No. 24-

IN THE

Supreme Court of the United States

SENATOR JONATHAN LINDSEY, *et al.*,

Petitioners,

v.

GRETCHEN WHITMER, IN HER OFFICIAL CAPACITY AS GOVERNOR OF MICHIGAN, OR HER SUCCESSOR, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Elections Clause expressly requires federal election regulation by the States, namely that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." Art. I, § 4, cl. 1. This clause is an express delegation of power to the state legislature to act with respect to federal elections. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–05 (1995). The Michigan state constitution defines "legislature." By initiative, citizens passed a state constitutional amendment that directly affects federal elections. The state legislature, as a body, did not challenge the legislative usurpation; individual legislators did. However, the appellate court adjudicated that individual legislators did not have Article III standing. Accordingly, there is no Elections Clause enforcement in Michigan and other states where state legislatures do not sue.

> Whether Article III standing exists for individual state legislators, having an interest or a right under a state constitution to vote to support or defeat state laws regulating federal elections, to challenge state executive usurpations of the delegated powers expressly granted to the state legislature under the Elections Clause.

PARTIES TO THE PROCEEDINGS

Petitioners are Michigan state legislators. Senator Jonathan Lindsey, Senator James Runestad, Representative James DeSana, Representative Rachelle Smit, Representative Steve Carra, Representative Joseph Fox, Representative Matt Maddock, Representative Angela Rigas, Representative Josh Schriver, Representative Neil Friske and Representative Brad Paquette. They were the plaintiffs-appellants below.

The Respondents are Michigan's Governor Gretchen Whitmer, Secretary of State Jocelyn Benson and Director of Elections Jonathan Brater. They were the defendants-appellees below.

CORPORATE DISCLOSURE STATEMENT

There are no non-individual petitioners. So, there is no public or private corporation involved.

RELATED PROCEEDINGS

Lindsey v. Whitmer, 2024 WL 1711052, (W.D.Mich. 2024), *affirmed by Lindsey v. Whitmer*, 124 F.4th 408 (6th Cir. 2024).

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Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case. *Lindsey v. Whitmer*, 124 F.4th 408 (6th Cir. 2024).

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit opinion is reported at *Lindsey v. Whitmer*, 124 F.4th 408 (6th Cir. 2024). 1a–15a.

The district court's opinion and order is reported at 2024 WL 1711052. 18a–34a.

JURISDICTION

The judgment of the court of appeals was entered on December 20, 2024. 16a–17a. The jurisdiction of this Court is invoked under 28 U.S. Code § 1254.

CONSTITUTIONAL PROVISION AND MICHIGAN STATE LEGAL TEXTS INVOLVED

The U.S. Constitution, Article I, section 4, clause 1, the Elections Clause, provides, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

Amending the state constitution is accomplished by different methods in Michigan. Under Article XII, § 1, constitutional amendments may occur by legislative proposal (agreed to by two-thirds of the members of each house), followed by a vote of electors. Second, under Article XII, § 2, of Michigan's constitution, the process contested in this case, an amendment may be made without the legislative branch through a citizen-initiated petition ballot measure. Third, under Article XII, § 3, an amendment can be made by a constitutional convention. Mich. Const. art. XII, §§ 1, 2, 3.

The Michigan Constitution expresses the state's vested legislative power is within a senate and a house of representatives, under Article IV, § 1:

> 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.

And, Article IV, § 22, of the Michigan Constitution, provides:

> All legislation shall be by bill and may originate in either house.

In order to pass bills under Art. IV, § 22, the Rules of the Michigan Senate and House of Representatives ensure each member has the opportunity to vote on any particular bill. *See e.g.*, Standing Rules of the House of Representatives in Accordance with the Michigan Constitution, Art. IV, § 13: Chapter II, Rules 12, 13; Chapter III, Rules 30, 31;[1] Senate Rules: Chapter I-Section 3, 1.302; Chapter III, § 1, 3.107; § 5, 3.505.[2] Plaintiff's Brief in Opposition to Motion to Dismiss, R. 12, Page ID # 222-223.

STATEMENT OF THE CASE

For federal elections, the U.S. Constitution expressly requires action by the States, namely that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by

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1. *Standing Rules of the House of Representatives in Accordance with the Michigan Constitution*, 102nd Leg. (2023-2024), available at https://www.legislature.mi.gov/Publications/rules/house_rules.pdf (last visited Mar. 19, 2025).

2. *Senate Rules*, (April 28, 2015), available at https://www.legislature.mi.gov/documents/2015-2016/resolutionadopted/Senate/htm/2015-SAR-0043.htm (last visited Mar. 19, 2025).

the Legislature thereof." Art. I, § 4, cl. 1. The Elections Clause is an express delegation of power to the state legislature to act with respect to federal elections. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–05 (1995). The Elections Clause mandates state legislatures to regulate federal elections.

To the contrary, citizen petition-led ballot proposals—initatives—to amend the Michigan constitution regulating federal elections have been allowed in 2018 and 2022 without state legislative participation and approval. Remarkably, the state legislature never approved the 2018 and 2022 state constitutional amendments regulating federal elections. This same, invalid process may be used in 2026 elections and beyond.

This case presents an important question regarding Article III standing for individual legislators to protect their rights or interests by making narrow legislative usurpation claims under the Elections Clause. Art. 1, §1, cl. 1. This case offers the Court an opportunity to address an unresolved issue after the decision in *Arizona State Legislature v. Arizona Independent Redistricting Com'n*, 576 U.S. 787, 803 (2015). There, this Court held, that a state legislature has Article III standing to bring Elections Clause violation claims against a state's executive branch officials citing *Coleman v. Miller*, 307 U.S. 433 (1939).

In *Coleman*, the plaintiff Kansas State Senators were of a sufficient number to defeat a resolution to ratify a federal constitutional amendment under Article V of the Federal Constitution:

> We think that these senators have a plain, direct and adequate interest in maintaining the effectiveness of their votes.

Coleman v. Miller, 307 U.S. 433, 438 (1939). More recently, this Court declared in *Raines*, that *Coleman*, stood "for the proposition that legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified." *Arizona State Legis.*, 576 U.S. at 801 quoting *Raines v. Byrd*, 521 U.S. 811, 823 (1997).

Thus, after the *Arizona State Legisature* decision, a state legislature has Article III standing to bring Elections Clause violation claims against state executive branch officials.

However, a problem for Elections Clause enforcement arises when the state legislature does not sue the state executive branch official allegedly usurping legislative power under the Elections Clause. The state legislature may refrain from suing for many reasons, including political alignment with the executive branch official, or for other reasons. Regardless, the alleged Elections Clause violation continues.

This Michigan case confirms this problem of Elections Clause enforcement when a state legislature does not sue. In 2023, the individual-state-legislator-petitioners commenced their district court action because the Michigan state legislature neither sued in 2018, nor 2022, regarding citizen initiatives amending the state constitution affecting the times, places, and manner of

federal elections. The underlying federal court complaint sought an injunction based on the constitutional invalidity of the 2018, 2022, and future constitutional amendments using the same state constitutional amendment procedure.

The legislators aimed to enforce the legislature's and the legislators' delegated power under the Elections Clause and the Michigan Constitution, to limit the legislative usurpations. A state legislator's interest or right to participate in state-law-making regulating federal elections is established under the state constitution, state senate and house rules, and the Elections Clause.

Although under the Court's *Arizona State Legislature* decision, the Michigan legislative body could have sought similar injunctive relief, it failed to do so. Consequently, the individual legislators felt compelled to act.

1. Petitioners, two Michigan state senators and nine state representatives, filed a federal court complaint seeking injunctive relief to restore their constitutional duty, authority and right to regulate the times, places, and manner of federal elections in Michigan as delegated by the Elections Clause. Art. 1, § 4, cl. 1. The Elections Clause prescribes that "[t]he Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in *each State by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." *Id.* (Emphasis added.)

Specifically, the individual state legislators sought declaratory judgment that "the use of the petition-

and-state-ballot-proposal process under the Michigan Constitution, Art. XII, Sec. 2, for regulation of times, places, and manner of federal elections [as] unconstitutional and violates the Elections Clause because the state legislature's approval and the state legislators' participation are not required, and that the process violated Plaintiffs' federal rights under the Elections Clause." Complaint, R.Doc. 1, at 15. *See also, e.g.*, 29a. The individual legislator-petitioners sought injunctive relief because the same petition-and-state-ballot-proposal process is always available and can be used again to amend the State's Constitution to regulate the times, places, and manner of federal elections.

Governor Gretchen Whitmer, Secretary of State Jocelyn Benson, and Director of Elections Jonathan Brater are Michigan executive-branch officials with duties to execute and enforce the law. 22a. Secretary Benson and Director Brater specifically have authority with respect to supervising and administering elections, and election laws. *Id.* Petitioner individual legislators sought injunctive and declaratory relief to prevent future use of the petition-and-ballot proposal process to regulate federal elections, and to declare that the 2018 and 2022 constitutional amendments have no legal effect on the state legislators enacting laws to regulate federal elections.

The Michigan Constitution defines what is the state legislature. In Michigan, the legislative power is vested in a senate and house of representatives

> 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.[3]

Mich. Const. art. IV, § 1. *See also*, Art. IV, § 22 ("All legislation shall be by bill and may originate in either house.").

Individual state legislators are elected members to either the State Senate or House of Representatives in order to pass bills under Art. IV, § 22. Each chamber provides the rules and methodology to ensure each member has that opportunity to vote "yea" or "nay" on any question put before them, that is, on any particular bill. *See e.g.*, Standing Rules of the House of Representatives in Accordance with the Michigan Constitution, Art. IV, § 13: Chapter II, Rules 12, 13; Chapter III, Rules 30, 31;[4] Senate Rules: Chapter I-Section 3, 1.302; Chapter III, § 1, 3.107; § 5, 3.505.[5] Thus, the act of voting is either a right or an interest of an individual state legislator in Michigan. The state legislator's right or interest is preserved under the state constitution, and the senate or house rules, and is exercised to support or defeat a bill.

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3. Article IV, § 6, specifically provides legislative authority to independent citizens redistricting commissions for redistricting state legislative and congressional districts.

4. *See, supra,* n. 2.

5. *See, supra,* n. 3.

Meanwhile, the Michigan Constitution reserves certain powers to citizens regarding the ability to propose and reject laws:

> 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.

Mich. Const., art. II, § 9. However, the Michigan Constitution also expresses a limitation to citizen ballot petitioning authority not to supersede legislative branch powers—those reserved in "this constitution":

> The power of initiative extends only to laws which the legislature may enact *under this constitution*.

Id. (emphasis added).

In Michigan, several methods exist to amending the State Constitution. First, under Article XII, § 1, constitutional amendments may occur by legislative proposal (agreed to by two-thirds of the members of each house), followed by a vote of electors. Second, under Article XII, § 2, of Michigan's constitution, an amendment may be made without the legislative branch through a citizen-initiated petition ballot measure. This procedure is herein contested when used to change election law, as occurred in 2018 and 2022. Third, under Article XII, § 3, constitutional amendments may be approved by a constitutional convention. Mich. Const. art. XII, §§ 1, 2, 3. *See also*, Complaint, R. 1 (¶¶ 24-31).

In this case, Michigan voters, under the Article XII, § 2 process, without state legislative participation and approval, used the initiative process to amend the constitution in 2018 (Proposals 2 and 3) and in 2022 (Proposal 2). The proposals, as alleged, regulated the times, places, and manner of federal elections. Neither citizen constitutional amendment proposal arose from a legislative proposal under Article XII § 1, or a state constitutional convention under Article XII, §§ 1, 2, 3. Moreover, Michigan's executive branch officials are enforcing the laws enacted as a result of the state constitutional initiative process as it relates to federal elections for Senators and Representatives.

The approval of Ballot Proposal 2 of 2018 regulating the times, places, and manner of elections did not involve the legislative branch. Ballot Proposal 2 of 2018 was created in preparation of the 2020 United States census, to move control of redistricting from the state legislature to an independent commission. The proposal was approved by a popular vote.

The approval of Ballot Proposal 3 of 2018 regulating the times, places, and manner of elections did not involve the legislative branch. In 2018, pursuant to the process of Michigan Constitution, art. XII, § 2, Michigan voters approved Michigan Ballot Proposal 3. The proposal reformed Michigan elections by protecting the right to a secret ballot, ensuring access to ballots for military and overseas voters, adding straight-ticket voting, automatically registering voters, allowing any citizen to vote at any time, provided they have a proof of residency, allowing access to absentee ballots for any reason, and auditing election results. Complaint, R. Doc. 1 (¶¶ 34,

37, 38). But, in so doing, Proposal 3, as the individual legislator-petitioners alleged, regulated the times, places and manner of federal elections by amending Section 4 of Article II of the Michigan Constitution. *See id.* (¶¶ 35-36; Ex. A).

To be sure, Proposal 3, as an amendment to the state constitution, preserved the rights of legislators to enact laws regarding the "time, place, and manner of all . . . elections" under the Michigan Constitution or the U.S. Constitution:

> (2) Except as otherwise provided in this constitution or in the constitution or laws of the United States, the legislature shall enact laws to regulate the time, place and manner of all nominations and elections. . . .

Complaint (Exhibit A) (underlining in original identifying new language); Mich. Const. art. 2 § 5(2).

But, with the enactment of the 2018 initiative constitutional amendments, the citizens, without the approval of the legislature, cabined the authority of lawmakers to regulate the election process as it pertains to federal elections.

In 2022, the same thing happened. The approval of Ballot Proposal 2 of 2022 regulating the times, places, and manner of elections did not involve the legislative branch. Michigan Ballot Proposal 2, the "Right to Voting Policies Amendment," also known as "Promote the Vote." Complaint, R.Doc. 1(¶¶ 39, 41). The amendment changed or modified voting procedures in the state, including

federal elections. *See id.* (¶ 45). Similar to the adoption of the 2018 constitutional amendments, despite a reservation of legislative authority provided "in this constitution or in the constitution or laws of the United States . . . ," the voter-initiated constitutional amendment process was used to amend the Michigan Constitution to regulate the times, places, and manner of federal elections, cabining the authority of legislator participation in supporting or defeating election law bills. *Id.* (¶ 50).

The gravamen of the federal complaint was to cease the continued use of Michigan Constitution, art. XII, § 2, the voter-initiated constitutional amendment process, to make state constitutional law regulating federal elections without state legislative approval.

2. The governmental defendants, in lieu of filing an answer to the individual legislators complaint, moved to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure.[6] Def. Mot. to Dismiss R.Doc. 15.

The district court dismissed the complaint for lack of subject matter jurisdiction.[7] The court determined that the individual-legislator petitioners did not have Article III standing. 27a–30a. The court opined that the "Plaintiffs' asserted injury—the deprivation of the

6. The motion also sought relief for failure to state a claim for which relief under Rule 12(b)(6).

7. The Legislator-Petitioners also made claims of taxpayer and voter standing that the district court also dismissed. Order and Opinion, R 25, Page ID# 309-311. Those arguments will not be made or otherwise addressed in this petition process.

power to cast a binding vote—is neither concrete nor particularized because it is shared by every single member of the Michigan Legislature." 30a.

The district court, to conclude the individual-legislator petitioners lacked standing, relied upon this Court's decision in *Virginia H. of Delegates v. Bethune-Hill*, 587 U.S. 658 (2019). 30a. This Court in a broad statement quoted by the district court, held that "individual members lack standing to assert the interests of a legislature." *Id.* The district court then turned to the Sixth Circuit Court's decision in *State by and through Tennessee Gen. Assembly v. U.S. Dept. of State*, 931 F.3d 499 (6th Cir. 2019). *Id.* There, the appellate found that individual legislators, because the "'nature of that injury,' is 'abstract and widely dispersed' among the legislative body, individual legislators cannot 'claim a personal stake'" in their lawsuit. *Id.*, quoting *State by and through Tennessee Gen. Assembly*, 931 F.3d at 514.

3. On appeal, The Sixth Circuit affirmed the district court's decision. 1a–15a. The Sixth Circuit also rejected the individual state legislators' arguments that the text of the Elections Clause, Michigan Constitution, and the state senate and house rules assigned rights or interests to individual state legislator(s).

First, the Sixth Circuit rejected the individual state legislators' argument that their federal rights or interests are derived from within the word "legislature" in the Elections Clause rejecting the notion that a concrete injury could include harms specified by the U.S. Constitution itself. The court rejected an invitation to "bore" a hole in *Coleman* and *Raines* for an Elections Clause claim for individual legislators:

> The legislators insist that the Elections Clause confers upon individual lawmakers a right to vote on federal election regulations and any deprivation of that right injures them. We decline this invitation to bore a good-for-Elections-Clause-only hole in *Coleman* and *Raines*. True, a concrete injury may "include harms specified by the Constitution itself." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425, 141 S.Ct. 2190, 210 L.Ed.2d 568 (2021). But if such a right existed, our caselaw places it with "Legislature[s]," not legislators. U.S. Const. art. I, § 4. 12a.

Lindsey, 124 F.4th at 414.

Second, the Sixth Circuit rejected the individual state legislators' argument that their federal rights or interests were based on the Elections Clause as assigned under the Michigan Constitution and senate and house of representative rules to the individual state legislators. *Id.* at 415. The appellate court opined that "just as Congress cannot create standing in Article III courts that does not exist, neither may the Michigan Constitution." *Id.*

Notably, the court disregarded arguments where an individual state legislator's rights or interests are derived from senate and house rules and the state constitution. The vested power is within the right or interest to vote, which without it, no bill could pass into law, yet not recognized according to the Sixth Circuit:

> The Michigan Constitution vests the legislative power in a "senate" and "house of

> representatives," not individuals. Mich. Const. art. IV, § 1. That separate lawmakers cast separate votes does not alter the reality that legislators do not vote "as a prerogative of personal power."

Id.

Nevertheless, the Sixth Circuit, acknowledged the legal question of Article III standing presented by the individual state legislators petitioners as "fair." *Id.* The court recognized the apparent tension, if not contradiction, between *Raines* and *Coleman* as standing out like a "sore thumb":

> [I]t's fair to question the line between *Raines* and *Coleman*. Some Justices have maintained that *Coleman* "stands out like a sore thumb from the rest of our jurisprudence, which denies standing for intragovernmental disputes." *Arizona*, 576 U.S. at 857, 135 S.Ct. 2652 (Scalia, J., dissenting, joined by Thomas, J.). It is indeed odd that *Raines* denies standing for legislators whose votes are "less 'effective' than before," yet *Coleman* permits standing for legislators whose votes are "virtually held for naught." *Raines*, 521 U.S. at 825–26, 117 S.Ct. 2312; *Coleman*, 307 U.S. at 438, 59 S.Ct. 972.

13a–14a.

The individual state legislators, arguing for standing in the courts below, sought to reconcile the "sore thumb" of *Coleman* and the "odd" situation caused by *Raines*

and *Coleman*, while pointing out that the Court had already decided in *Arizona State Legislature* that state legislatures have standing to bring Elections Clause enforcement claims.

This petition for writ of certiorari followed.

REASONS FOR GRANTING THE PETITION

"The right to vote is a fundamental right, 'preservative of all rights.'" *League of Women Voters v. Brunne*r, 548 F.3d 463, 476 (6th Cir. 2008) (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). It cannot be refuted that the states play an important role in regulating this right because the constitution vests the states with the authority to regulate "[t]he Times, Places and Manner of holding Elections for Senators and Representatives." U.S. Const. Art. I, § 4, cl. 1). And, the Elections Clause is the express delegation of power to the state legislature to act with respect to federal elections. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–05 (1995).

Legislative bodies have standing to sue under *Arizona State Legislature v. Arizona Independent Redistricting Com'n*, 576 U.S. 787 (2015). But, when the state legislature does not sue for Elections Clause enforcement, the lack of individual state legislator Article III standing is an important question of federal law. U.S. Const. Art. 1, § 4, cl. 1. In those states where the state legislature does not sue, there will be no Elections Clause enforcement. Essentially, in those states, the state executive branch officials have no federal judicial oversight for their alleged Elections Clause violations.

The question of individual state legislator Article III standing "has not been, but should be, settled by this Court." Sup. Ct. Rule 10. Even the Sixth Circuit's decision now before this Court for review, recognized that "it's fair to question the line between *Raines* and *Coleman*. Some Justices have maintained that *Coleman* 'stands out like a sore thumb from the rest of our jurisprudence, which denies standing for intragovernmental disputes' . . . It is indeed odd that *Raines* denies standing for legislators whose votes are "less 'effective' than before," yet *Coleman* permits standing for legislators whose votes are 'virtually held for naught.'" 13a–14a (citations omitted)."[8]

Despite the Sixth Circuit's recognition of the tension in this Court regarding individual state legislator standing, it could not "change Supreme Court precedents or redraw the lines created by them." 14a. Thus, the appellate court had the only option it had and opined that individual state legislators do not have individual legislator standing for a lawsuit against state executive officials who usurp legislative powers under the Elections Clause—even in the circumstances where the state legislature refused or failed to bring a lawsuit.

However, the failure of the legislative body to act, should not deprive individual legislators of Article III standing to challenge Elections Clause violations by the executive branch or other acts—such as state constitutional

8. Notably, the Michigan Supreme Court recognizes standing for state legislators when their individual rights or privileges to vote are nullified or usurped. *Dodak v. State Administrative Bd.*, 495 N.W.2d 539, 545 (Mich. 1993)).

initiatives[9]—that impede or usurp the legislator's right or interest granted under a state constitution to vote to support or defeat federal election legislation as a delegated power expressly granted under Article I, § 4, cl. 1. The Elections Clause's expressed delegation of power to a state legislature is an implied limitation on state executive branch officials. The Elections Clause constrains both the state legislative and the state executive branches.

Because of this Court's decision in *Arizona State Legislature*, which recognized a state legislature's standing to bring Elections Clause claims against state executive officials which are appropriately resolved by federal courts, this petition offers the Court the opportunity to extend the *Arizona State Legislature* precedent to cover individual state legislator Article III standing as well.

The Sixth Circuit erred by not reading the Elections Clause, Article III, and the *Arizona State Legislature* decision to draw the line supporting individual state legislator standing after *Raines* and *Coleman*. This Court relied upon *Coleman*, which expressly confirmed individual legislator standing, to establish a foundation for state legislature standing. "Our conclusion that the

9. Notably, while the Michigan Constitution allows for constitutional initiatives by citizens to make laws, it is explicit in its definition of what is a "legislature." And, that definition includes bicameral chambers, not unelected citizens. Therefore, the Elections Clause's specific reference to state legislatures and the delegation of the power to it, the initiative cannot impede the right or interest of the individual legislators that provide the authority for each chamber to act, and together to enact laws pursuant to the state constitutional provisions.

Arizona Legislature has standing fits that bill," because the actions of others—under a constitutional initiative—would completely nullify a vote of the legislature. *Arizona State Legislature*, 576 U.S. at 801–04 (footnotes omitted). The *Arizona State Legislature* decision, because it relied on *Coleman* which held for individual state legislator standing, supports individual state legislator Article III standing here.

I. The Article III doctrine of standing provides meaning to constitutional limits by identifying those disputes which are appropriately resolved through the judicial process.

Article III of the Constitution limits the jurisdiction of federal courts to "cases" and "controversies." U.S. Const., Art. III, § 2. The doctrine of standing gives meaning to these constitutional limits by "identify[ing] those disputes which are appropriately resolved through the judicial process." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). "The law of Article III standing, which is built on separation-of-powers principles, serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 407 (2013). To establish Article III standing, a plaintiff must show (1) an "injury in fact," (2) a sufficient "causal connection between the injury and the conduct complained of," and (3) a "likel[ihood]" that the injury "will be redressed by a favorable decision." *Lujan, supra*, at 560–561 (internal quotation marks omitted).

This Michigan case concerns the injury-in-fact requirement, which helps to ensure that the plaintiff has a "personal stake in the outcome of the controversy."

Warth v. Seldin, 422 U.S. 490, 498 (1975) (internal quotation marks omitted). An injury sufficient to satisfy Article III must be "concrete and particularized" and "actual or imminent, not 'conjectural' or 'hypothetical.'" (internal question marks omitted). An allegation of future injury may suffice if the threatened injury is "certainly impending," or there is a "'substantial risk' that the harm will occur." *Clapper*, 568 U.S., at 414, n.5 (emphasis deleted and internal quotation marks omitted).

II. The Elections Clause's express delegation of power to the state legislature, as defined by a state constitution, bars the state executive branch from usurping the right or interest of individual state legislators to participate in state-law-making regulating federal elections as a means to create fair ballot competition.

In the election context, several circuits have recognized what has come to be known as an Article III "competitive standing" theory whereby a candidate or his political party can show direct injury if the government acts in a manner that hurts a candidate's or a party's chances of prevailing in an election. *See*, *e.g.*, *Drake v. Obama*, 664 F.3d 774, 783 (9th Cir. 2011); *Smith v. Boyle*, 144 F.3d 1060, 1062–63 (7th Cir. 1998); *Schulz v. Williams*, 44 F.3d 48, 53 (2d Cir. 1994). Thus, state laws governing times, places, and manner of federal elections must ensure fair competitive access to the ballot to pass constitutional muster and must protect the fundamental right to vote. But, when executive branch officials usurp the legislative power to regulate federal elections, delegated under the Elections Clause, an injury-in-fact arises. And, as this Court in *Arizona State Legislature* held, the state

legislature has Article III standing to sue in federal court challenging alleged Elections Clause violations.

It is equally true that state legislatures are governed by state constitutions. The Michigan Constitution expresses the state's vested legislative power within a senate and a house of representatives, under Article IV, § 1:

> 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.

And, as elected members of either the Senate or House of Representatives, in order to pass bills under Article IV, section 22, each chamber provides the rules and methodology to ensure each elected member has that opportunity to vote "yea" or "nay" on any question put before them, that is, on any particular bill. This represents the individual state legislator's right or interest to support or defeat a bill. *See, e.g.*, Standing Rules of the House of Representatives in Accordance with the Michigan Constitution Article IV, section 13: Chapter II, Rules 12, 13; Chapter III, Rules 30, 31; Senate Rules: Chapter I-Section 3, 1.302; Chapter III, Section 1, 3.107; Section 5, 3.505.

In this regard, individual legislators, as elected members of the legislature, are given opportunities to vote to exercise their authority on bills regarding federal elections consistent with the constitutional mandate of the Elections Clause. The Elections Clause delegates to state legislatures the power to enact laws governing

times, places, and manner of federal elections. But the state legislature cannot enact laws in Michigan without individual state legislators exercising their right or interest to support or defeat federal elections laws subject only to federal constitutional limitations (*e.g.*, congressional acts) or state constitutional limitations (*e.g.*, gubernatorial vetoes).

Thus, when executive branch officials, or other processes usurp the individual legislator's right or interest in providing access to fair ballot competition, and the legislative body fails to challenge those acts in federal court, individual state legislators become the last bastion of defense to protect the voters' right to vote and to ensure a fair competition to ballot access.

Notably, this Court in exercising its right to review state appellate court decisions under 28 U.S.C. § 1257, has previously decided Elections Clause cases brought by voters, voter rights organizations, citizens, and taxpayers—not state legislatures. These same cases illustrate that the Elections Clause is a rule to ensure fair competition to ballot access by limiting the acts of executive branch officers and others. For example, in *Moore v. Harper*, 600 U.S. 1 (2023), the Court adjudicated Elections Clause and other claims brought by voters and voting rights organizations challenging the North Carolina state legislature's Congressional redistricting map. *Moore*, 600 U.S. at 7–10. In *Smiley v. Holm*, 285 U.S. 355 (1932), the Court decided an Elections Clause case brought by a "citizen, elector and taxpayer" to enjoin the secretary of state from giving notice of the holding of elections for that office in such subdivisions. *Smiley*, 285 U.S. at 361. In *Koenig v. Flynn*, 285 U.S. 375 (1932), the Court decided an Elections Clause case brought by "citizens."

Indeed, individual state legislators are distinguishable from citizens, voters, voter rights organizations, and taxpayers. In a constitutional republic like ours, elected legislators represent citizens, voters, and taxpayers. Individual state legislators, at least in Michigan through the state's constitution, have preserved and expressed rights and interests to enforce the powers delegated to the state legislature via the Elections Clause. This direct authority is not granted to citizens, voters, and taxpayers. Instead, it is granted to the state legislature which in Michigan consists of the elected members to the Michigan Senate and House of Representatives.

III. Federal court opinions after the *Arizona State Legislature* decision have unintentionally created a checkerboard pattern of Elections Clause enforcement against state executive branch officials.

This Court's decision in the *Arizona State Legislature* case did not intend to create a checkerboard pattern of Elections Clause enforcement in the states. But, requiring a state legislature to bring an Elections Clause case sets the jurisdictional bar so high that it shields state executive branch officials from Elections Clause enforcement litigation. It is difficult for a state legislature to sue an executive branch official, because both chambers of a bicameral legislature must agree to do so. For example, a state legislature will not sue over the Elections Clause when one or two houses of a state bicameral legislature are controlled by the same political party as the Governor. In these situations, the state executive official enjoys safety from Elections Clause enforcement litigation. Consistently, the Sixth Circuit decision, by not recognizing individual state legislator

standing when a state legislature does not sue, provides additional safety to the state executive official from Elections Clause enforcement litigation.

The result of recent federal court decisions outlined below is a checkerboard pattern of Elections Clause enforcement against state executive officials. In Arizona, the threat of Elections Clause enforcement exists because the Arizona state legislature sued. But, in Virginia, Michigan and Pennsylvania, there is no threat of Elections Clause enforcement because the respective state legislatures have not sued and because individual legislator standing is not recognized.

A. In 2015, this Court held that the Arizona State Legislature had standing to bring its Elections Clause enforcement action.

The Arizona State Legislature brought an action against the state's independent congressional redistricting commission, its five members, and Arizona Secretary of State. The action sought judgment declaring that the state constitutional amendment creating the commission violated the Elections Clause. The action further sought an injunction against use of the commission's maps for any future congressional election. The Court held that the state legislature had standing to bring the action challenging the state constitutional amendment. *Arizona State Legislature*, 576 U.S. at 787.

B. In 2019, this Court did not adjudicate the legal issue of individual legislator standing in the *Virginia House of Delegates* decision because the Virgina state legislature had not pursued the appeal.

Several Virginia registered voters brought an action against the Virginia Board of Elections, Virginia Department of Elections, and various officials. The action challenged the redistricting of 12 House of Delegates districts as racial gerrymandering in violation of the Equal Protection Clause. *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658 (2019). The House of Delegates and the House Speaker intervened to defend the redistricting plan based on their institutional interest. A three-judge district court was convened, and after a bench trial, the court entered judgment for defendants and intervenors. Probable jurisdiction was noted. This Court, affirmed in part, vacated in part, and remanded. After a second bench trial, the district court enjoined the State from conducting further elections in the challenged districts until a new redistricting plan was adopted. The House of Delegates appealed. The State defendants moved to dismiss. This Court held that the House of Delegates did not have standing to represent the State's interests on appeal and the House of Delegates, as one House of a bicameral legislature, did not have standing in its own right to pursue appeal. *Virginia House of Delegates*, 587 U.S. at 658. But, neither the Virginia House of Delegates, nor the House Speaker, argued individual state legislator standing. Accordingly, the Court did not adjudicate the legal issue of individual legislator standing in the *Virginia House of Delegates* decision.

C. In 2024, the Sixth Circuit held that Michigan individual state legislators did not have standing to bring their Elections Clause enforcement action.

In this case, Michigan state Senators and Representatives filed a § 1983 lawsuit against the Michigan Governor and others. They sought to enjoin Michigan executive-branch officials from enforcing two ballot-initiative amendments to the state constitution that governed procedures for state and federal elections. The legislators argued that using citizen ballot initiatives to regulate federal elections violated the Elections Clause of the U.S. Constitution. 1a–4a. The Sixth Circuit held that plaintiffs lacked an injury in fact required for Article III standing. 4a–13a.

D. On March 4, 2025, the Third Circuit held that Pennsylvania individual state legislators did not have standing to bring the same Elections Clause claims that the Pennsylvania state legislature could have brought.

In a Pennsylvania case, the Pennsylvania state Senators and Representatives brought Elections Clause claims against the President, the Pennsylvania Governor and Pennsylvania executive-branch officials from violating state-legislatively-enacted laws. The Third Circuit held that individual state legislators lacked standing, but acknowledged that the parties did not dispute that the Pennsylvania state legislature would have standing under this Court's decision in *Arizona State Legislature* to bring the same Elections Clause claims:

> As a benchmark, no party disputes that if the General Assembly would have initiated this suit, then it would satisfy the elements for Article III standing, citing *Ariz. State Legislature*, 576 U.S. at 803–04.

Keefer v. Biden, 2025 WL 688924, at *2 (3rd Cir. 2025).

IV. The Sixth Circuit erred because, under the Elections Clause delegation of power to legislatures and under the Michigan State Constitution, individual state legislator standing is based on the deprivation of a "plain, direct and adequate interest in maintaining the effectiveness of their votes."

The Sixth Circuit affirmed the lower court's decision that no individual state legislator standing existed. The Sixth Circuit rejected Legislator-Petitioners' claim of a "plain, direct, and adequate interest in maintaining the effectiveness of their vote." *Coleman*, 307 U.S. at 438.

In so doing, the Sixth Circuit rejected the individual state legislators' arguments that the text of the Elections Clause, the Michigan Constitution, and the state senate and house rules, assigned federally-protected interests or rights to the individual state legislators. First, the Sixth Circuit rejected the individual state legislators' argument that their federal interests or rights were based on the word "legislature" in the Elections Clause:

> The legislators insist that the Elections Clause confers upon individual lawmakers a right to vote on federal election regulations and any deprivation of that right injures them.

> We decline this invitation to bore a good-for-Elections-Clause-only hole in *Coleman* and *Raines*.

12a.

Second, the Sixth Circuit rejected the individual state legislators' argument that their federal interests or rights, derived from the Michigan state constitution and legislative rules, assigned certain election related powers to individual legislators protected through that Elections Clause. The appellate court rejected that proposition to deny Article III standing. The court remained unconvinced the individual-legislator petitioners suffered an injury-in-fact:

> The Michigan Constitution vests the legislative power in a "senate" and "house of representatives," not individuals. Mich. Const. art. IV, § 1. That separate lawmakers cast separate votes does not alter the reality that legislators do not vote "as a prerogative of personal power." *Raines*, 521 U.S. at 821.

12a.

To the contrary, the Michigan Constitution, Article 6, section 1, vests the Elections Clause legislative power in individual state legislators, and extends it, through the State Senate and House of Representative Rules, to the individual state legislators. Complaint, R. 1, Page ID # 7 (¶ 30). *See e.g.*, Standing Rules of the House of Representatives in Accordance with the Michigan Constitution Article IV, section 13: Chapter II, Rules 12,

13; Chapter III, Rules 30, 31;[10] Senate Rules: Chapter I-Section 3, 1.302; Chapter III, Section 1, 3.107; Section 5, 3.505.[11] So, at least in this case, the Elections Clause reference to "legislature" confers federally-protected interests or rights onto Michigan's individual state legislators. *Id.*

The Sixth Circuit disagrees, for standing purposes, that the Elections Clause text and the referenced state legal texts confer on an individual state legislator the interest and right to vote on state laws regulating federal elections.

To the contrary, the Court's *Coleman* decision involved twenty Kansas state senators challenging the state legislature's ratification of a proposed amendment to the U.S. Constitution. The state senate had deadlocked on the amendment by a vote, and the lieutenant governor cast a tie-breaking vote in favor of ratification. *Coleman*, 307 U.S. at 436. The claim of the objecting state legislators rested on the argument that the lieutenant governor did not have the power to break the tie in relation to proposed Article V federal constitutional amendments. *Id.* This Court held that the legislators had "a plain, direct and adequate interest in the effectiveness of their votes" as a right and privilege under the U.S. Constitution. *Id.* at 438.

Coleman has been distinguished, but not overturned, and similar to this case, deals with constitutionally-delegated powers to state legislatures. Here, similarly the individual-state-legislator petitioners have a plain,

10. *See, supra,* n.2.

11. *See, supra,* n.3.

direct and adequate interest in maintaining their ability to propose effective federal election legislation, and to vote on bills that do regulate the times, places and manner of federal elections. *See e.g.*, *id.*

Despite the Sixth Circuit's concerns to the contrary, *Raines v. Byrd*, 521 U.S. 811 (1997) and its progeny cases have not overturned *Coleman*, and they do not foreclose the narrow path for individual legislators to bring enforcement claims under the Elections Clause.

In *Raines*, six disgruntled members of Congress who had voted against the Line Item Veto Act, which was enacted and signed into law, filed suit seeking a declaratory judgment that the Act was unconstitutional. *Raines*, 521 U.S. at 814–17. In denying standing, this Court noted that the Congressional Members' asserted injury to their legislative power was, in a real sense, inflicted by Congress upon itself. Indeed, the *Raines* petitioners tried and failed to defeat the passage of the Act of Congress at issue. When Congress considered the Line Item Veto Act, the petitioners votes "were given full effect. [Petitioners] simply lost that vote." *Id.* at 824. In other words, their loss was a political one derived from losing in the legislative process, duly separated from other branches of government.

The *Raines* Court expressed doubts that individual legislators who had lost a legislative battle could ever establish standing to assert an injury from that lost battle on behalf of themselves, their chamber or Congress itself. In such a case, this Court opined that the petitioners quarrel was with their colleagues in Congress and not with the executive branch. *Id.* at 830, n.11. This Court further

expressed a deep reluctance to let members who had lost a battle in the legislative process seek judicial intervention by invoking an injury to Congress as a whole. This difference of opinion between the individual Congressmen and their respective chambers was not speculative; the Senate, together with the House leadership had filed an amicus brief urging that the Line Item Veto Act be upheld. *See Id.* at 818, n. 2. Thus, the plaintiffs' allegations were insufficient to establish a judicially cognizable vote nullification injury of the type at issue in *Coleman*. *Id.* at 824.

The *Raines* Court suggested individual legislator standing could be established when individual legislators show vote nullification of the sort at issue in *Coleman*: that a specific legislative vote was "completely nullified" by executive action despite a legislator-plaintiff having cast a vote that was "sufficient to defeat (or enact)" the act. *Id.* at 823. That is similar to this case in which the individual-legislator petitioners claim that their votes have been preemptively nullified by the state constitutional initiative amendments and related executive branch official actions.

Unlike *Raines*, in this case, the Michigan individual-state-legislator petitioners quarrel is not with their colleagues in the state house or senate, but with the state executive branch whose actions in allowing and enforcing the Mich. Const. art XII, § 2, amendment process to change the state constitution excludes the state legislators' participation and approval. And unlike *Raines*, this case does not involve legislators who voted, "simply lost that vote" and then sought to have the law invalidated. While some of the Michigan legislators in the house and senate may not be affected or impacted by the 2018 and 2022

amendments, the individual-state-legislator petitioners are. Just as in *Coleman*, the individual-state-legislator petitioners' votes and, opportunity to vote for proposed election legislation, have been "stripped of their validity," and "denied [their] full validity in relation to the votes of their colleagues." *Id.* at 824 n. 7. And, just as in *Coleman*, the individual-state-legislator petitioners seek remedies based upon rights, interests, or privileges granted to them by the Michigan Constitution and respective senate or house of representatives rules, and based, in turn, upon a duty charged to them through the delegated power under the Elections Clause. *Coleman*, 307 U.S. at 438.

To further emphasize this point, this Court recently provided guidance on who can litigate on behalf of a state or institution in the *Virginia House of Delegates* case. In that case this Court held: "Virginia, had it so chosen, could have authorized the House to litigate on the State's behalf, either generally or in a defined class of cases." *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 664 (2019). The *Virginia* decision descends from, but is also distinct from this Court's decision in *Arizona State Legislature.*, 576 U.S. at 804. As previously mentioned, this Court had held in the *Arizona State Legislature* decision that there was standing for the Arizona State Legislature—using the logic of *Coleman* for granting standing to individual legislators—because "the Arizona Constitution's ban on efforts to undermine the purposes of an initiative. . . . would "completely nullif[y]" any vote by the Legislature, now or "in the future. . . ." *Id.*

In *Virginia House of Delegates*, both houses of the bicameral legislature had started in a lawsuit together, but the House proceeded to appeal on behalf of the state

without its Senate partner in the legislative process, which negated its original standing basis. 587 U.S. at 665. Neither *Arizona State Legislature*, nor *Virginia House of Delegates*, overruled or cabined *Coleman*. Neither decision forecloses individual legislator standing.

Additionally, while federal and state court standing is not identical, the Michigan Supreme Court has recognized that individual state legislators may bring legislative usurpation claims to challenge unlawful executive actions. *Dodak v. State Admin. Bd.*, 495 N.W.2d 539, 555 (Mich. 1993), disapproved of by *Rohde v. Ann Arbor Pub. Schools*, 737 N.W.2d 158 (Mich. 2007).

The individual-legislator petitioners do not dispute that there is no individual state legislator standing for lost political battles as held in *Raines*. But, placed in perspective, individual state legislator cases generally fall into three categories: "lost political battles, nullification of votes and usurpation of power." *Silver v. Pataki*, 755 N.E.2d 842, 847 (NY. Ct. App. 2001) (categorizing legislative standing case fact patterns). While there is no standing for individual legislators' lost political battles, standing may exist for the nullification or usurpation of individual legislator votes. *See*, *id.* (citing *Coleman*, 307 U.S. 433 regarding vote nullification; *Dodak v. State Admin. Bd.*, 495 N.W.2d 539 for an example of legislative usurpation; *Raines v. Byrd*, 521 U.S. 811 (1997) for lost political battles.)

Finally, this Court's recognition of individual state legislator standing will have the same salutary effect as 28 U.S.C. § 1257 cases when the state legislature, for whatever reason, does not bring Elections Clause

enforcement actions against state executive branch officials. This Court's decisions in *Moore, Smiley* and *Koenig* show the benefits of a federal court—this Court—deciding Elections Clause enforcement cases brought by voters, voter rights organizations, citizens and taxpayers, albeit under 28 U.S.C. § 1257. This Court decided in those Elections Clause cases that judicial enforcement was required because injuries to a fair ballot competition were occurring.

In this case, the Sixth Circuit's denial of Article III standing to the individual Michigan legislators for Elections Clause enforcement claims, unintentionally allows Michigan state executive branch officials an unfettered ability to usurp the power delegated to the Michigan state legislature under the Elections Clause, albeit because the Michigan state legislature will not sue. The Court should close this constitutional loophole for Michigan state executive official violations of the Elections Clause by recognizing individual state legislator standing for Elections Clause enforcement actions in federal court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: March 20, 2025

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED DECEMBER 20, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1413

SENATOR JONATHAN LINDSEY; SENATOR JAMES RUNESTAD; REPRESENTATIVE JAMES R. DESANA; REPRESENTATIVE RACHELLE SMIT; REPRESENTATIVE STEVE CARRA; REPRESENTATIVE JOSEPH FOX; REPRESENTATIVE MATT MADDOCK; REPRESENTATIVE ANGELA RIGAS; REPRESENTATIVE JOSH SCHRIVER; REPRESENTATIVE NEIL FRISKE; REPRESENTATIVE BRAD PAQUETTE,

Plaintiffs-Appellants,

v.

GRETCHEN WHITMER, IN HER OFFICIAL CAPACITY AS GOVERNOR OF MICHIGAN; JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS MICHIGAN SECRETARY OF STATE; JONATHAN BRATER, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF ELECTIONS,

Defendants-Appellees.

Appendix A

Appeal from the United States District Court
for the Western District of Michigan at Grand Rapids.
No. 1:23-cv-01025—Jane M. Beckering, District Judge.

Argued December 11, 2024

Decided and Filed December 20, 2024

Before: SUTTON, Chief Judge; BUSH and MURPHY, Circuit Judges.

OPINION

SUTTON, Chief Judge. In Michigan, as in seventeen other States, citizens may use ballot initiatives to amend the State's Constitution. Two Michigan state senators and nine state representatives argue that, if citizens use the initiative to regulate federal elections, that process violates the Elections Clause of the U.S. Constitution. Because they lack standing to bring the lawsuit, we affirm the district court's dismissal under Civil Rule 12(b)(1).

I.

The Michigan Constitution does something the U.S. Constitution does not. It empowers citizens to amend the state constitution directly without support from their elected representatives in the state legislature or without the need for a convention. *See* Mich. Const. art. XII, § 2. Under the Michigan Constitution, this form of direct democracy takes two steps. A Michigan voter initially must file an initiative petition with the Secretary of State that contains the supporting signatures of individuals

totaling at least 10 percent of the votes cast for governor in the last general election. *Id.* Then the proponent must obtain the support of "a majority of the electors voting on the question." *Id.*

Since the initiative became part of the State's Constitution in 1908, Michigan voters have used it in many ways. In 1978, they barred property and local tax increases above certain limits "without direct voter approval." *Id.* art. IX, § 25. In 1992, they initiated and passed term limits for Michigan's governor, lieutenant governor, secretary of state, and attorney general. *Id.* art. V, § 30. In 2006, they barred public universities from using affirmative action programs to grant "preferential treatment" to any "individual or group" on the basis of "race, sex, color, ethnicity, or national origin." *Id.* art. I, § 26.

Michigan voters also have used the provision to regulate elections. Two recent examples bear on this case. In 2018, they passed Proposal 3, which created automatic voter registration, a secret ballot, an absentee ballot, straight-ticket voting, and an audit of statewide election results. They didn't stop there. In 2022, voters passed Proposal 2, which created new voter-identification options, state-funded prepaid postage for absentee ballots, secure ballot drop boxes, and early voting. The provisions in Proposals 2 and 3 apply to state and federal elections.

Eleven Michigan state senators and representatives took issue with this last feature of the election amendments—their application to federal elections. They

filed this action in federal court under 42 U.S.C. § 1983. They claimed that the election amendments violated the U.S. Constitution's Elections Clause, which says that the "Times, Places and Manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof." As the claimants see it, the Clause allows only state legislatures, not the citizens themselves, to set the time, place, and manner of federal elections. In bringing this lawsuit, the legislators sought to enjoin Michigan executive-branch officials from enforcing the two amendments. The district court dismissed the complaint under Civil Rule 12(b)(1) on the ground that the state legislators lack standing to file it.

II.

Article III of the United States Constitution confines the authority of the federal courts. It permits us to decide only "Cases" or "Controversies." U.S. Const. art. III, § 2. A key ingredient of this requirement is standing—that a plaintiff must have a concrete, not an abstract, interest in the case before a federal court may wield the "judicial power of the United States." *Id.* § 1. The imperative springs from "a single basic idea—the idea of separation of powers." *Allen v. Wright*, 468 U.S. 737, 752, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984). Call this formal division of authority what you will—an effort to cabin judicial power or an effort to constitutionalize judicial humility—its function is clear: to "prevent the judicial process from being used to usurp the powers of the political branches" and to ensure that the federal courts do not casually referee inter-branch disputes that the Constitution

assigns to the political process. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 408, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013).

This "irreducible constitutional minimum" comes with three requirements. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The plaintiff must establish an "injury in fact," "trace[able]" to the defendant's actions, and "redress[able]" by a favorable decision. *Id.* (quotation omitted).

This case starts and finishes with injury in fact, standing's "[f]irst and foremost" prong. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998). An Article III injury consists of an "invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." *Lujan*, 504 U.S. at 560 (quotation omitted). These conditions demand that an injury be real and affect the plaintiff in some "personal and individual way." *Id.* at 560 & n.1.

In the context of challenges to legislative power, the courts distinguish individual injuries of legislators from institutional injuries of a legislature. *See Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 802, 135 S. Ct. 2652, 192 L. Ed. 2d 704 (2015). The general rule is that individual legislators "lack standing to assert the interests of a legislature" merely because they have lost a vote or lack a majority. *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 667, 139 S. Ct. 1945, 204 L. Ed. 2d 305 (2019). A legislator lacks a personal right to

prevent the "abstract dilution of institutional legislative power" that runs "with the Member's seat." *Raines v. Byrd*, 521 U.S. 811, 821, 826, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997). But the entire legislature may sue when it suffers an "institutional" injury, namely when an entity or individual strips the legislature of authority as a body. *See Ariz. State Legislature*, 576 U.S. at 802, 821-22.

Two lines of Supreme Court decisions add context to these principles. *Raines v. Byrd* exemplifies the general rule: that legislators usually lack Article III authority to bring constitutional challenges to legislation. In that case, several federal senators and representatives challenged a law that gave the President a line-item veto of appropriations bills passed by Congress. *Raines*, 521 U.S. at 814. In doing so, they claimed that the law diminished their authority because it allowed the President to veto a single appropriation instead of requiring the President to vote up or down on all of the appropriations at once. *Id.* at 814-16. In a 7-2 vote, the Court concluded that the legislators lacked standing to bring the challenge. The majority opinion rebuffed the legislators' theory that a selective veto would make future appropriations votes less "effective," reasoning that the alleged injury was "wholly abstract" and "widely dispersed" among each lawmaker. *Id.* at 825, 829. That conclusion, the Court explained, fit with Congress's historical use of its impeachment authority, its authority to pass legislation, and its authority to make appropriations as the constitutional means to combat irresponsible uses of Presidential power and was preferable to plunging the Supreme Court into "bitter political battle[s]" between the First and Second Branches. *Id.* at 826-28. Although the law gave members

of Congress the right to sue in federal court to challenge the validity of the law, that did not matter. Congress, the Court reasoned, may not create Article III standing that does not otherwise exist. *See id.* at 815, 818. Justice Souter, joined by Justice Ginsburg, separately concurred in the judgment, reasoning that the legislators' alleged injuries were "insufficiently personal and concrete to satisfy Article III standing." *Id.* at 835.

Since *Raines*, the Court has remained skeptical of legislators' standing to challenge laws that purportedly diminish their official authority as legislators. Twenty-two years after *Raines*, the Court barred a single chamber of the Virginia legislature from challenging redistricting legislation in federal court. *See Bethune-Hill*, 587 U.S. at 667.

The Court has been equally skeptical of the efforts of executive branch officials to challenge laws on constitutional grounds. In one case, the Court barred a county auditor from challenging a state tax exemption in federal court because he "had no personal interest in the litigation" as the "public officer" enforcing it. *See Smith v. Indiana*, 191 U.S. 138, 148-49, 24 S. Ct. 51, 48 L. Ed. 125 (1903). In another, the Court barred Indiana executive-branch officials from challenging a state procedure in federal court that stopped them from certifying a proposed state constitution to county clerks because it "concern[ed] their official, and not their personal, rights." *See Marshall v. Dye*, 231 U.S. 250, 255, 258-59, 34 S. Ct. 92, 58 L. Ed. 206 (1913). In still another, the Court barred a county treasurer from challenging a state tax penalty program in federal court because he had "no personal

interest in the litigation" as the county officer enforcing the program. *See Stewart v. Kansas City*, 239 U.S. 14, 16, 36 S. Ct. 15, 60 L. Ed. 120 (1915).

Through these cases and others, the federal courts have been vigilant in holding the Article III line against efforts by individual legislators or executive branch officials to bring constitutional challenges in federal courts. When it comes to individual legislators, there seem to be at least two special concerns. One is that the legislators already have "ample legislative power" to remedy injuries as representatives. *Cf. Campbell v. Clinton*, 203 F.3d 19, 23, 340 U.S. App. D.C. 149 (D.C. Cir. 2000). The other is that the federal courts remain wary of allowing political losers to sidestep their colleagues and run "to a sympathetic court for a do-over." *Vonderhaar v. Village of Evendale*, 906 F.3d 397, 401 (6th Cir. 2018). The proper remedy lies "not with the courts but with the legislative process." *Crawford v. U.S. Dep't of Treasury*, 868 F.3d 438, 454 (6th Cir. 2017); *see also Baird v. Norton*, 266 F.3d 408, 411-12 (6th Cir. 2001); *Tenn. Gen. Assembly v. U.S. Dep't of States*, 931 F.3d 499, 514 (6th Cir. 2019).

The other line of Supreme Court cases creates a narrow exception to this general prohibition. The Court has permitted legislators to assert a claimed institutional injury on just two occasions.

In the first case, the entire legislature filed the lawsuit. In *Arizona State Legislature v. Arizona Independent Redistricting Commission*, Arizona voters amended their state constitution by ballot initiative to

transfer redistricting power from the legislature to an independent commission. 576 U.S. at 792. The Arizona Legislature alleged that the Elections Clause "precludes resort to an independent commission" to draw electoral districts. *Id.* The Court held that the legislature suffered a concrete injury when the amendment seized "its alleged prerogative to initiate redistricting." *Id.* at 800. The commission "completely nullifie[d] any vote by the Legislature" to adopt its own redistricting plans. *Id.* at 804 (quotation omitted). As the Court has since explained, "the Arizona House and Senate," "*acting together*," can contest the usurpation of its power in federal court because there is "no mismatch between the body seeking to litigate and the" allegedly injured body. *Bethune-Hill*, 587 U.S. at 667.

In the second case, a controlling bloc of the legislature filed the lawsuit. In *Coleman v. Miller*, the Kansas Senate faced a 20-20 deadlock over whether to ratify the Child Labor Amendment to the U.S. Constitution. 307 U.S. 433, 436, 438, 59 S. Ct. 972, 83 L. Ed. 1385 (1939). Save for the unicameral exception of Nebraska, a federal constitutional amendment must obtain majority support in both houses of each state legislature. U.S. Const. art. V; *see Hawke v. Smith*, 253 U.S. 221, 227-29, 40 S. Ct. 495, 64 L. Ed. 871 (1920). When the Kansas Lieutenant Governor broke the tie in the Kansas Senate by voting to ratify the amendment, the losing state senators turned to federal court. *Coleman*, 307 U.S. at 436. The Supreme Court permitted the lawsuit. It held that the dissenting senators suffered a concrete injury when the challenged tiebreaking procedure "overr[ode]" votes otherwise "sufficient to defeat ratification." *Id.* at 438. *Coleman*

stands for the narrow proposition that legislators suffer a concrete injury when they command enough votes "to defeat (or enact) a specific legislative [a]ct" and their votes would be "nullified" if the challenged conduct were allowed. *Raines*, 521 U.S. at 823.

In today's dispute, the Michigan legislators fall within the general rule, not within these narrow exceptions. They filed this lawsuit as individuals, not as approved representatives of their legislature. They do not allege that they passed election laws foreclosed by the 2018 or 2022 state constitutional amendments. And they do not allege that they command votes sufficient to pass contrary election laws in the future.

Proof that the claimants do not represent a majority bloc of the legislature is the reality that the legislature has enacted several laws that implement these constitutional amendments. In one, the legislature required the secretary of state to automatically register qualified electors who applied for driver's licenses, state identification cards, or changes of address. 2018 Mich. Pub. Acts 603; Mich. Comp. Laws § 168.493a(1). In another, the legislature required Michigan cities and townships to have "at least 1 absent voter ballot drop box" for each 15,000 registered electors. 2023 Mich. Pub. Acts 85; Mich. Comp. Laws § 168.761d(1).

In the last analysis, this case simply is not one in which the citizen petitions "completely nullify" the legislators' votes. *Ariz. State Legislature*, 576 U.S. at 788 (quotation omitted). Unable to fit this lawsuit into the narrow exception for such institutional injuries, the

claimants cannot turn to the federal courts to transform their legislative defeat into a judicial victory.

In trying to fend off this conclusion, the legislators argue that this case is like *Coleman* because Michigan executive-branch officials nullified their votes by permitting citizen-led amendments to the Michigan Constitution that later infringed their legislative power. But this approach would inflate *Coleman*'s narrow exception into a gaping maw. If they were right, a Michigan legislator could challenge *any* state constitutional amendment created by an initiative because all such amendments would invariably limit some legislative power. That approach cannot be reconciled with the caselaw. Instead, we must follow *Raines*'s general directive: The Michigan legislators lack standing when they do not have the votes "sufficient to defeat" or enact a bill. 521 U.S. at 823.

The Michigan legislators analogize this case to *Coleman* in another way—that both lawsuits involve claims against state executives. But that is not the test. As *Coleman* held and as *Raines* explained, the lawmakers must show legislative power—that they represent the entire legislature (*Arizona*) or a controlling voting bloc of it (*Coleman*)—to establish an institutional injury to the legislature. *See id.* at 824. Without such power, it makes no difference that they train their complaint on state executive officers. *See id.* at 824 n.8. Article III demands a concrete injury regardless of whether the defendants convene in Washington, *id.*, or in a state capital, *Coleman*, 307 U.S. 433. That's why it makes no difference whether the legislators sue a state lieutenant governor, *id.* at 436,

or sue the Secretary of the Treasury, *Raines*, 521 U.S. at 814, 824 n.8.

The legislators insist that the Elections Clause confers upon individual lawmakers a right to vote on federal election regulations and any deprivation of that right injures them. We decline this invitation to bore a good-for-Elections-Clause-only hole in *Coleman* and *Raines*. True, a concrete injury may "include harms specified by the Constitution itself." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). But if such a right existed, our caselaw places it with "Legislature[s]," not legislators. U.S. Const. art. I, § 4. That's why Arizona's legislature may mount an Elections Clause challenge to "a redistricting plan" that would "nullif[y]" future redistricting-related bills. *Ariz. State Legislature*, 576 U.S. at 804. And that's why the Court has indicated that individual legislators may not. *See id.* at 801-02.

The legislators point out that the Michigan Constitution vests legislative power over elections in individual lawmakers, suggesting that they must have suffered an injury as a result. But just as Congress cannot create standing in Article III courts that does not exist, neither may the Michigan Constitution. *See TransUnion*, 594 U.S. at 426; *Raines*, 521 U.S. at 818. The argument fails on its own terms anyway. The Michigan Constitution vests the legislative power in a "senate" and "house of representatives," not individuals. Mich. Const. art. IV, § 1. That separate lawmakers cast separate votes does not alter the reality that legislators do not vote "as a prerogative of personal power." *Raines*, 521 U.S. at 821.

The legislators claim that Elections Clause violations deprive them of a "right, privilege, or immunity" enforceable under § 1983. Right or wrong about this point, it would not tell us whether the legislators have a cognizable injury that Article III empowers the federal courts to hear. *TransUnion*, 594 U.S. at 426.

The legislators persist that the Supremacy Clause constrains the Michigan Constitution to the extent it violates the Elections Clause. That is true in the abstract. But the Supremacy Clause doesn't establish standing. It is "not the source of any federal rights." *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324, 135 S. Ct. 1378, 191 L. Ed. 2d 471 (2015) (quotation omitted). It declares only the rule of decision when state and federal law clash. *Id.*

The legislators invoke Michigan Supreme Court cases that recognize standing for state legislators bringing similar claims against state executives. The Court, for example, rejected *Lujan* in favor of a "limited, prudential [standing] doctrine" designed to "ensure sincere and vigorous advocacy." *Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ.*, 487 Mich. 349, 792 N.W.2d 686, 692 (Mich. 2010) (quotation omitted). But state standing law does not drive the meaning of Article III of the U.S. Constitution.

We appreciate the legislators' argument that, as an original matter, it's fair to question the line between *Raines* and *Coleman*. Some Justices have maintained that *Coleman* "stands out like a sore thumb from the rest of our jurisprudence, which denies standing for intragovernmental disputes." *Arizona*, 576 U.S. at 857

(Scalia, J., dissenting, joined by Thomas, J.). It is indeed odd that *Raines* denies standing for legislators whose votes are "less 'effective' than before," yet *Coleman* permits standing for legislators whose votes are "virtually held for naught." *Raines*, 521 U.S. at 825-26; *Coleman*, 307 U.S. at 438. But our station gives us no right to change Supreme Court precedents or redraw the lines created by them. What our station does permit us to do is to reconcile any tension in such precedents to make them as consistent as possible with the Constitution's text and the original understanding of it.

Our reading of *Coleman* comports with that understanding, informed by long-standing "historical practice" that "in analogous confrontations between" the legislature "and the Executive Branch, no suit was brought on the basis of claimed injury to official authority or power." *Raines*, 521 U.S. at 826. When Congress tried to impeach President Johnson for removing his Secretary of War in violation of the Tenure of Office Act, for example, he defended himself in the Senate, not the Supreme Court. *Id.* at 826-27. Subsequent Presidents "urged Congress to repeal" the Act rather than urge the Court to declare it unconstitutional. *Id.* at 827. The Court only decided this important question of executive power more than half a century later, when a removed officer sued to recover his lost salary—a classic injury in fact. *Id.* (citing *Myers v. United States*, 272 U.S. 52, 106-07, 173, 176, 47 S. Ct. 21, 71 L. Ed. 160 (1926)). Had the federal courts intervened at the President's behest at the outset, they would have been "improperly and unnecessarily plunged into the bitter political battle" between the branches. *Id.* And it would

have transgressed the traditional role of federal courts to refrain from "general supervision of the operations of government." *Id.* at 829 (quotation omitted). Just so here.

We affirm.

APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FILED DECEMBER 20, 2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 24-1413

SENATOR JONATHAN LINDSEY; SENATOR JAMES RUNESTAD; REPRESENTATIVE JAMES R. DESANA; REPRESENTATIVE RACHELLE SMIT; REPRESENTATIVE STEVE CARRA; REPRESENTATIVE JOSEPH FOX; REPRESENTATIVE MATT MADDOCK: REPRESENTATIVE ANGELA RIGAS; REPRESENTATIVE JOSH SCHRIVER; REPRESENTATIVE NEIL FRISKE; REPRESENTATIVE BRAD PAQUETTE,

Plaintiffs-Appellants,

v.

GRETCHEN WHITMER, IN HER OFFICIAL CAPACITY AS GOVERNOR OF MICHIGAN; JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS MICHIGAN SECRETARY OF STATE; JONATHAN BRATER, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF ELECTIONS,

Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.

Appendix B

Before: SUTTON, Chief Judge; BUSH and MURPHY, Circuit Judges.

JUDGMENT

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION THEREOF, it is ORDERED that the district court's dismissal of the case is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

APPENDIX C — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, FILED APRIL 10, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:23-cv-1025
HON. JANE M. BECKERING

JONATHAN LINDSEY, *et al.*,

Plaintiffs,

v.

GRETCHEN WHITMER, *et al.*,

Defendants.

OPINION AND ORDER

Jonathan Lindsey, a state senator, along with one other state senator and nine state representatives, initiated this case against Gretchen Whitmer in her official capacity as Michigan's governor, Jocelyn Benson in her official capacity as Michigan's secretary of state, and Jonathan Brater in his official capacity as Michigan's director of elections. Plaintiffs seek declaratory and injunctive relief related to their claim that Michigan's adoption of constitutional amendments through a citizen-led initiative process violates their rights as legislators, taxpayers, and voters under the Elections Clause of the United States

Constitution. Defendants moved to dismiss Plaintiffs' Complaint (ECF No. 15). For the following reasons, the Court grants Defendants' motion, closes this case, and therefore dismisses as moot the other motions pending in this case.[1]

I. BACKGROUND

A. Factual Background

One of the ways in which Michigan's Constitution can be amended is by petition of the registered electors of Michigan (Compl. ¶ 24, citing MICH. CONST. Art. XII, Sec. 2). Michigan's Constitution provides in pertinent part the following:

> Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to

1. Jim Pedersen, Andrea Hunter, Michigan Alliance for Retired Americans, Detroit/Downriver Chapter of the A. Philip Randolph Institute, and Detroit Disability Power filed a Motion to Intervene as defendants in this case (ECF No. 5), and they subsequently filed a Motion to Strike (ECF No. 10) and a Motion to Expedite (ECF No. 20).

> receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

MICH. CONST. Art. XII, Sec. 2; *see* Compl. ¶¶ 26-28. After the correct number of valid signatures and their sufficiency are ascertained, the proposed amendment to the constitution is placed on the ballot as a ballot proposal to be considered by Michigan voters (Compl. ¶ 29). Any proposal that is approved by a majority of voters voting on the ballot proposal becomes part of the constitution and goes into effect 45 days after the date on which it was approved (*id.* ¶ 31). Michigan's Constitution does not require state legislative approval for the amendment (*id.* ¶¶ 24-25).

2018 Constitutional Amendment. Michigan Ballot Proposal 3 ("Proposal 3") was a citizen-initiated ballot initiative approved by voters in Michigan as part of the 2018 federal elections (*id.* ¶ 33). The proposal reformed Michigan elections by protecting the right to a secret ballot; ensuring access to ballots for military and overseas voters; adding straight-ticket voting; automatically registering voters; allowing any citizen to vote at any

time, provided they have a proof of residency; allowing access to absentee ballots for any reason; and auditing election results (*id.* ¶ 34). The measure amended Section 4 of Article II of the Michigan Constitution (*id.* ¶ 35, referencing Pls. Ex. A [ECF No. 1-1]). The proposal was approved with 67 percent of the vote (*id.* ¶ 36). State legislative approval was not obtained for the amendment because such approval is not required (*id.* ¶ 37).

2022 Constitutional Amendment. In 2022, Michigan Ballot Proposal 2, the Right to Voting Policies Amendment a/k/a Promote the Vote ("Proposal 2"), was a citizen-initiated proposed constitutional amendment in the state of Michigan, which was voted on as part of the 2022 Michigan elections (*id.* ¶ 38). The amendment changed voting procedures in Michigan with the stated goal of making it easier to vote (*id.* ¶ 39). Various voting rights advocacy groups gathered 669,972 signatures, enough for the amendment to be placed on the 2022 ballot (*id.* ¶ 40). On August 31, 2022, the four-member Board of State Canvassers, which is responsible for determining whether candidates and initiatives should be placed on the ballot, deadlocked 2-2, with challengers arguing that the ballot title of the initiative was misleading (*id.* ¶ 41). On September 9, 2022, the Michigan Supreme Court ruled that the initiative should be placed on the November ballot (*id.* ¶ 42). The ballot measure amended Article 2, Sections 4 and 7, of the Michigan Constitution (*id.* ¶ 43, referencing Pls. Ex. B [ECF No. 1-2]). Proposal 2 was approved with 60 percent of the vote (*id.* ¶ 44). Again, state legislative approval was not obtained for the amendment because such approval is not required (*id.* ¶ 45).

Appendix C

Governor Whitmer, Secretary Benson, and Director Brater have supervisory control over local election officials for all elections and for the performance of their election duties for state-level ballot proposals, such as the 2018 and 2022 ballot proposals (*id.* ¶ 61, citing MICH. COMP. LAWS § 168.21). Defendants are also responsible for enforcement of laws governing all elections, including federal elections (*id.* ¶ 62). After a constitutional provision regulating federal elections goes into effect, Defendants implement the constitutional provisions regulating federal elections (*id.* ¶ 32).

B. Procedural Posture

On September 28, 2023, Plaintiffs filed this action, alleging that Governor Whitmer, Secretary Benson, and Director Brater support and enforce laws that violate the Elections Clause of the United States Constitution (Compl. ¶¶ 35, 43, & 46-47, 58, 62). Specifically, Plaintiffs seek a declaratory judgment that "the use of the petition-and-state-ballot-proposal process under Michigan Constitution, Art. XII, Sec. 2, for regulation of times, places, and manner of federal elections is unconstitutional and violates the Elections Clause because the state legislature's approval and the state legislators' participation are not required, and that the process violated Plaintiffs' federal rights under the Elections Clause" (ECF No. 1 at PageID.15). Plaintiffs also seek a declaration that "the 2018 and 2022 constitutional amendments, in their entirety, are constitutionally invalid, unenforceable, and have no legal effect on the state legislature enacting laws, subject to the Governor's veto power, to regulate times, places, and

manner of federal elections" (*id.* at PageID.15). According to Plaintiffs, the amendments were "not constitutionally enacted" and are "legally null-and-void" (*id.* ¶¶ 64 & 74).

Additionally, because Plaintiffs allege that those same petition-and-state-ballot-proposal processes could be used in the future to amend the Michigan Constitution to regulate the times, places, and manner of federal elections (*id.* ¶ 48), Plaintiffs also seek injunctive relief enjoining Defendants from "funding, supporting, or facilitating" the use of either the petition-and-state-ballot-proposal process or the 2018 and 2022 constitutional amendments themselves "to regulate times, places, and manner of federal elections" (*id.* at PageID.15).

In lieu of answering the Complaint, Defendants filed the motion to dismiss at bar (ECF No. 15). Plaintiffs filed a response in opposition (ECF No. 19), and Defendants filed a reply (ECF No. 22). Having considered their submissions, the Court concludes that oral argument is unnecessary to resolve the issues presented. *See* W.D. Mich. LCivR 7.2(d).

II. ANALYSIS

A. Motion Standard

Defendants' motion to dismiss is filed pursuant to Federal Rule of Civil Procedure 12(b)(1) (lack of subject-matter jurisdiction) and 12(b)(6) (failure to state a claim upon which relief can be granted). Whether a party has standing is an issue of the court's subject-matter

jurisdiction under Rule 12(b)(1). *See Lyshe v. Levy*, 854 F.3d 855, 857 (6th Cir. 2017); *Kepley v. Lanz*, 715 F.3d 969, 972 (6th Cir. 2013); *Roberts v. Hamer*, 655 F.3d 578, 580-81 (6th Cir. 2011). A facial attack on standing challenges whether a complaint adequately pleads standing, even accepting its facts as true. *Ass'n of Am. Physicians & Surgeons v. FDA*, 13 F.4th 531, 543 (6th Cir. 2021); *Primus Grp., LLC v. Smith & Wesson Corp.*, 844 F. App'x 824, 826 (6th Cir. 2021). "In reviewing a facial attack to a complaint under Rule 12(b)(1) for lack of standing, '[courts] must accept the allegations set forth in the complaint as true' while drawing all inferences in favor of the plaintiff[.]" *Hile v. Michigan*, 86 F.4th 269, 273 (6th Cir. 2023) (citation omitted).

Rule 12(b)(6) authorizes a court to dismiss a complaint if it "fail[s] to state a claim upon which relief can be granted[.]" FED. R. CIV. P. 12(b)(6). Specifically, a complaint must present "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). The court views the complaint in the light most favorable to the plaintiff, accepting as true all well-pled factual allegations and drawing all reasonable inferences in favor of the plaintiff. *Gavitt v. Born*, 835 F.3d 623, 639-40 (6th Cir. 2016). However, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009).

B. Discussion

Defendants argue that Plaintiffs' lack of standing prevents this Court from exercising jurisdiction over the subject matter of Plaintiffs' claims. Defendants also argue that Plaintiffs' claims otherwise fail on their merits based on established precedent from the United States Supreme Court. Subject-matter jurisdiction is the threshold question. This Court is obligated to confirm jurisdiction under Rule 12(b)(1) before proceeding with any adjudication on the Complaint's allegations under Rule 12(b)(6). *See Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 434, 131 S. Ct. 1197, 179 L. Ed. 2d 159 (2011) ("[F]ederal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press."); *Chapman v. Tristar Prods., Inc.*, 940 F.3d 299, 304 (6th Cir. 2019) ("We are required in every case to determine—sua sponte if the parties do not raise the issue—whether we are authorized by Article III to adjudicate the dispute."). Without subject-matter jurisdiction, this Court lacks power to consider the merits of Plaintiffs' claims, *see Bell v. Hood*, 327 U.S. 678, 682, 66 S. Ct. 773, 90 L. Ed. 939 (1946) (explaining that motion to dismiss for failure to state a claim may be decided only after establishing subject-matter jurisdiction because determination of the validity of the claim is, in itself, an exercise of jurisdiction); *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990) ("[W]e are bound to consider the 12(b)(1) motion first, since the Rule 12(b)(6) challenge becomes moot if this court lacks

subject-matter jurisdiction."), or, indeed, issue any order, *see U.S. Fid. & Guar. Co. v. Thomas Solvent Co.*, 955 F.2d 1085, 1087 (6th Cir. 1992) (explaining that where a district court lacks subject-matter jurisdiction, its orders are "void"). In short, "[t]o succeed on the merits, a party must first reach the merits, and to do so it must establish standing." *Online Merchants Guild v. Cameron*, 995 F.3d 540, 547 (6th Cir. 2021). Consequently, the Court turns first to analyzing Defendants' Rule 12(b)(1) standing argument, and the Court finds the argument dispositive.

Defendants argue that Plaintiffs lack standing to bring their claims against them where all three of their theories of injury fly in the face of controlling precedent (ECF No. 16 at PageID.190-196). Defendants argue that even if Plaintiffs could identify a concrete and particularized injury, their claims also suffer from two other fatal Article III flaws: (1) their request for invalidation of the 2018 and 2022 Amendments is not redressable because the legislature has independently codified nearly all of those policies into Michigan's election statutes; and (2) their "freewheeling challenge" to a future, unidentified use of the proposal process to regulate federal elections is far too speculative to satisfy Article III's imminence requirement (*id.* at PageID.197-199).

In response, Plaintiffs argue that they have "supreme" law-making power, to wit: a "particularized right or privilege under the Electors [sic] Clause to have an opportunity to cast a binding vote on state laws regulating federal elections" (ECF No. 19 at PageID.231-235). They assert that an individual legislator's loss of this right or

privilege is not an "institutional injury" (*id.*). Additionally, Plaintiffs argue that their claims are redressable because "[t]his Court has the legal authority to issue an order declaring the 2018 and 2022 state constitutional amendments as violative of the Elections Clause" (*id.* at PageID.248). Last, Plaintiffs argue that their claims are also not speculative but are "targeted against the process of adopting these constitutional amendments without state legislative approval ... specifically as it relates to regulating federal elections" (*id.* at PageID.248-249).[2]

Defendants' argument has merit.

Article III, § 2 of the United States Constitution provides that the judicial power of the federal courts extends only to "Cases" and "Controversies." "'[S]tanding,' by itself, traditionally has referred to whether a plaintiff can satisfy Article III's case-or-controversy requirement[.]" *Roberts*, 655 F.3d at 580 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); *Davis v. Passman*, 442 U.S. 228, 239 n.18, 99 S. Ct. 2264, 60 L. Ed. 2d 846 (1979)). Standing "ensure[s] that federal courts do not exceed their authority" and "limits

2. Plaintiffs also argue that "[b]ecause there exists an individual state legislator's right or privilege under the Elections Clause, an action lies under 42 U.S.C. § 1983 as a mechanism to seek a judicial remedy" (ECF No. 19 at PageID.236-244). The argument is misplaced. As Defendants point out in their reply, "Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing" (ECF No. 22 at PageID.285 n.1, quoting *Raines v. Byrd*, 521 U.S. 811, 820 n.3, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997)).

the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016), as revised (May 24, 2016). The doctrine of standing requires federal courts to satisfy themselves that "the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009) (quoting *Warth v. Seldin*, 422 U.S. 490, 498-99, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)). *See also United States v. Texas*, 599 U.S. 670, 675, 143 S. Ct. 1964, 216 L. Ed. 2d 624 (2023) ("Article III standing is 'not merely a troublesome hurdle to be overcome if possible so as to reach the 'merits' of a lawsuit which a party desires to have adjudicated; it is a part of the basic charter promulgated by the Framers of the Constitution at Philadelphia in 1787.'") (citation omitted). As the Sixth Circuit recently opined, Article III gives courts the power to adjudicate "Cases" and "Controversies," not "hypothetical disputes." *Savel v. MetroHealth Sys.*, 96 F.4th 932, 2024 WL 1190973, at *3 (6th Cir. 2024).

The United States Supreme Court has held that "the irreducible constitutional minimum of standing contains three elements." *Lujan*, 504 U.S. at 560. The plaintiff must have suffered "(1) a concrete and particularized injury-in-fact which (2) is traceable to the defendant's conduct and (3) can be redressed by a favorable judicial decision." *Dickson v. Direct Energy, LP*, 69 F.4th 338, 343 (6th Cir. 2023). The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing the

elements. *Spokeo*, 578 U.S. at 338; *Lujan*, 504 U.S. at 561. "A plaintiff must prove Article III standing 'with the manner and degree of evidence required at the successive stages of the litigation.'" *Kareem v. Cuyahoga Cnty. Bd. of Elections*, 95 F.4th 1019, 1022 (6th Cir. 2024) (quoting *Lujan*, 504 U.S. at 561). Where, as here, a case is at the pleading stage, the plaintiff must "clearly ... allege facts demonstrating" each element. *Spokeo, supra.*

The standing analysis in this case turns on the injury-in-fact requirement, a requirement that establishes a plaintiff's "personal stake in the outcome of the controversy." *Kareem*, 95 F.4th at 1022 (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 134 S. Ct. 2334, 189 L. Ed. 2d 246 (2014)). In their Complaint, Plaintiffs allege three ways they have been injured—as (1) "legislators," (2) "taxpayers," and (3) "voters" (Compl. ¶ 63). The Court considers each theory in turn.

Legislators. First, Plaintiffs allege they have "individual legislator standing to challenge usurpation of state legislative powers" (*id.* ¶ 65). Plaintiffs alleges that "as state legislators," they have "federal rights under the Elections Clause U.S. Const., Art. 1, Sec. 4, Cl. 1, to oversee and participate in making legislative decisions regulating the times, places and manner of federal elections" (*id.* ¶ 67). Plaintiffs allege that "Defendants caused injury to Plaintiffs when they supported and enforced laws and when they support and enforce constitutional provisions enacted through the petitioning and ballot question processes that usurp the state legislature's powers and violate the state legislator's federal rights under the Elections Clause" (*id.* ¶ 72).

As Defendants point out, the Supreme Court and the Sixth Circuit have directly rejected this type of "legislator standing" (ECF No. 16 at PageID.190). The Supreme Court has expressly held that "individual members lack standing to assert the interests of a legislature." *Virginia House of Delegates v. Bethune-Hill*, 587 U.S. ___, ___; 139 S. Ct. 1945, 1952 (2019). Similarly, the Sixth Circuit has held that "[a]n individual legislator, or group of legislators, do not have Article III standing based on an allegation of an institutional injury, or a complaint about a dilution of legislative power[.]" *State by & through Tenn. Gen. Assembly v. U.S. Dep't of States*, 931 F.3d 499, 514 (6th Cir. 2019). The Sixth Circuit reasoned that because the "nature of that injury" is "abstract and widely dispersed" among the legislative body, individual legislators cannot "claim a 'personal stake' in [such a] suit," and the abstract nature of their alleged injury renders it "'[in]sufficiently concrete' to establish Article III standing." *Id.* (quoting *Raines v. Byrd*, 521 U.S. 811, 830, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997)). *See also Crawford v. U.S. Dep't of Treasury*, 868 F.3d 438, 453 (6th Cir. 2017) ("The general rule that individual legislators lack standing to sue in their official capacity as [members of a legislature] follows from the requirement that an injury must be concrete and particularized."). Plaintiffs' asserted injury—the deprivation of the power to cast a binding vote—is neither concrete nor particularized because it is shared by every single member of the Michigan Legislature.[3]

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3. An individual legislator (or group of legislators) may sue as an authorized representative of a legislative body if they have been expressly chosen by the body to do so. *See Tennessee*, 931 F.3d at 514; *see also Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*,

Taxpayers. Second, Plaintiffs allege that they have standing as "taxpayers" to bring this lawsuit because Defendants "use state funds to support and enforce current regulations governing federal elections as a result of past amendments to the Michigan Constitution which are legally unauthorized under the Elections Clause, including the use of state funds for similar petitioning or ballot questions in the future that affect federal elections without legislator involvement" (Compl. ¶ 77). According to Plaintiffs, Defendants cause injury to Plaintiffs when they "fund" statewide referenda on such legally invalid ballot questions (*id.* ¶ 78). Plaintiffs allege that as state legislators, they are "uniquely injured by such illegal disbursement or illegal use of taxpayers funds because, if the referendum passes, there is a violation of the state legislators' federal rights under the Elections Clause" (*id.* ¶ 79).

In general, "state taxpayers have no standing under Article III to challenge state tax or spending decisions simply by virtue of their status as taxpayers." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 346, 126 S. Ct. 1854, 164 L. Ed. 2d 589 (2006). The Supreme Court has reasoned that if every "taxpayer could sue to challenge any Government expenditure, the federal courts would cease to function as courts of law and would be cast in the

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576 U.S. 787, 801-02, 135 S. Ct. 2652, 192 L. Ed. 2d 704 (2015) (distinguishing a suit brought by individual legislators with one brought by the legislature itself or an authorized member). However, Plaintiffs do not allege in their Complaint (nor argue in briefing) that the Michigan Legislature has authorized them to serve as its representative in this litigation.

role of general complaint bureaus." *Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 593, 127 S. Ct. 2553, 168 L. Ed. 2d 424 (2007) (plurality op.). "[A] taxpayer may not 'employ a federal court as a forum in which to air his generalized grievances about the conduct of government or the allocation of power in the Federal System.'" *United States v. Richardson*, 418 U.S. 166, 174, 94 S. Ct. 2940, 41 L. Ed. 2d 678 (1974). Like their asserted injury as legislators, Plaintiffs' asserted injury as taxpayers is neither concrete nor particularized.[4]

Voters. Third, Plaintiffs allege that they have standing as "voters" to bring this lawsuit because "when such a referendum violating the Elections Clause is offered, Plaintiffs' personal vote in favor or against the referendum is wasted" (Compl. ¶ 81). According to Plaintiffs, "Defendants cause injury by unnecessarily burdening Plaintiffs' voting rights when they supervise, fund, or otherwise support statewide referenda on such legally invalid ballot questions" (*id.* ¶ 82).

Again, controlling precedent wholly rejects Plaintiffs' voter-standing theory. The Supreme Court has "repeatedly held that an asserted right to have the Government act in accordance with law is not sufficient, standing alone, to

4. The Supreme Court has recognized that a taxpayer will have standing consistent with Article III to invoke federal judicial power when he alleges that congressional action under the taxing and spending clause violates the First Amendment's prohibition against laws respecting the establishment of a religion. *See Flast v. Cohen*, 392 U.S. 83, 105-06, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968). However, Plaintiffs do not allege an Establishment Clause violation.

confer jurisdiction on a federal court." *Allen v. Wright*, 468 U.S. 737, 754, 104 S. Ct. 3315, 82 L. Ed. 2d 556 (1984), abrogated on other grounds by *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126-27, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014). "[A]ssertion of a right to a particular kind of Government conduct, which the Government has violated by acting differently, cannot alone satisfy the requirements of Art. III without draining those requirements of meaning." *Id.*

In *Lance v. Coffman*, 549 U.S. 437, 442, 127 S. Ct. 1194, 167 L. Ed. 2d 29 (2007) (per curiam), the injury the plaintiffs alleged was also that the law—the Elections Clause—had not been followed. The Supreme Court held that "this injury is precisely the kind of undifferentiated, generalized grievance about the conduct of government that we have refused to countenance in the past." *Id.* As Defendants correctly point out, Plaintiffs' claim that the election regulations under which they must vote were enacted unlawfully is likewise a prototypical generalized grievance: "every other voter in Michigan could make the exact same claim" (ECF No. 16 at PageID.192-193).

In sum, Plaintiffs have not met their burden at the pleading stage to demonstrate injury-infact and have concomitantly failed to demonstrate Article III standing. *See Savel*, 96 F.4th 932, 2024 WL 1190973, at *3 ("If the plaintiff fails to satisfy *any* of the three standing requirements, we have no jurisdiction because there is no case or controversy to decide, and we must dismiss the case.") (emphasis added). Without standing for bringing their claims, Plaintiffs ask this Court for nothing more

than a "jurisdiction-less 'advisory opinion.'" *Mann Constr., Inc. v. United States*, 86 F.4th 1159, 1162 (6th Cir. 2023) (quoting *California v. Texas*, 141 S. Ct. 2104, 2116, 210 L. Ed. 2d 230 (2021)). Thus, dismissal under Rule 12(b)(1) is required. *See also Davis v. Colerain Twp., Ohio*, 51 F.4th 164, 176 (6th Cir. 2022) (indicating that dismissal for lack of subject-matter jurisdiction is without prejudice); FED. R. CIV. P. 58 (providing for entry of judgment).

III. CONCLUSION

For the foregoing reasons,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (ECF No. 15) is GRANTED.

IT IS FURTHER ORDERED that the motions to intervene (ECF No. 5), to strike (ECF No. 10), and to expedite (ECF No. 20) are DISMISSED as moot.

Dated: April 10, 2024

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge

APPENDIX D — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, DATED APRIL 10, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:23-cv-1025
HON. JANE M. BECKERING

JONATHAN LINDSEY, *et al.*,

Plaintiffs,

v.

GRETCHEN WHITMER, *et al.*,

Defendants.

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS HEREBY ORDERED that Plaintiffs' Complaint (ECF No. 1) is DISMISSED for lack of subject-matter jurisdiction.

Dated: April 10, 2024

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge