfavorable legislation under article 2, § 9. A referendum, unlike a legislatively enacted initiative law, holds more textual safeguards under article 2, § 9. Lastly, Michigan voters can exercise their political power to vote out their state legislators and the governor that enacted and signed into law any unfavorable legislation. See, e.g., *Phillips v Snyder*, 836 F3d 707, 721 (CA6 2016). The remedy for this issue is best left for the People to decide, not this Court.[25]

[25] The People appear to be pursuing their own recourse and have filed a new Raise the Wage ballot proposal that would change the minimum wages over the next four years. https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-

IV. The Amicus Curiae Brief of the Self-Designated "Legal Scholars" Draws False Parallels Between the Michigan Constitution and the Constitutions of Other States.

The Legal Scholars portray the initiative vehicle as the only voice of the People, ignoring the People's voice manifested through their elected representatives. It is worth noting that the People were not prevented from petitioning the Legislature here. Indeed, the Legislature adopted the initiative laws. All that is at issue is whether the Legislature, in its wisdom and on behalf of their constituents, may amend those laws thereafter. The Legal Scholars point to holdings in the courts of other states without first examining whether those states have a constitutional provision that parallels Michigan's. Caselaw from other states is not binding on this Court, but may be instructive when applying similar language in similar contexts. *See, e.g., People v Thompson*, 477 Mich 146, 155-156; 730 NW2d 708 (2007). It is this Court's obligation to "independently examine our state's Constitution to ascertain the intentions of those in whose name our Constitution was ordained and established." *People v Tanner*, 496 Mich 199, 222; 853 NW2d 653 (2014) (cleaned up). The common understanding of the *actual text* of the Michigan Constitution must prevail in this case, not imprecise policy arguments. The Legal Scholars claim that "a number of states reserve initiative and referendum powers to the people using constitutional language similar to Michigan's" but they fail to actually present them to the Court. (Legal Scholars Amicus at 7.)

A brief survey of the constitutional provisions cited by the Legal Scholars demonstrates that the Michigan Constitution is distinct from these others in its drafting. In each of the examples cited by the legal scholars, the state constitutional provisions set up a system for amending an initiated law that is different from Michigan's. In the state of Washington, the state

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Announcements/Raise_the_Wage_MI_747768_7.pdf?rev=232bbdf3c8ae4d00bca23feaf7fec08b&hash=61F9A38156D9738CE3F0D99CDF66FD95.

constitution expressly provides that an initiated law requires a two-thirds vote of the legislature if amended within two years of adoption. Wash Const Art II § 1.[26] In Missouri, Idaho and Massachusetts, the state constitutions do not expressly address amendments at all and are much more vague than the Michigan constitution. Mo Const Art III §50; Idaho Const Art III §1; and Mass Const Art XLVII §§ 3, 5.[27] In Maine, the state constitution expressly requires an amendment to an initiated law to go to a vote if it is presented at the same session. Me Const Art IV, Pt 3 § 18.[28] In Arizona, the state constitution also expressly addresses amendment procedure

[26] ". . . Such initiative measures, whether certified or provisionally certified, shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. . . . No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: Provided, That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon. . . ." Wash Const Art II § 1.

[27] Mo Const Art III §50; Idaho Const Art III §1; Mass Const Art XLVII §§ 3, 5.

[28] "2. Referral to electors unless enacted by the Legislature without change; number of signatures necessary on direct initiative petitions; dating signatures on petitions; competing measures. For any measure thus proposed by electors, the number of signatures shall not be less than 10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition. The date each signature was made shall be written next to the signature on the petition. A signature is not valid if it is dated more than one year prior to the date that the petition was filed in the office of the Secretary of State. The measure thus proposed, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with any amended form, substitute, or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next statewide election to be held not less than 60 days after the first vote thereon be submitted by itself if it receives more than 1/3 of the votes given for and against both. If the measure initiated is enacted by the Legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding

for the legislature and provides different requirements for amendments that "further the purposes" of the initiative. Ariz Const Art IV, Pt 1 § 1.[29] The constitutional provisions cited by the Legal Scholars are not an apples-to-apples comparison, as demonstrated by their different wording and functional implementation.

This case is one of interpretation of the *Michigan* Constitution. As demonstrated by the examples above, the language of the Michigan Constitution is distinct. The Michigan Constitution stands on its own, and there is no cannon of interpretation that requires states to similarly apply constitutional provisions that address similar subject matter.

Contrary to the Legal Scholar's assertion, the actions of the Legislature in this case do not rest solely on the plenary authority provided in Art 4, § 1 but also in the plain text of Article 2, § 9. The non-Michigan cases addressing differently worded constitutions of other states are inapplicable—especially when Michigan case law directly addresses the Michigan Constitution's construction.

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section. The Legislature may order a special election on any measure that is subject to a vote of the people." Me Const Art IV, Pt 3 § 18.

[29] " . . . The legislative authority of the state shall be vested in the legislature, consisting of a senate and a house of representatives, but the people reserve the power to propose laws and amendments to the constitution and to enact or reject such laws and amendments at the polls, independently of the legislature; and they also reserve, for use at their own option, the power to approve or reject at the polls any act, or item, section, or part of any act, of the legislature. . . . The legislature shall not have the power to amend an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon, or to amend a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure. For all other initiatives and referendums, the legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon and shall not have the power to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure." Ariz Const Art IV, Pt 1 § 1.

CONCLUSION AND RELIEF REQUESTED

The Coalition supports opinion of the COA reversing the decision of the Court of Claims and affirming the constitutionality of Public Acts 368 and 369. The Coalition requests that this Court reject Appellants' applications for leave to appeal and decline to hear this case.

Dated: April 19, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this **Amicus Brief** complies with the type-volume limitation set forth in MCR 7.312(A). This brief uses a 12-point proportional font (Times New Roman), has one and a half line spaced text, and the word count is 15,230 based on the word count of the word-processing system used to produce this document.

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