STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

In Re REQUESTS FOR ADVISORY OPINION
REGARDING 2018 PA 368 AND 2018 PA 369

MSC Nos. 159160 and 159201

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John C. Philo (P52721)
Anthony D. Paris (P71525)
SUGAR LAW CENTER
FOR ECONOMIC & SOCIAL JUSTICE
4605 Cass Avenue, Second Floor
Detroit, Michigan 48201
313-993-4505/Fax: 313-887-8470
jphilo@sugarlaw.org
tparis@sugarlaw.org
Attorneys for Amici Curiae

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AMICI CURIAE BRIEF OF THE SUGAR LAW CENTER FOR ECONOMIC & SOCIAL JUSTICE, THE MICHIGAN CHAPTER OF THE NATIONAL LAWYERS GUILD, THE MICHIGAN IMMIGRANT RIGHTS CENTER, FARMWORK LEGAL SERVICES OF MICHIGAN AND THE CENTER FOR COMMUNITY BASED ENTERPRISE IN OPPOSITION TO THE CONSTITUTIONALITY OF 2018 PA 368 and 2018 PA 369[1]

[1] Pursuant to MCR 7.312(H)(4) counsel for *Amici Curiae* attests that they authored this brief in its entirety and no counsel for a party authored any part of this brief. Counsel for *Amici Curiae* further attests that no party or their attorneys made a monetary contribution intended to fund the preparation or submission of this brief.

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BASIS OF JURISDICTION

The State of Michigan's Constitution permits "either house of the legislature or the governor [to] request the opinion of the supreme court … as to the constitutionality of legislation after it has been enacted into law but before its effective date." Const 1963, art 3, § 8.

The state's House of Representatives and the state Senate have both requested an advisory opinion from the Court on the constitutionality of 2018 PA 368 and 2018 PA 369. The Legislature's requests were made before both laws were scheduled to take effect. The House's request was made on February 22, 2019 and the Senate's on March 1, 2019. Both 2018 PA 368 and 2018 PA 369 were to take effect on March 29, 2019.

This Court, therefore, has jurisdiction pursuant to Const 1963, art 3, § 8, MCL 600.215 and MCR 7.303(B)(3).

QUESTIONS INVOLVED

1. Should the Court exercise its discretion to grant the requests to issue an advisory opinion in this matter?

   ANSWER: YES.

2. Does art 2, § 9 of the State of Michigan's Constitution permit the Legislature to enact an initiative petition into law and then subsequently amend that law during the same legislative session?

   ANSWER: NO.

3. Were Public Act 368 of 2018 and Public Act 369 of 2018 enacted in accordance with art 2, § 9 of the State of Michigan's Constitution?

   ANSWER: NO.

I. INTRODUCTION

Amici Curiae respectfully request that this Court issue an advisory opinion holding that the State of Michigan's Constitution at art 2, § 9 prohibits the Legislature from enacting an initiated law and subsequently amending it during the same legislative session and request that 2018 PA 368 and 2018 PA 369 be found to have been enacted in violation of art 2, § 9.

As confirmed by prior decisions of this Court, art 2, § 9 expresses a clear substantive limitation on the Legislature's legislative powers. The provision reserves to the people of Michigan the power to enact laws through citizens' initiatives and the common understanding and plain language of terms used in art 2, § 9 prohibit the Legislature from amending or repealing legislatively enacted initiatives until the next legislative session following the session in which the enactment becomes effective. As a result, the Legislature's actions in this matter clearly violate the spirit, intent, common understanding, and plain language of the Michigan Constitution.

II. STATEMENT OF FACTS

This matter arises from the actions of the Michigan Legislature when it enacted two citizen's initiatives to prevent their appearing on the November 6, 2018 ballot and then before the measures took effect and during the same legislative session, amended each to negate substantive provisions of the initiatives.

In early 2018, MI Time to Care, a coalition of community and advocacy organizations, began circulating petitions to place a citizen's initiative before voters at the November election. The initiative sought adoption of a law to require Michigan employers to provide paid sick leave to their employees. Under the initiative, employers of 10 or more employees would be required to provide one hour of paid sick leave for every 30 hours that an employee worked. These employees would be entitled to use up to 72 hours of sick leave per year. Employers of fewer than

10 employees would accrue sick time in the same manner, however, would be limited to using no more than 40 hours of paid sick leave and 32 hours of unpaid leave each year. Earned but unused sick time would carry over to following years. Nearly 380,000 voters signed MI Time to Care's petitions and on July 27, 2018, the Michigan Board of Canvassers certified the measure for the ballot.

Additionally, in early 2018, One Fair Wage, another coalition of community and advocacy organizations, circulated petitions to place an initiative to increase the state minimum wage on the November ballot. The initiative would incrementally increase the minimum wage to $12 per hour by 2022 and thereafter the minimum wage would increase based on the rate of inflation. Additionally, the initiative would have required overtime pay at one and one half time a worker's hourly wage rate and would have gradually eliminated the employer tip credit by 2024.[2] Over 370,000 voters signed the One Fair Wage's petitions. Following a legal challenge and in compliance with an order from the Michigan Court of Appeals, the Michigan Board of Canvassers certified the measure for the ballot on August 22, 2018.[3]

The Michigan Secretary of State transmitted the paid sick leave initiative to the state Legislature on July 30, 2018 and the minimum wage initiative on August 27, 2018. Both initiatives were passed by the Legislature on September 5, 2018 and were then scheduled to take effect on March 29, 2019. Multiple news outlets reported that state legislators had no intention of allowing the Acts to take effect and that amendments or repeal would be passed by the Legislature before March 29.

[2] The employer tip credit permits an employer of tipped employees to pay employees direct wages less than the minimum wage, in the expectation that tips earned by the employees will make up the difference between the credited amount and the minimum wage rate.

[3] The Board of Canvassers initially failed to certify the initiative for the ballot. A lawsuit was initiated, and the Court of Appeals ordered the measure to appear on the ballot.

Two days after the November 6 election, legislators introduced Senate bill no. 1175 to amend the citizens' paid sick leave initiative and Senate bill no. 1171 to amend the citizens' minimum wage initiative. Both bills quickly passed in the state Legislature and were signed by the governor on December 13, 2018.

The Legislature's amendments to the two citizen's initiatives dramatically diverge from the intent and substance of the proposed legislation. Among other changes, the Legislature's amendments to the paid sick day proposal, resulted in:

- Narrowing the definition of employee to exclude hundreds of thousands of Michigan workers and most farmworkers working in the state;
- Reducing the rate at which paid sick leave would accrue from one hour for every 30 hours work to one hour for every 35 hours worked;
- Reducing the amount of sick leave to, in all instances, not more than 40 hours per year;
- Eliminating the initiative's requirement that small businesses with less than 10 employees provide paid sick leave of up to 40 hours per year and unpaid leave of up to 32 hours per year;
- Eliminating the initiative's requirement that businesses with between 10 and 49 employees provide paid sick leave of up to 72 hours per year;
- Eliminating a rebuttable presumption of retaliation when certain action was taken by an employer and creating a presumption that an employer is complying;
- Eliminating a civil cause of action when employers violate the Act and eliminating various damages recoverable under the initiative;
- Reducing the statute of limitations to bring an administrative complaint from three years to six months;
- Eliminating anti-retaliation and anti-discrimination provisions; and
- Eliminating any requirement to allow unused leave to carry over to the following benefit year and eliminating requirements that employers compensate employees for unused leave.

Likewise, amendments to the minimum wage initiative radically alter the intent and substance of the Act to, among other changes:

- Eliminate the provisions requiring increases in the minimum wage each year until reaching $12 per hour in 2022 and implementing greatly reduced increases whereby the minimum wage will only reach $12 in 2030;
- Eliminating any requirement that the minimum wage be adjusted to meet inflation after reaching $12 per hour; and

- Eliminating reductions in the employer tip credit until it equaled the minimum wage in 2024 and reinstating the employer tip credit in full.

The Legislature's amendments are unequivocally intended to frustrate the intent and the substance of the two citizen's initiatives that are at issue in this matter.

III. DISCUSSION

A. THE COURT MUST DETERMINE THE INTENT OF ART 2, § 9 AND WHAT RESTRICTIONS THE PROVISION PLACES ON THE LEGISLATURE'S ABILITY TO VETO CITIZENS' INITIATIVES.

Article 2, § 9 of the Michigan Constitution reads in relevant part as follows:

> **§ 9 Initiative and referendum; limitations; appropriations; petitions.**
>
> Sec. 9.
>
> 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. …
>
> *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*. …
>
> … 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. … 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.

Const 1963, art 2, § 9 (emphasis added).

Any difficulties presented by the language do not permit the court to "do manifest violence to the plain intent of the framers" of the provision. *Ecorse v Peoples Cmty Hosp Auth*, 336 Mich 490, 502; 58 NW2d 159 (1953). Rather, the Court must look to the intent of the provision as it would have been commonly understood by the citizens that adopted our state's Constitution.

B. THE INTENT TO BE ARRIVED AT IS THE INTENT OF THE PEOPLE AT THE TIME THAT ART 2, § 9 WAS ADOPTED.

As held by the Michigan Supreme Court, "the primary objective of constitutional interpretation is to determine the original meaning of the provision … at the time of ratification." *Nat'l Pride at Work, Inc v Governor of Mich*, 481 Mich 56, 67; 748 NW2d 524 (2008). The original meaning is determined based on the rule of "common understanding." *People v Nutt*, 469 Mich 565, 573; 677 NW2d 1 (2004).

The Michigan Supreme Court has long held that the primary rule of constitutional construction is the rule of common understanding. *Traverse City Sch Dist v AG*, 384 Mich 390; 185 NW2d 9 (1971). The Court describes the rule:

> A constitution is made for the people and by the people. *The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it*. 'For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, *the intent to be arrived at is that of the people*, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, *but rather that they have accepted them in the sense most obvious to the common understanding*, and ratified the instrument in the belief that that was the sense designed to be conveyed.'

Federated Publications, Inc v Michigan State Univ Bd of Trustees, 460 Mich 75, 85; 594 NW2d 491 (1999) (quoting 1 Cooley, Constitutional Limitations (6th ed), p 81) (emphasis added).

Quoting from precedent, this Court states further regarding application of the rule:

> "[It] is a fundamental principle of constitutional construction that we determine the intent of the framers of the Constitution and of the people adopting it." *Holland v Clerk of Garden City*, 299 Mich 465, 470; 300 NW 777 (1941). In addition, the Court in *Holland* quoted *Pfeiffer v Detroit Bd of Ed*, 118 Mich 560, 564; 77 NW 250 (1898), stating, in part:
>
> > In determining this question, we should endeavor to place ourselves in the position of the framers of the Constitution, and ascertain what was meant at the time; for, if we are successful in doing this, we have solved the question of its meaning for all time. It could not mean one thing at the time of its adoption, and another thing today, when public sentiments have undergone a change. *McPherson v Secretary of State*, 92 Mich 377 [52 NW 469 (1892)]." [*Holland*, *supra*, p 470.]

Frey v Dep't of Mgmt & Budget, 429 Mich 315, 328; 414 NW2d 873 (1987).

Putting oneself in the place of the framers of Michigan's Constitution, there can be little doubt that they did not intend the citizens' initiative provisions of art 2, § 9 to grant the Legislature veto power over all proposed initiatives. The Legislature's understanding of art 2, § 9 most assuredly encompasses a blanket veto power. Under their understanding, in all cases where an initiative is certified for the ballot, the Legislature would be free to engage in the practices it adopted in the present matter — thereby both blocking the initiative from reaching the ballot *and* ensuring that the substantive provisions of the initiative never become law.[4]

In this way, the Legislature argues that art 2, § 9 intends no restraint on their legislative power. Such a conclusion is contrary to prior decisions of this Court.

[4] While the Legislature waited until two days after the general election to begin proceedings to amend and repeal provisions of the two initiatives, the Legislature's understanding of art 2, § 9 argues no restraint on that body's power to pass the initiative one day and begin amendment and repeal the following day. No reasonable review of the intent of art 2, § 9 can fairly be found to sanction such machinations to thwart the right of citizens to propose and enact legislation through the initiative process.

C. UNDER ART 2, §9, THE PEOPLE CLEARLY INTENDED TO RESERVE POWER TO PROPOSE AND ENACT LAWS TO MICHIGAN'S CITIZENS.

With language that has been repeatedly cited by this Court, Chief Justice Thomas Cooley of the Michigan Supreme Court wrote regarding the courts' role in interpreting Michigan's Constitution:

> [I]n seeking for its real meaning we must take into consideration the times and circumstances under which the State Constitution was formed, the general spirit of the times, and the prevailing sentiments among the people. Every constitution has a history of its own, which is likely to be more or less peculiar, and, unless interpreted in the light of this history, is liable to be made to express purposes which were never within the minds of the people in agreeing to it. This the Court must keep in mind when called upon to interpret it, for their duty is to enforce the law which the people have made, and not some other law which the words of the Constitution may possibly be made to express.

People v. Harding, 53 Mich 481, 485 (1884). When determining the meaning of art 2, § 9, this Court has recognized these principles and long found the provision to be a substantive limitation on the Legislature's legislative power.

In *Woodland v Mich Citizens Lobby*, the Michigan Supreme Court explicitly recognized the intent of the framers and the people who adopted art 2, § 9 to limit the powers of the state Legislature and reserve to the people the power to propose and enact state laws. The Court expressly found and held that:

> Art 2, § 9, is a reservation of legislative authority which serves *as a limitation on the powers of the Legislature*. This reservation of power is constitutionally protected from government infringement once invoked; once the petition requirements have been complied with, *the state may not refuse to act*.

423 Mich 188, 215; 378 NW2d 337 (1985) (emphasis added).

As stated by Chief Justice Robert Young in *Mich United Conservation Clubs*, "clearly, art 2, § 9 provides a means for citizens directly to challenge Legislative action or inaction" and "the

people enacted two provisions [initiative and referendum] that are clearly intended as checks on the constitutional power of the Legislature." 464 Mich at 382-83. (Young, J., concurring). This Court expressly cautions that "the initiative process should 'be interfered with *neither by the legislature*, the courts, nor the officers charged with any duty in the premises.'" *Frey*, 429 Mich at 338 (citing *Scott v Secretary of State*, 202 Mich 629, 643; 168 NW 709 (1918)) (emphasis added).

The Legislature however disagrees, and, in effect, argues that art 2, § 9 is merely a *procedural rule* and not a substantive restraint on the Legislature. The Michigan Supreme Court has held otherwise.

> Indeed, the initiative process has been described as "[assuring] the citizenry of a gun-behind-the-door to be taken up on those occasions when the legislature itself does not respond to popular demands." Lederle, "The Legislative Article," in Pealy (Ed), The Voter and the Michigan Constitution in 1958, p 47. This "gun-behind-the-door" was intended as a threat to the Legislature … the initiative process is intended as a last resort for the people when the Legislature fails to act on issues which so inflame the citizenry on a grass-roots level … Nothing in the history or interpretation of the precursor to art 2, § 9, provides a basis for a different construction. In 1913, the people amended the 1908 Constitution to provide a statutory initiative, Const 1908, art 5, § 1, and a constitutional amendatory initiative, Const 1908, art 17, § 2, that was less restrictive than that originally provided. These 1913 constitutional amendments reflected the popular distrust of the legislative branch of our state government. In construing art 17, § 2, the constitutional amendatory initiative provision, this Court said in 1924:
>
> > The initiative found its birth in the fact that political parties repeatedly made promises to the electorate both in and out of their platforms to favor and pass certain legislation for which there was a popular demand. As soon as election was over their promises were forgotten, and no effort was made to redeem them. These promises were made so often and then forgotten that the electorate at last through sheer desperation took matters into its own hands and constructed a constitutional procedure by which it could effect changes in the Constitution *and bring*

> *about desired legislation without the aid of the legislature*. [Hamilton v Secretary of State, 227 Mich 111, 130; 198 NW 843 (1924).]

Woodland, 423 Mich at 217-18 (emphasis added).

Under the Legislature's argument that art 2, § 9 is merely a procedural and not a substantive limitation, the provision acts not as a "gun behind the door" to restrain legislative power but rather as a kitten in its lap. The Legislature argues that the body is only required to symbolically and not substantively "enact" or "reject" the initiative. Once enacted, the Legislature argues it is permitted, without limitation, to amend the initiative — even before the initiative ever comes into effect and during the same legislative session. Following enactment, the Legislature would place no time limits on when it might amend and would place no limits on the substance of changes it might make.

This view of art 2, § 9's intent would render the provision as having no substantive meaning, since the Legislature could, without limitation, prevent each and every initiative from ever reaching the ballot and from ever coming into effect. Michigan's Constitution is not however self-destructive — granting a right of initiative to the people and then taking it away by the same provision. As noted by the U.S. Supreme Court, "[i]t is also settled beyond dispute that the Constitution is not self-destructive. In other words, that the powers which it confers on the one hand it does not immediately take away on the other. *Billings v United States*, 232 US 261, 282 (1914) (cited in dissent of Justice Dethmers in *In re Apportionment of Mich State Legislature*, 372 Mich 418, 436; 126 NW2d 731, 740 (1964)).

The Legislature's understanding finds the Michigan Constitution impermissibly self-destructive and would render the provision nugatory since, in effect, the Legislature would possess a legislative veto over all citizens' initiatives. Such an understanding violates the clear intent of

art 2, § 9 to act as a substantive limit on the Legislature's power and would further violate clear principles of constitutional construction holding that no provision should be interpreted in such a way as to render it meaningless.

The common understanding of the provision's terms further supports a finding that art 2, § 9 acts as a substantive restraint on the Legislature's powers.

D. ENACTMENT REQUIRES THAT THE INITIATIVE TAKE EFFECT BEFORE THE LEGISLATURE MAY AMEND.

Article 2, § 9 gives the Legislature the power to "enact" a citizen's initiative before the measure is placed on the ballot. The provision reads: "[a]ny law proposed by initiative petition shall be either *enacted* or rejected by the legislature without change or amendment." Const 1963, art 2, § 9 (emphasis added). The framers and the electorate in 1963 would have shared an understanding that the term "enacted" encompasses and requires that an initiative, in fact, takes effect as a law of this state.

As stated by the Michigan Supreme Court, "the primary objective of constitutional interpretation is to determine the original meaning of the provision … at the time of ratification." *Nat'l Pride at Work, Inc*, 481 Mich at 67. The original meaning is determined based on the rule of "common understanding." *People v Nutt*, 469 Mich at 573. The rule of common understanding holds that "the people are understood to have accepted the words employed in a constitutional provision in the sense *most obvious to the common understanding*." *Id.* (emphasis added). The court determines common understanding by the term's plain meaning at the time of ratification. *Nat'l Pride at Work, Inc.*, 481 Mich at 67-68.

Common words are given their plain meaning, obvious on their face. *Phillips v Mirac, Inc.*, 470 Mich 415, 422; 685 NW2d 174, 179 (2004). Only when words have no plain meaning, may the Court then ascribe a legal or technical meaning. *Id*. (citing *Silver Creek Drain Dist v*

Extrusions Div, Inc, 468 Mich 367, 375; 663 NW2d 436 (2003); *Michigan Coalition of State Employee Unions v Civil Service Comm*, 465 Mich 212, 222-223; 634 NW2d 692 (2001), quoting 1 Cooley, Constitutional Limitations (8th ed), p 132). "Courts … may "discern the 'plain meaning' by reference to a dictionary." *Citizens Protecting Michigan's Constitution v Sec'y of State*, 280 Mich App 273, 295; 761 NW2d 210 (2008) (citing *Nat'l Pride at Work, Inc* 481 Mich at 67-69). See also *People v Duncan*, 494 Mich 713, 723; 835 NW2d 399 (2013).

The common understanding of the term 'enact' incorporates an understanding that a measure in fact becomes effective and binding on citizens as a law of this state. It is inconceivable that the majority of persons who ratified art 2, § 9 understood the term "enact" to simply mean a formal vote of the state Legislature without the law ever becoming effective. Common definitions of the word support this understanding.

Dictionary.com defines the verb 'enact' to mean "to make into an act or statute" where an act and statute are defined as a law and law is defined as "principles and regulations established in a community by some authority and *applicable to its people* [and] … *recognized and enforced by judicial decision*." Dictionary.com, <http://www.dictionary.com > (accessed June 17, 2019) (emphasis added). An act or statute that never comes into effect and that is not intended to come into effect is not a law under lay understandings and such measures have not been 'enacted' as those terms are commonly understood now or in 1963.

The New Oxford American Dictionary shares this understanding, defining 'enact' as to "make law" and "*put into practice*." *New Oxford American Dictionary*, p. 570 (3rd ed). Law is again defined as "the system of rules that a particular … community recognizes as *regulating actions of its members and may enforce*" and "a thing regarded as *having the binding force or effect of a formal system of rules*." *Id*. at 989.

Again, the Random House Unabridged Dictionary, defines 'enact' as "to make into an act or statute." *Random House Unabridged Dictionary*, p. 639 (2nd ed). Both an act and a statute are defined as a law. *Id*. at pp. 29 & 1862. 'Law' is defined as "the principles and regulations established in a community by some authority *and applicable to its people … recognized and enforced* by judicial decision." *Id*. at 1089 (emphasis added).

Webster's Seventh New Collegiate Dictionary defines 'enact' as "to establish by legal or authoritative act" and "to make (as a bill) into law." *Webster's Seventh New Collegiate Dictionary*, p. 272 (1963). 'Establish' is defined as "to institute (as a law) permanently by enactment or agreement." *Id*. at 284. And again, 'law' is defined as "a binding custom or practice of a community : a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority." *Id*. at 478.

Webster's New World Dictionary, College Edition also defines 'enact' as "to establish by legal or authoritative act" and "to make (a bill, etc.) into law" with substantially similar definitions to the words 'establish' and 'law' noted above. *Webster's New World Dictionary, College Edition*, p. 477 (1960).

In all instances, the definition of 'enact' encompasses a requirement that the measure at issue be made binding and enforceable and that it become a rule that is, in fact, in effect. This is particularly true in the context of laws, which in all cases are commonly understood to be *binding* rules that is enforceable by an authority. An initiative is therefore only fully 'enacted' when there is an intent that a measure become binding and enforceable. Enactment is not complete until that occurs. Thus, an initiative could not be amended or repealed by the Legislature until that process is complete. Common understandings of the term 'enacted' as found in art 2, § 9 requires that the initiative cannot be amended or repealed until the law becomes effective and, as explained in the

following section, not until the next legislative session following the session in which the measure becomes effective (when enactment is completed).[5]

Any other understanding of the term 'enact' seeks to inject a legal or technical understanding upon a commonly understood term, in violation of clear constitutional canons. The Michigan Supreme Court states:

> Here we are not confronted with a statute which must be strictly construed but rather with a constitutional provision, … which should be given a reasonable and practical interpretation which gives effect to the intent and purpose of its framers and the persons who adopted it. Words used therein are to be given their natural, obvious and ordinary meanings and *not a technical meaning*.

John Hancock Mut Life Ins Co v Ford Motor Co., 322 Mich 209, 221-222; 33 NW2d 763 (1948). See also *Goldsmith v Albion Pub Sch*, 373 Mich 397, 401; 129 NW2d 377 (1964).

As stated above, words used in a constitution must be given their ordinary and plain meaning, since this is the meaning that would have been commonly understood by the electorate when adopting the Constitution. Courts may only ascribe a legal or technical meaning "when words have no plain meaning." *Phillips*, 470 Mich at 422. In *Silver Creek Drain Dist v Extrusions Div, Inc*, this Court explained:

> [T]he first inquiry is to determine if the words have a plain meaning or are obvious on their face. *If they are, that plain meaning is the meaning given them. If, however, the constitutional language has no plain meaning*, but is a technical, legal term, we are to construe those words in their technical, legal sense.

468 Mich at 375 (emphasis added). See also *Michigan Coalition of State Employee Unions v Civil*

[5] It cannot reasonably be argued that since enactment could not be completed within the 40 day window for the Legislature to act, the commonly understood meaning of "enacted" should not be recognized. Art 4, § 27, provides a procedure whereby the Legislature could give immediate effect to an initiative and all other cases is simply required to take no action to change or amend the initiative until the process of enactment is complete — 90 days after the session in which the initiative was passed.

Service Comm, 465 Mich 212, 222-223; 634 NW2d 692 (2001).

In violation of these long-standing principles, the Legislature seeks to impose a highly legalistic and technical meaning on a commonly understood term — 'enact'. The Legislature asks this court to reject the plain, ordinary meaning of the term as noted above and to impart a meaning where the term 'enact' only means the formality of passing the initiative by the Legislature, without imparting the force of law. This understanding is not one that is commonly understood by those who adopted the state Constitution, but rather is one that can only be arrived at upon a deep dive into legal texts[6] and after acquiring a sophisticated technical understanding of legislative processes. The Michigan Supreme Court has explicitly rejected such inquiries when a term possesses a plain and ordinary meaning on its face.

E. INITIATIVES ENACTED BY THE LEGISLATURE MAY ONLY BE AMENDED AT SUBSEQUENT LEGISLATIVE SESSIONS.

Article 2, § 9 further reads:

> If any law proposed by such petition shall be enacted by the legislature *it shall be subject to referendum, as hereinafter provided*.
>
> …
>
> Laws approved by the people *under the referendum provision of this section may be amended by the legislature at any subsequent session* thereof.

Const 1963, art 2, § 9 (emphasis added).

The plain language of the first clause cited above imposes a clear restriction on the power to legislate on an initiative following its enactment by the Legislature. The clause states that such legislation *shall be* subject then subject to following provisions that are applicable to referendum.

[6] Black's Law Dictionary defines 'enact' as "to make into law." *Black's Law Dictionary*, p. 642 (10th ed).With this definition, the reader is required to make further philosophical inquiry into the technical meaning of the term 'law' within a system of government before one can begin to reach the conclusion advocated by the Legislature. Such an inquiry clearly contravenes the rule of common understanding and is a negation of the plain meaning doctrine.

The following provisions (found in the second clause stated above) further mandate that an approved referendum may only be amended by the Legislature a subsequent session of that body.[7] These clauses place an express limitation on the state Legislature that prohibits amendment of a legislatively enacted initiative until the next legislative session. This understanding was confirmed shortly after the state's Constitution was ratified by the people.

Within a year following ratification of the Constitution by the people, Attorney General Frank Kelley confirmed this understanding. At that time, the Attorney General was asked to render an opinion regarding when the Legislature may amend a citizen's initiative that the body had enacted and found wrote that:

> It is equally clear that the legislature enacting an initiative petition proposal cannot amend the law … at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963.

OAG, 1964, No. 309 (March 6, 1964).

The contemporaneousness of the Attorney General's understanding and the fact that there were no known court challenges or other objections to this understanding for over forty years, suggest that this was the common understanding by the framers and the people who adopted the state Constitution.

While the plain language of art 2, § 9 supports no other conclusion, this Court is aided further by its holdings that: "[a] constitutional limitation may be inferred to enforce or implement the purpose and spirit of an explicit constitutional limitation." *Advisory Op. on Constitutionality of 1982 PA 47*, 418 Mich 49, 69-70; 340 NW2d 817 (1983). And, by the Court's prohibition

[7] With respect to the phrase "[l]aws approved by the people," the language importantly lacks the "at the polls" qualifier found elsewhere in the same paragraph. The phrase 'laws approved by the people' thereby includes both those approved at the polls and by legislative enactment and is applicable to both initiatives and referendum.

against finding any provisions of the Constitution as meaningless and without effect when its intent is clear. See *People v Cathey*, 220 Mich 628, 631, 190 NW 753 (1922). As noted in preceding sections, the Legislature's understandings, if adopted, would effectively grant that body a discretionary veto over every citizens' initiative and render the initiative's limitation on legislative power meaningless. Such a result cannot be reconciled with the intent of art 2, § 9,

As noted in the prior section, the common understanding of 'enacted' is that an initiative is enacted after it is passed *and* becomes effective. Thus, an enacted citizens' initiative may only be amended by the Legislature during legislative sessions following the one where the measure became effective. If the Legislature wishes an earlier date, it is free to vote to give the measure immediate effect as the time that that measure is adopted, but in no instance is the Legislature permitted to amend or repeal provisions of the initiative until the next legislative session following enactment.

F. THE MICHIGAN CONSTITUTION IS NOT SELF-DESTRUCTIVE, GRANTING THE RIGHT OF INITIATIVE ON ONE HAND AND IMMEDIATELY WITHDRAWING THAT RIGHT WITH THE OTHER HAND.

Federal and state courts have long held that "[p]rovisions of the constitution should be read in context, not in isolation, and they should be harmonized to *give effect* to all." *Saginaw County v State Tax Comm*, 54 Mich App 160; 220 NW2d 706 (1974), vacated on other grounds 393 Mich 779; 224 NW2d 283 (1974), aff'd sub nom *Emmet County v State Tax Comm*, 397 Mich 550; 244 NW2d 909 (1976) (emphasis added). The Michigan Supreme Court has long held:

> Another rule of construction, founded equally in good sense and judicial decisions, and applicable alike to constitutions and statutes, requires that every word, every phrase, and ... every distinct provision of the constitution …must be construed to have its own specific and appropriate meaning, office and *effect*.

Sears v Cottrell, 5 Mich 251, 260 (1858) (emphasis added). See also, *Billings v United States*, 232 US 261, 282 (1914) (a Constitution does not confer powers on the one hand and immediately take away those powers with the other.) and *People v Cathey*, 220 Mich 628, 631, 190 NW 753 (1922) (the Constitution should not be interpreted to render provisions meaningless).

As this Court wrote in *People v Cathey*, "[w]e cannot attribute to the constitutional convention which framed the Constitution and to the people who adopted it an intent to write into the fundamental law a meaningless and ineffective provision." 220 Mich at 631. Yet, the Legislature's understanding of art 2, § 9 does just this, rendering significant portions of the provision meaningless and ineffective.

Substantively, the Legislature's amendment and repeal of the initiatives' provisions prior to the statutes' effective date is an after-the-fact rejection of the initiative in violation of art 2, § 9. The Constitution requires the Legislature to enact the initiative without change or amendment or to reject the initiative. Here, the Legislature seeks to evade its constitutional obligations to enact without change or to reject, claiming that it agrees with some portions of the initiatives but not others. The Constitution however contemplates such circumstances and provides a clear process and clear instructions.

In every instance, the Legislature must enact the initiative without change or reject it. When the Legislature agrees with some portions of the initiative but not others, the Constitution *requires* the Legislature to "propose a different measure upon the same subject … [and] both measures shall be submitted … to the electors for approval or rejection at the next general election." Const 1963, art 2, § 9. The Legislature sought to evade and now seeks to nullify this requirement in violation of clear constitutional principles.

If upheld, the Legislature's actions in this case would render null and void the clear constitutional requirement that the Legislature's competing version of the initiative be placed on the ballot. The requirement would be null and void, since in every instance the Legislature could evade the requirement by simply passing the initiative without change and then in the hours, days, weeks, or months ahead, repeal and replace the initiative before it ever takes effect. Clearly, such duplicitous machinations were not within the intent of the framers or electors at the time that art 2, § 9 was adopted and the Constitution cannot be read to sanction such practices.

CONCLUSION

For the foregoing reasons, the Sugar Law Center for Economic & Social Justice, the Michigan Chapter of the National Lawyers Guild, the Michigan Immigrant Rights Center, Farmworker Legal Services of Michigan, and the Center for Community Based Enterprise supports the Michigan Legislature's requests for an advisory opinion from this Court.

Amici Curiae however respectfully request that this Court issue an advisory opinion holding that the State of Michigan's Constitution at art 2, § 9 prohibits the Legislature from enacting an initiated law and subsequently amending it during the same legislative session and request that 2018 PA 368 and 2018 PA 369 be found to have been enacted in violation of art 2, § 9.

By: /s/ John C. Philo
John C. Philo (P52721)
Anthony D. Paris (P71525)
SUGAR LAW CENTER
FOR ECONOMIC & SOCIAL JUSTICE
4605 Cass Avenue, Second Floor
Detroit, Michigan 48201
313-993-4505/Fax: 313-887-8470
jphilo@sugarlaw.org
tparis@sugarlaw.org
Attorneys for Amici Curiae

Dated: June 19, 2019

STATE OF MICHIGAN
IN THE MICHIGAN SUPREME COURT

In Re REQUESTS FOR ADVISORY OPINION
REGARDING 2018 PA 368 AND 2018 PA 369

MSC Nos. 159160 and 159201

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CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2019, I electronically filed the attached *Amici Curiae Brief of the Sugar Law Center for Economic & Social Justice, the Michigan Chapter of the National Lawyers Guild, the Michigan Immigrant Rights Center, Farmworkers Legal Services of Michigan, and the Center for Community Based Enterprise in Opposition to the Constitutionality of 2018 PA 368 and 2018 PA 369* with the Clerk of the Court using the TrueFiling system, which will send notification of such filing to all participants and their counsel of record in this case.

Respectfully Submitted,

By: /s/ Shannon Stuckey
SUGAR LAW CENTER
FOR ECONOMIC & SOCIAL JUSTICE
4605 Cass Avenue, Second Floor
Detroit, Michigan 48201
(313) 993-4505/Fax: (313) 887-8470
sstuckey@sugarlaw.org

Date: June 19, 2019