STATE OF MICHIGAN
IN THE SUPREME COURT

ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., SENATOR EDWARD MCBROOM IN HIS OFFICIAL CAPACITY, REPRESENTATIVE DALE ZORN IN HIS OFFICIAL CAPACITY, RODNEY DAVIES, KIMBERLEY DAVIES, OWEN PYLE, WILLIAM LUBAWAY, BARBARA CARTER, AND ROSS VANDERKLOCK,

Plaintiffs-Appellants,

v

TREASURER OF MICHIGAN, RACHAEL EUBANKS, IN HER OFFICIAL CAPACITY,

Defendant-Appellee.
_____/

Supreme Court No. 166871

Court of Appeals No. 369314

Court of Claims No. 23-000120-MB

TREASURER EUBANKS' BRIEF IN OPPOSITION TO PLAINTIFFS-APPELLANTS' APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF JURISDICTION

Defendant-Appellee concurs with Plaintiff-Appellants' statement of jurisdiction; pursuant to MCR 7.303(B) and 7.305(C)(2), this Court has jurisdiction over Plaintiffs' application for leave to appeal, which was filed on March 25, 2024, within 42 days of the lower court's March 8, 2024 published decision.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1.A This matter involves a challenge to the Treasurer's interpretation of MCL 206.51(1)(a)-(c), but the appeal does not attack the constitutionality of the statute. Does this case present a substantial question about the validity of a legislative act?

Appellants' answer:	Do not answer.
Appellee's answer:	No.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

1.B This matter concerns Michigan's Income Tax Act, i.e., the individual income tax rate for all Michigan taxpayers. Plaintiffs have sued Michigan's Treasurer. Does this case involve an issue of public interest that is against the State or one of its agents?

Appellants' answer:	Do not answer.
Appellee's answer:	Yes.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

1.C This matter involves statutory construction of unambiguous text, MCL 206.51(1)(a)-(c). Does this case involve a legal principle of major significance?

Appellants' answer:	Do not answer.
Appellee's answer:	No.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

2. The Court of Appeals determined that the Income Tax Act, MCL 206 51(1)(b)-(c), is unambiguous and contains a default rate of 4.25%, with an exceptional rate that applies under certain conditions. The Court determined that the "current" rate, MCL 206.51(1)(c), refers to the default rate set forth in MCL 206.51(1)(b). Was the Court of Appeals decision clearly erroneous, or will it cause material injustice or conflict with a decision of this Court or the Court of Appeals?

Appellants' answer:	Yes, as to clearly erroneous.
Appellee's answer:	No.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

3. Michigan's Constitution provides that the Legislature is charged with the responsibility to levy taxes; the Treasurer is not. Further, the declaratory and mandamus relief Plaintiffs seek is predicated on their preferred interpretation of MCL 206.51(1)(c). Have Plaintiffs shown a clear legal right, and that the Treasurer has a clear legal duty, as to implementation of a 4.05% tax rate?

Appellants' answer:	Yes.
Appellee's answer:	No.
Trial court's answer:	Did not answer.
Court of Appeals' answer:	Did not answer.

STATUTE INVOLVED

MCL 206.51

(1) For receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed under this part upon the taxable income of every person other than a corporation a tax at the following rates in the following circumstances:

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

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

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

INTRODUCTION

Plaintiffs' application for leave to appeal to this Court does not demonstrate that this Court's review is warranted. Plaintiffs strain to identify any ambiguity in the statute (there is none), misapply canons of statutory construction or create new ones, compare the unambiguous statute at issue with a 1983 taxing act, and ruminate on budget matters that do not inform the Income Tax Act's plain language, MCL 206.51(1)(a)-(c).

This Court should deny Plaintiffs' application because the grounds for its consideration weigh against this Court's review:

- There is no substantial question about the validity of the Income Tax Act, MCR 7.305(B)(1);
- Like many cases against the State, including most tax disputes, this case presents an issue of public interest and is against the State or one of its agencies, MCR 7.305(B)(2) – this is the exclusive ground in Plaintiffs' favor, but it is outweighed by all other grounds;
- This case involves a routine question of statutory interpretation, not a legal principle of major significance, MCR 7.305(B)(3);
- The Court of Appeals decision is correct, and, therefore, not clearly erroneous, will not cause material injustice, and does not conflict with any other decision of this Court or the Court of Appeals, MCR 7.305(B)(4).

Finally, Plaintiffs are not entitled to declaratory relief or mandamus because the Court of Appeals' construction is correct, and they otherwise cannot show that they have a clear legal right to, or that the Treasurer has a clear legal duty to impose, a tax rate of 4.05%.

For these reasons, the Treasurer respectfully asks that this Court deny Plaintiffs' application for leave.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

The Legislature amends the Income Tax Act of 1967.

In 2015, the Legislature amended the Income Tax Act of 1967, MCL 206.1 *et seq*. (Income Tax Act). See 2015 PA 180. Relevant to this case, the amendment added a provision for tax years beginning after January 1, 2023, that lowers the individual income tax rate from 4.25% when "the percentage increase in the total general fund/general purpose revenue from the immediately preceding fiscal year is greater than the inflation rate for the same period and the inflation rate is positive." MCL 206.51(1)(c).[1]

The Treasurer requests an Attorney General Opinion.

In March 2023, State of Michigan Treasurer Rachael Eubanks requested an opinion from Michigan Attorney General Dana Nessel as to whether the individual income tax rate would remain at the reduced rate in subsequent years when the reduction was not triggered. (Pls' Appx, p 72, Compl, Ex 7 (AG Op Req), p 2.)[2] Attorney General Nessel issued a formal opinion concluding that the rate reduction

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

> the current rate shall be reduced by an amount determined by multiplying that rate by a fraction, the numerator of which is the difference between the total general fund/general purpose revenue from the immediately preceding state fiscal year and the capped general fund/general purpose revenue and the denominator of which is the total revenue collected from this part in the immediately preceding state fiscal year. [*Id*.]

[2] Plaintiffs have not provided an appendix to their Application for Leave to appeal, and it appears they are citing the appendix provided to the Court of Appeals. The Treasurer will also cite that appendix where appropriate and has attached it for ease of reference.

was not permanent. (Pls' Appx, pp 43–46, Compl, Ex 1 (OAG, 2023, No. 7320 (March 23, 2023)).)

Consistent with the AG Opinion, the Treasurer determines that the tax rate decrease is not permanent.

After the release of the 2022 Annual Comprehensive Financial Report, Treasurer Eubanks announced on March 29, 2023, that the 2023 individual income tax rate would "decrease to 4.05% for one year" based on the 2015 law. (Pls' Appx, pp 74–76, Compl, Ex 8 (03/29/2023 Announcement), p 1.) The March 29 announcement referenced Attorney General Nessel's formal opinion. (*Id*. at 2.) The following day, Treasury issued a notice that the conditions required for an individual income tax rate reduction in MCL 206.51(1)(c) had been met and that the 2023 individual income tax rate would be reduced to 4.05%. (Pls' Appx, pp 78–79, Compl, Ex 9 (Notice), p 1.)

The Senate Fiscal Agency prepared an economic outlook dated May 16, 2023, which referenced a reduction in the individual income tax rate for 2023, and stated that "[b]ased on an opinion from the Attorney General, the rate reduction is a temporary rate reduction for the tax year 2023 . . . ." (Pls' Appx, p 88, Compl, Ex 12 (Michigan's Economic Outlook and Budget Review), p 36.[3]) On May 19, 2023, the Treasurer and heads of the Senate Fiscal Agency and House Fiscal Agency released the Consensus Revenue Agreement Executive Summary, which stated that the

[3] The full text of this publication is available at House Fiscal Agency, *Consensus Revenue Estimating Conference* <https://www.house.mi.gov/hfa/Consensus.asp> (accessed March 29, 2024).

calculated 2023 individual income tax rate would be 4.05%. (Appx p 4, Ex A, Consensus Revenue Agreement; Appx p 7, Ex B, Economic and Revenue Forecasts (excerpt).[4]) See also Pls' Appx, p 17, Compl, ¶¶ 32–33 (discussing the May 2023 revenue conference).

Plaintiffs challenge the Treasurer's determination.

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

The Court of Claims concludes that the case is not ripe, but nevertheless opines on the merits.

Following the filing of cross-motions for summary disposition, the Court of Claims issued its Opinion and Order. (Pls' Appx, pp 115–147 (Opinion and Order).[5]) The Court first addressed certain procedural/justiciability matters. First, the Court determined that it has jurisdiction to decide the matter because Treasury had not

[4] These public documents are being offered for background purposes only and to the extent this Court reaches the merits. They are also available online at the same source as footnote 3.
[5] The Treasurer will refer to the Opinion and Order page numbers.

issued an assessment, order, or determination, but instead that Plaintiffs sought prospective declaratory relief, for which reason MCL 205.22(1) did not apply. (*Id.*, pp 12–13.) The Court of Claims then held that the Legislators and advocacy groups lacked standing. (*Id.*, p 14.) Despite concluding that Plaintiffs' claims were not ripe, the Court of Claims stated that those claims could become ripe "in the near future," and proceeded to analyze the merits. (*Id.*, p 24.)

As to the merits, in construing the meaning of the word "current," the Court explained that, reading the phrase in context, "existing at the present time" is the proper definition. (*Id.*, pp 26–27.) The Court further explained that, reading the statute sequentially, the "current rate" is 4.25% unless certain conditions are met. The Court also reasoned that Plaintiffs' interpretation could lead to an income tax rate of zero, and that the "trigger" of the rate reduction is a temporary situation. (*Id.*, p 27.) Because the Court of Claims concluded that the statutory language was unambiguous, it declined to consult a previous statute or the legislative history cited by Plaintiffs. (*Id.*, pp 29–31.) Finally, because the statute was unambiguous and the legislators/lobbyists lacked standing, the Court denied declaratory and mandamus relief. (*Id.*, p 31.) The Court of Claims granted Treasury's motion for summary disposition, denied Plaintiffs' motion for summary disposition, and denied Plaintiffs' motion for a show-cause order. (*Id.*, p 33.)

Plaintiffs appealed the determination of the Court of Claims to the Court of Appeals. This Court denied a bypass application but ordered the Court of Appeals

to decide Plaintiffs' appeal an expedited briefing schedule. (1/31/2024 Order Denying Bypass App.)

The Court of Appeals decides on the merits and concludes that the default rate is 4.25%.

The Court of Appeals first determined that it had subject-matter jurisdiction, that at least one plaintiff had standing, and that the issue was ripe for review. (Slip op pp 6–10.) After explaining the general rule of statutory construction that unambiguous language must be applied as written and that provisions are considered in context, the Court held that "it is clear that the current default income tax rate is 4.25%." (*Id.*, p 11.) The Court began its substantive analysis at MCL 206.51(1)(a), which has an end date of October 1, 2012. (*Id.*) Subsection (1)(b), with effective dates on and after October 1, 2012 "unambiguously indicates that the rate of 4.25% continues in effect, subject to the exception in Subsection (1)(c)." (*Id.*) As the Court further stated, 4.25% is the default rate that is modified if the exception contained within Subsection (1)(c) applies, and nothing within Subsection (1)(b) indicates that the 4.25% rate has an end date. (*Id.*) The "for each tax year" clause in Subsection (1)(c) indicates that whether the exception applies must be evaluated each year, supporting the conclusion that 4.25% is the default rate. (*Id.*) Nothing in Subsection (1)(c) suggests that the reduced rate becomes the new rate. (*Id.*)

The Court then turned to the meaning of the phrase "current rate" in Subsection (1)(c). (*Id.*) After citing this Court's statement in *Honigman Miller*

Schwartz & Cohn LLP v Detroit, 505 Mich 284, 306–307 (2020) that statutory language should be read in context, the Court agreed that "existing at the present time" was the more appropriate definition. (*Id.*, p 12.) The Court then rejected Plaintiffs' definition of "current rate" for two reasons (*Id.*) First, reading "current rate" as "existing at the present time" did not render "current rate" superfluous because the income tax rate has changed over time, and the rate may change in the future. (*Id.*) Second, if the conditions triggering Subsection (1)(c) are not present in a given year, there is no reason to consider that section. (*Id.*, pp 12–13.) Further, Plaintiffs' interpretation would render part of the statute nugatory because it could result in no income tax. (*Id.*, p 13.) Because the statute is unambiguous, the Court rejected Plaintiffs' assertions regarding previous legislation, resolving ambiguity in favor of taxpayers, and legislative history. (*Id.*, pp 13–14.) Finally, the Court determined that Plaintiffs were not entitled to declaratory or mandamus relief. (*Id.*, p 14.)

The May Consensus Revenue Estimating Conference

Pursuant to MCL 18.1367b, the third week in May is the next Consensus Revenue Estimating Conference, which will forecast revenues for the current fiscal year and the next two fiscal years. MCL 18.1367b(1) and (6). The May Conference provides an update to the January Conference forecast prior to the final budget enactment. House Fiscal Agency, *A Legislator's Guide to Michigan's Budget Process*, p 10 (January 2019) (available at https://www.house.mi.gov/hfa/About.asp). Typically, the final budget is presented sometime between the May conference and

July. (Pls' App'x, p 85, Compl, Ex 11, p 8.) MCL 18.1367b(7) requires that the conferences proceed with the "assumption that the current law and current administrative procedures will remain in effect for the forecast period." MCL 18.1367b(7). Accordingly, a timely denial of the application before the May Conference, or no decision on the application before the May Conference, would mean that the "current law" is based on the Court of Appeals decision interpreting MCL 206.51. Changing the assumptions for the May Conference revenue forecast would require this Court to grant the application and render a contrary decision on the merits before the May Conference.

STANDARD OF REVIEW

This Court reviews de novo both a decision on a motion for summary disposition and questions of statutory interpretation. *Honigman*, 505 Mich at 295.

ARGUMENT

I. In relying on the first three factors listed in MCR 7.305(B), this Court should deny leave.

This Court should deny leave here as the Court of Appeals properly ruled below on this question of law, and while it does present an issue of public interest, the analysis itself is a straight-forward matter of statutory construction.

A. There is no substantial question about the validity of a legislative act.

Under MCR 7.305(B)(1), an application for leave to appeal must show that "the issue involves a substantial question about the validity of a legislative act[.]"

Plaintiffs make no argument that the statute at issue is invalid. Instead, they argue for their preferred interpretation of MCL 206.51.

Accordingly, it is undisputed that there is no substantial question about the validity of MCL 206.51.

B. This case does present an issue of public interest and is against the State or one of its agencies.

One ground for granting leave to appeal is that "the issue has significant public interest and the case is one by or against the state or one of its agencies or subdivisions or by or against an officer of the state or one of its agencies or subdivisions in the officer's official capacity." MCR 7.305(B)(2). The Treasurer does not dispute that the issue in this case affects all taxpayers in Michigan who will file income tax returns for the 2024 tax year and beyond, and that the case is against the Treasurer in her official capacity. Accordingly, this case satisfies the ground set forth in MCR 7.305(B)(2).

But standing alone, this ground is not sufficient to grant this application for leave. Most cases involving the State implicate issues of public interest, especially in the tax realm, but that alone does not warrant this Court's review in the absence of other grounds.

C. This case does not involve a legal principle of major significance.

Under MCR 7.305(B)(3), an application for leave must show that "the issue involves a legal principle of major significance to the state's jurisprudence[.]" As

will be discussed in greater detail below, both the Court of Claims and Court of Appeals applied common statutory interpretation principles. The matter simply concerns the structure and meaning of MCL 206.51, and there is nothing novel in the approach of either court. Neither is there is a legal issue of "major significance" in this case. Cf., *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95 (2023) (addressing the continued viability of the open and obvious doctrine). Accordingly, there is no significant legal principle at issue that requires this Court's review.

II. Because the decision of the Court of Appeals is not clearly erroneous, will not cause material injustice, and does not conflict with any other decision, this Court should deny leave.

For the final factor of a decision of the Court of Appeals, Plaintiffs cannot satisfy the ground for granting leave in MCR 7.305(B)(5). As an initial matter, they make no assertion that the decision of the Court of Appeals will cause material injustice. There is also no conflict with any other decision. And, for the reasons discussed below, Plaintiffs cannot show that the Court of Appeals' decision is clearly erroneous. Thus, there is no need for this Court's review. But if this Court grants leave to appeal, this Court should affirm the Court of Appeals.

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

The Court of Appeals did not err because, per MCL 206.51(1)(b), 4.25% is the default rate in all years in which the exception/contingency in MCL 206.51(1)(c) is not satisfied.

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

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

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

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

This Court, long ago, established the basic framework for statutory interpretation:

> There seems to be no lack of harmony in the rules governing the interpretation of statutes. All are agreed that the primary one is to ascertain and give effect to the intention of the Legislature. *All others serve but as guides to assist the courts in determining such intent with a greater degree of certainty.* [*Van Antwerp v State*, 334 Mich 593, 600 (1952) (emphasis added).]

Consistent with this overarching purpose, "a court should not abandon the canons of common sense." *Marquis v Hartford Accident & Indemnity*, 444 Mich 638, 644 (1994). The most reliable evidence of the Legislature's intent is the "the language of the statute itself." *Christie v Wayne State Univ*, 511 Mich 39, 47 (2023) (cleaned up). "When legislative intent is clear from the language, no further construction is required or permitted." *Id.* (cleaned up). And "[w]hen considering the correct interpretation, the statute must be read as a whole and in a manner that ensures that it works in harmony with the entire statutory scheme." *Id.*

Turning to the with the statutory language of MCL 206.51, Subsection (1)(a) was effective "on and after October 1, 2007 and before October 1, 2012." This brings us to Subsection (1)(b), which is now effective and must be read as the beginning point of the statute every year. That provision contains exceptional language ("[e]xcept as otherwise provided under subdivision (c)"), and mandatory/default language ("on and after October 1, 2012, 4.25%"). The mandatory language governs unless the exception is triggered. See, e.g., *Mich Ass'n of Home Builders v City of Troy*, 497 Mich 281, 286 (2015) (the phrase "except as otherwise provided" generally

connotes an exception to the statutory text). The Legislature specifically intertwined these two sections together: if the conditions exist under Subsection (1)(c), then the rate in Subsection (1)(b) is modified for that tax year. And the Court of Appeals recognized that nothing in Subsection (1)(b) indicates that the 4.25% rate "permanently expires" if Subsection (1)(c) is triggered. (Slip op p 11.)

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

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

The parties do not dispute that Subsection (1)(c) is a conditional provision that is triggered only if a certain contingency arises. But contrary to Plaintiffs' interpretation, Subsection (1)(b) remains the operative tax rate unless the conditions in Subsection (1)(c) apply for that tax year. As noted by the Court of Appeals, this is evident by the phrase "[f]or each tax year beginning on and after January 1, 2023"—a dependent clause—which is followed by the conditional term "if." (Slip op p 11.) "If" means "in the event that." Merriam-Webster's Collegiate Dictionary (11th ed, 2020). See also *Klooster v City of Charlevoix*, 488 Mich 289, 301 (2011) (recognizing "if" is a conditional term). "If" is a conjunction that joins a conditional (or antecedent) clause and a dependent (consequent) clause, and, thereby, sets forth a contingency that may or may not be triggered in any given tax year.

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

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

Here, the phrase "[f]or each tax year beginning on and after January 1, 2023" is the dependent/consequent clause, while the "if the percentage increase" language is the conditional/antecedent clause. Therefore, the tax rate in Subsection (1)(b) is examined "[f]or each tax year" to determine if the rate reduction in Subsection (1)(c) applies based on the conditions articulated in Subsection (1)(c). If those conditions are satisfied, Subsection (1)(c) contains a formula to calculate the adjustment from the default rate set forth in Subsection (1)(b), and is not itself a new permanent rate. This is the most natural reading that gives effect to every term in the statute. *Christie*, 511 Mich at 47 (statutes "must be read as a whole and in a manner that ensures that it works in harmony with the entire statutory scheme.").

Plaintiffs' interpretation, by contrast, would render Subsection (1)(b) nugatory. The conditional language of Subsection (1)(c)—which is anticipated by the exception language of Subsection (1)(b) ("Except as provided . . . .")—cannot override, and, thereby, become the default/mandatory language in Subsection (1)(b),

which would be rendered nugatory. See *People v Seewald*, 499 Mich 111, 123 (2016) ("When possible, [courts] strive to avoid constructions that would render any part of the Legislature's work nugatory."). In other words, reading the conditional language of Subsection (1)(c) as setting a new permanent default rate would mean that what is designed to be only an exception in Subsection (1)(b) now becomes the rule. This is because the exception would render the rule that is Subsection (1)(b) thereafter inoperable, contrary to the plain text and contrary to how courts have construed exception language. See *Mich Ass'n of Home Builders*, 497 Mich at 286; *In re Casey Estate*, 306 Mich App at 260 ("Absent satisfaction of one of those conditions, the remainder of subsection (1)(b) does not come into play.").) It would also make the introductory language of Subsection (1)(b) of "[f]or each tax year" unnecessary because it would apply to *all* tax years once it displaces (1)(c) as the default rate. Thus, the Court of Appeals correctly found that "[t]here is no language in Subsection (1)(b) indicating that the 4.25% rate permanently expires when the exception in Subsection (1)(c) is triggered for a particular tax year." (Slip op p 11.)

Plaintiffs argue that Treasury does not give meaning to every term in the statute because "that rate" should be read as "the rate." (Pls' App, pp 19–21.) But the Treasurer's construction gives the correct meaning to the word "that," as "the person, thing or idea indicated mentioned, or understood from the situation." *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020). The sentence where "that rate" appears provides that a fraction is multiplied by "that rate," which must refer to something, i.e., a "thing or idea mentioned." See MCL 206.51(1)(c). The word

"that" serves to reference the "current rate," which is a natural antecedent previously mentioned in the sentence. This construction does not replace "that rate" with "the rate"; instead, it gives full effect to Subsection (1)(b) as the current rate arrived at by reading the statute as whole and giving effect to "on and after October 1, 2012." By contrast, Plaintiffs' interpretation writes Subsection (1)(b) entirely out of the statute.

The intent of the Legislature is unambiguous from the language of the statute: in enacting MCL 205.51, the 2015 Legislature intended to provide a step-by-step process of reading the statute from Subsection (1) downward. Subsection (1)(a) has sunset; in light of that sunset, Subsection (1)(b) is the new default tax rate that must be applied every year subject to certain contingencies set forth in Subsection (1)(c).

In short, the Court of Appeals properly decided that Subsection (1)(c) is a conditional provision that is examined "for each tax year period." Plaintiffs' reading otherwise contravenes the plain language of the statute, well established rules of statutory construction, and common sense in terms of how the statute—understood as a whole—is designed to operate.

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

The plain text and structure of the Income Tax Act support the Treasurer's interpretation of the statute. Specifically, the meaning of the word "current" in MCL 206.51(1)(c) is unambiguous in that it refers to the rate that "exist[s] at the

present time," *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020), which is set by Subsection (1)(b) and—until amended by the Legislature—stands at 4.25% after October 1, 2012. As recognized by the Court of Appeals, Subsection (1)(c) is placed and understood in the structure of the whole of the Income Tax Act and MCL 206.51. (Slip op p 12, citing *Honigman*, 505 Mich at 306–307.) That structure provides a prescribed/default rate, see MCL 206.51(1)(b), and Subsection (1)(c) decreases the individual income tax "current rate" evaluated for that year, i.e., "[f]or each tax year" in which the conditional/exceptional terms of Subsection (1)(c) apply. See MCL 206.51(1)(c). The "current rate" is a fixed rate, set forth in Subsection (1)(b). This rate is modified as provided in Subsection (1)(c) to reduce the tax burden on individual income taxpayers in any year when the general fund grows faster than the rate of inflation. But that does not mean that the current rate becomes the new default tax rate, as if Subsection (1)(c) created the new rate for not just that year but all subsequent years. If the Legislature had intended this result, it would not have left Subsection (1)(b) intact as a default tax rate or inserted the limitation "for each tax year" in the beginning of (1)(c), a limitation that appears in neither Subsection (1)(a) nor (1)(b).

In effect, in the years where the State of Michigan receives a tax windfall, the burden of taxpayers is reduced. The reduction in the rate is premised on a single event, not a continuing one, so the statute's context indicates that the rate reduction should be a single year event. An interpretation of "current" that carries

previous reductions forward would transform a single-year windfall into a permanent reduction and even eliminate the tax in its entirety.

"Current" must also be read in context of MCL 206.51(1)(a) and (b), which provide for different rates effective at different times. In particular, the rate was 4.35% "[o]n and after October 1, 2007 and before October 1, 2012," and 4.25% "[e]xcept as otherwise provided under subdivision (c), on and after October 1, 2012." MCL 206.51(1)(a) and (b). "Current," then, recognizes that Subsections (1)(a) and (b) provide a different rate for different years, and ensures that the rate reduction applies to the base rate arrived at by reading the statute beginning at Subsection (1)(a) and then (1)(b) based on the current/present tax year, i.e., the rate that "exist[s] at the present time." *Merriam-Webster's Collegiate Dictionary* (11th ed, 2020). The Court of Appeals also correctly explained that this construction recognizes that the income tax rate has changed over time. (Slip op p 12.)

In short, on or after October 1, 2012, the "current" rate of 4.25% set in Subsection (1)(b) is reduced for the tax year in which the economic conditions outlined in Subsection (1)(c) are met, as Subsection (1)(c) is expressly limited to the specific tax year based on the phrase "[f]or each tax year." "[T]he statute contains no language indicating a legislative intent to make the rate reduction under Subsection (1)(c) permanent." (Slip op p 13.)

Further, Plaintiffs' interpretation of "current rate" could render the entire Income Tax Act null and void. The Income Tax Act states that "[f]or receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied

and imposed under this part upon the taxable income of every person other than a corporation a tax at the following rates in the following circumstances." MCL 206.51(1). If Plaintiffs' interpretation is correct, then MCL 206.51(1)(c) could be triggered multiple times, ultimately compounding reductions until the rate became zero. That this possibility may be remote, (Pls' App, pp 27–32), does not change the structure, meaning, and implications of the statute and Plaintiffs' faulty interpretation of the same. That interpretation would render the provision imposing the income tax nugatory, which should be avoided if possible. See *Seewald*, 499 Mich at 123 ("[w]hen possible, we strive to avoid constructions that would render any part of the Legislature's work nugatory.")

B. The principle of resolving ambiguity in favor of taxpayers does not apply in this case.

Finally, Plaintiffs argue that there are ambiguities in the statute and that these should be resolved in favor of taxpayers, citing *Honigman*, 505 Mich at 292 n 3, citing *Mich Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 477 (1994). (Pls' App, p 34.) But, as explained above, and as the Court of Claims and Court of Appeals both agreed, there is no ambiguity. In any case, resolving an ambiguity in a taxpayer's favor is a canon of last resort. (Slip op p 13.) The ambiguity principle should be understood similarly to the canon requiring strict construction of tax exemption statutes, employed "only when an act's language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity," *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 343 (2020), i.e., only to be used

when the meaning cannot be understood otherwise. Thus, the "ambiguity" rule is not dispositive or even applicable in this case.

Further, although the Supreme Court has stated that "ambiguities in the language of a tax statute are to be resolved in favor of the taxpayer," *Mich Bell*, 445 at 477, the Plaintiff legislators and lobbyists are not parties in their capacities as taxpayers. Neither did this Court hold in either *Honigman* or *Michigan Bell* that a disagreement on the construction of a statute means that a taxpayer's view must prevail. Rather, courts still must "determine the most reasonable meaning of statutory language," even when the parties "appear to articulate plausible interpretations of the statute." *Honigman*, 505 Mich at 307.

The caselaw cited by Plaintiffs only operates to the benefit of taxpayers when there is a question about the authority to impose a tax. The issue in *Honigman* was whether income on legal services performed within the City of Detroit was subject to tax. 505 Mich at 289. In *Michigan Bell*, the issue was whether the taxpayer's intangible personal property was subject to tax. 445 Mich at 471. In support of the statement in *Michigan Bell* that ambiguities are resolved in a taxpayer's favor, this Court cited *In re Dodge Bros*, 241 Mich 665 (1928). There, this Court explained the basis for resolving ambiguity in a taxpayer's favor:

> Tax exactions, property or excise, must rest upon legislative enactment, and collecting officers can only act within express authority conferred by law. Tax collectors must be able to point to such express authority so that it may be read when it is questioned in court. The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer. [*Id.* at 669.]

As stated in *In re Dodge Bros*, this Court's rationale for resolving ambiguity in the favor of a taxpayer is whether the authority to tax is not clearly expressed. *Id.* Unlike *Honigman* and *Michigan Bell*, the authority to tax income has not been raised in this case. To the contrary, the Income Tax Act provides for a levy of income tax, MCL 206.51(1), for which reason the authority to tax is established and undisputed. As a result, the principle set forth in *In re Dodge Bros* is inapplicable to this case.

C. None of Plaintiffs' arguments that the Court of Appeals erred are persuasive.

The Court of Appeals did not misapply canons of construction or create new ones, as Plaintiffs did with their self-styled "weighted clarity analysis" and "normal clarity analysis." (Pls' App, p 8 n 4, 9 n 10.) Plaintiffs argue that the Court of Appeals created a new canon of construction or "circumvented" the canon against surplusage. (Pls' App, pp 10, 21–22.) But, as explained above, nothing in the statute is surplusage under the Court of Appeals' interpretation. Neither did that Court create a canon where litigants look to the future. Rather, the Court recognized that the income tax rate had changed in the past and could change again in the future. (Slip op p 12.) This was done to explain that the phrase "current rate" was not superfluous in the unambiguous construction of the statute, because "current" makes clear that the starting point of the Subsection (1)(c) calculation was the rate that "existed at the present time," and not some past rate, or a rate that might come into effect at a later time.

The Court of Appeals did not err when it declined to consider Public Act 15 of 1983. Plaintiffs argue that failing to consider Public Act 15 of 1983 was a "methodological error." (Pls' App, p 15.) This Court has held "to whatever extent courts correctly divined past legislatures' intents using previously enacted language, those intents should not guide our interpretation of the *unambiguous* language of the current versions of the statutes; the acts of past legislatures do not bind the power of successive legislatures to enact, amend, or repeal legislation." *People v Gardner*, 482 Mich 41, 65-66 (2008). Further, none of the cases cited by Plaintiffs—*Christie , Ottgen v Katranji*, 511 Mich 223 (2023), and *Andary v USAA Casualty Ins Co*, 512 Mich 207 (2023)—rely on a previous legislative act to determine an unambiguous statute's meaning. Nor could they.

Plaintiffs also do not make a persuasive argument that their construction of the statute could not make the Income Tax Act nugatory based on presuming the Legislature's knowledge. They argue that the 2015 Legislature would have known that the income tax rate would not have been reduced to zero. (Pls' App, pp 23– 25.) Plaintiffs' presumption argument is misplaced. Presuming the Legislature's knowledge is another way of stating a simple proposition: "[i]f the statute's language is clear and unambiguous, we assume that the Legislature intended its plain meaning, and we enforce the statute as written." *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 410 (2022). None of the cases cited by Plaintiffs state that a construction rendering part of a statute nugatory or surplusage is viable

because the Legislature would have known that a certain factual scenario would not occur.

Rather, the Court of Appeals' textual analysis demonstrated that "the statute contains language providing for an income tax and that plaintiffs' interpretation has the potential to render this language nugatory." (Slip op p 13.) Simply because Plaintiffs' view is unsupported by the statutory text does not mean that the Court of Appeals misapplied settled tenets of statutory construction.

In short, the Court of Appeals decision is a sound and unremarkable application of ordinary canons of statutory construction, for which reason it is not clearly erroneous, will not cause material injustice, and does not conflict with any decisions of this Court or the Court of Appeals. MCR 7.305(B)(5)(a). This Court should deny the application for leave to appeal.

III. Plaintiffs are not entitled to declaratory or mandamus relief.

Plaintiffs' arguments for declaratory and mandamus relief are contingent on Plaintiffs' interpretation of MCL 206.51 prevailing, and as set forth above, their interpretation does not comport with the plain language of the statute. Even then, Plaintiff-taxpayers provide a sparse, two-sentence argument as to why they are entitled to declaratory relief. (Pls' App, p 36.) Plaintiff taxpayers argue, without any support, that the withholding rate of 4.25%, instead of their preferred rate of 4.05%, is an injury warranting a declaratory action. This underdeveloped argument overlooks that a declaratory action is not necessary as MCL 205.22 provides the

mechanism for an individual taxpayer to contest whether they were wrongfully assessed for the 2024 tax year *after* they are assessed.

As to mandamus, Plaintiff legislators and advocacy groups make short work of this argument, (Pls' App, p 36), which is untenable because "plaintiffs' argument for how the statute should be interpreted is unpersuasive, and they have therefore failed to show that they have a clear legal right to performance of a specific duty[.]" *Berry v Garrett*, 316 Mich App 37, 41 (2016) (quotation marks and citation omitted)." (Slip op p 14.) The Court of Appeals was correct because Plaintiffs have established neither that they have a clear legal right to their requested interpretation of a statute nor that the Treasurer has a clear legal duty to set Plaintiffs' preferred tax rate.

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

Plaintiff legislators and advocacy groups assert that they have a "clear legal right to correct information as to the amount the state" will collect in income taxes. (Pls' App, p 36.) Below, the Plaintiff legislators based their right to "correct information" on Const 1963, art 4, § 31. (Pls' COA Br, p 20.) But § 31 does not guarantee a precise or permanent tax rate; it provides only for revenue *estimates*.

Neither have the Plaintiff advocacy groups articulated any source of their asserted claims. (*Id.*, p 22.) Instead, they leave this Court to search for the source of that purported right. Plaintiffs cannot "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mitcham v Detroit*, 355 Mich 182, 203 (1959).

Similarly, MCL 206.51(1)(c) does not impose any specific duty on the Treasurer with respect to the income tax rate. Nor could it—the Legislature is constitutionally designated as the branch of government that levies taxes. Const 1963, art 9, § 1. Instead, the statute imposes a duty on the Treasurer to work with the House and Senate fiscal agency directors to determine "whether the total revenue distributed to general fund/general purpose revenue has increased" based on the comprehensive annual financial report no later than January 2023. Plaintiffs' assertion that the Treasurer "has a clear legal duty to charge the proper tax rate[,]" (Pls' App, p 36), ignores that the Legislature levies taxes, the Treasurer does not charge taxes. MCL 206.51(1) ("For . . . income from any source . . . there is levied . . . upon the taxable income of every person" a tax at certain rates. (Emphasis added).).

Plaintiffs' reliance on *Berdy v Buffa,* 504 Mich 876; 928 NW2d 204 (2019) is misplaced because *Berdy* involved a specific duty to be performed in a ministerial way, i.e., remove an ineligible candidate from ballots for patent candidacy defects.

928 NW2d at 207. See also *Berry*, 316 Mich App 37 (mandamus for removal of candidate from ballot for defective affidavits). Unlike *Berdy*, this case does not involve a specific statutory duty to be performed by the Treasurer as to the tax rate.

Plaintiffs generally assert that the Treasurer has a duty to "charge" the proper tax rate. (Pls' App, p 36.) Even if this were accurate concerning how taxes are levied and what branch of government is responsible—it is not, MCL 206.51(1); Const 1963, art 4, §§ 1, 32; art 9, § 1—the purported "duty" they identify is so nonspecific as to be incognizable. And while Plaintiffs argued below that this Court gave no indication that the holding of *Berdy* was limited factually, (Pls' App, p 48), that does not change the nature of the duty at issue in *Berdy* or how it is fundamentally distinct from the purported duty Plaintiffs assert in this matter.

CONCLUSION AND RELIEF REQUESTED

Plaintiffs articulate no cognizable grounds for this Court's review. The Court of Appeals' decision is well-reasoned and properly applies basic principles of statutory construction, which is the interpretation governing the upcoming budget forecast consistent with MCL 18.1367b(7).

For these reasons, this Court should deny Plaintiffs' Application.

Respectfully submitted,

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