STATE OF MICHIGAN

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CONSTITUTIONAL LAW: SEPARATION OF POWERS: BICAMERALISM AND PRESENTMENT: APPROPRIATIONS: SEVERANCE:	Constitutionality of MCL 18.1451a(3), which allows the Senate or House Appropriations Committee to disapprove of work projects designated by the State Budget Director

The disapproval mechanism in MCL 18.1451a(3) amounts to a legislative committee veto that violates Article 3, § 2 of the Michigan Constitution, which requires the separation of powers between the three branches of government, and Article 4, § 33, which requires legislation to be completed consistent with the bicameralism and presentment requirements set forth in the Michigan Constitution.

Although the disapproval mechanism in MCL 18.1451a(3) is unconstitutional, the invalid portion is legally severable because the remaining provisions regarding temporal limits, substantive criteria, and reporting requirements are independently operable and further the Legislature's intent for fiscal oversight over work projects.

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You have asked whether the provision in MCL 18.1451a(3), allowing either the Senate or House Appropriations Committees to disapprove work projects designated by the State Budget Director, violates the Michigan Constitution.

As noted in your request, the Michigan House Appropriations Committee recently invoked this provision to discontinue nearly $645 million in funding that had been authorized by the Governor and the prior Legislature. These appropriations were designated as "work projects" by the State Budget Director under MCL 18.1451a(3), which requires the Director to notify the legislative appropriations committees of such designations within 45 days of the fiscal year's end.

Under the statute, these designations "may be disapproved by either appropriations committee within 30 days" of notification. MCL 18.1451a(3). Pursuant to this procedure, the House Appropriations Committee disapproved a number of the Director's designations, preventing the expenditure of $645 million in funding.

You now seek my opinion as to whether this statutory power of either the House or Senate Appropriations Committees to "disapprove" line-item appropriations designated as work projects by the State Budget Office's Director violates the Michigan Constitution. To answer this question, it is necessary to first address Michigan's appropriations process, including its constitutional framework, the statutory rules governing how appropriated funds may be spent, and the framework for work projects in general.

BACKGROUND

The Appropriations Process

The Michigan Constitution vests the Legislature with the power to appropriate public funds and establishes specific procedures for doing so. Under Article 4, § 31, the Legislature must prioritize general appropriation bills for the "succeeding fiscal period" before either chamber "passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation."[1] Appropriation bills are an important feature of government because, under Article 9, § 17, "[n]o money shall be paid out of the state treasury except in pursuance of appropriations made by law."

The framework governing the expenditure of appropriations is codified at MCL 18.1452(2), which requires that "[e]ach of the amounts appropriated shall be used solely for the respective purposes stated in the budget act except as otherwise provided by law." In addition to this purpose-based restriction, MCL 18.1451(1) establishes a general timeframe for the expenditure of appropriated funds: "At the close of the fiscal year, the unencumbered balance of each appropriation shall lapse to the state fund from which it was appropriated." In other words, any unexpended or otherwise unencumbered portion of appropriated moneys that remains at the end of a given fiscal year "lapses."

[1] The Constitution's use of the term "period" rather than "year" suggests a degree of flexibility regarding the duration of an appropriation.

Work Projects

But by establishing "work projects," MCL 18.1451a creates an exception to the temporal limitation in MCL 18.1451. Under this provision, a work-project appropriation remains available until either the work is completed or for up to 48 months "after the last day of the fiscal year in which the appropriation was originally made, whichever comes first." MCL 18.1451a(1). The statute sets forth the following components, each of which must be met for an appropriation to be a work project:

> (a) The work project shall be for a specific purpose.
>
> (b) The work project shall contain a specific plan to accomplish its objective.
>
> (c) The work project shall have an estimated completion cost.
>
> (d) The work project shall have an estimated completion date. [*Id.*]

Generally, work projects are separated into two categories: statutory work projects and designated work projects. A statutory work project occurs when the Legislature, within an appropriations bill, expressly identifies a line item as a "work project" and sets forth the four required components directly in the text of the bill.

A designated work project, on the other hand, is created under MCL 18.1451a(3), which vests the State Budget Director with the authority to "designate" specific line-item appropriations as work projects. For the Director's designations to become effective, MCL 18.1451a(3) requires the Director to first

notify the House and Senate Appropriations Committees of his or her intent to designate the funds. Either Committee then has 30 days from the date of notification to "disapprove" the designation. *Id.* If either Committee exercises this disapproval authority within the 30-day timeframe, the Director's designation "shall not be effective." *Id.* In other words, a timely disapproval by either Committee serves as a statutory bar to the Director's designation of a work project. But if there is no disapproval, then the executive branch retains an additional three years after the close of the preceding fiscal year to expend the appropriated funds.

Here, the Legislature, through the General Appropriations Bills, 2024 PA 120 and 2024 PA 121, and the Supplemental Appropriations Bills, 2024 PA 135 and 2024 PA 148, exercised its legislative power to appropriate funds. From the line items appropriated for fiscal year 2025, the State Budget Director designated $2.7 billion in gross appropriations as work projects, including $657.6 million from the general fund. Consistent with MCL 18.1451a(3), the Director notified the Appropriations Committees, as well as the legislative fiscal agencies, of the proposed work-project designations. Of the total designations, the House Appropriations Committee "disapproved" $644.9 million, effectively blocking the continued use of these appropriated funds.

ANALYSIS

With the relevant background established, the question to be addressed is whether the provision in MCL 18.1451a(3) that allows either the Senate or House

Appropriations Committees to disapprove work projects designated by the State Budget Director violates the Michigan Constitution.

Although MCL 18.1451a(3) appears to grant either the House or Senate Appropriations Committee a final check on work-project designations, statutory authorization does not equate to constitutional validity. The dispositive issue is whether the Legislature may constitutionally reserve for itself, or a committee within a chamber of itself, the authority to block executive action after an appropriation has already been signed into law. It may not. Reserving such authority over work projects violates the Michigan Constitution in at least two fundamental respects.

First, MCL 18.1451a(3) impermissibly allows a single legislative committee to exert ongoing control over the executive implementation of enacted laws. The appropriation bills implicated here were complete upon enactment. The subsequent work-project designations by the State Budget Director were proper acts of executive implementation. By subjecting this executive action to a post-enactment legislative committee disapproval, MCL 18.1451a(3) impermissibly extends legislative authority into the executive's constitutional domain in violation of the separation-of-powers provision.

Second, the legislative committee disapproval circumvents the constitutional requirements of bicameralism and presentment. Unlike the original appropriation, which required passage by both chambers and submission to the Governor, the

legislative committee disapproval operates through a truncated process that bypasses these constitutional safeguards.

Both of these reasons are discussed in further detail below.

The committee disapproval mechanism usurps executive power in violation of the separation-of-powers provision of the Michigan Constitution.

The Michigan Constitution provides for the separation of powers of the State among the three branches of government: "The powers of government are divided into three branches: legislative, executive, and judicial. No person exercising powers of one branch shall exercise powers properly belonging to another branch *except as expressly provided in this constitution*." Const 1963, art 3, § 2 (emphasis added). This constitutional principle protects individual liberty by ensuring that no single branch can consolidate and exercise the powers of another. See *In re Certified Questions from the United States District Court, W Dist of Mich*, 506 Mich 332, 357 (2020) (" '[w]hen the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty' "), quoting Montesquieu, *The Spirit of the Laws* (London: J. Nourse and P. Vaillant, 1758), Book XI, ch 6, p 216.

Relevant here, the legislative power is vested in a bicameral Senate and House of Representatives. Const 1963, art 4, §§ 1–3. The Legislature's fundamental power to enact laws includes the constitutional authority and duty to "appropriate funds." Thomas M. Cooley, A Treatise on the Constitutional

Limitations (Little, Brown & Co., 1886), p 92; *Civil Serv Comm v Auditor General*, 302 Mich 673, 682 (1942); *Int'l Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW Local 6000 v Michigan*, 194 Mich App 489, 501 (1992).

The appropriations power is constitutionally defined. As mentioned, Article 9, § 17 establishes the foundational principle that "no money shall be paid out of the state treasury except in pursuance of appropriations made by law." And Article 4, § 31 mandates a specific process for general appropriation bills: "[G]eneral appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the Legislature before that house passes any appropriation bill for items not in the budget."

Critically, however, the Legislature's constitutional role in the appropriations process has defined temporal and functional limits. Once the Legislature enacts appropriations through the constitutionally required bicameral process and gubernatorial approval, "the legislature's area of exclusive operation is ended." OAG, 1955–1956, No 2249, p 565, 568; see also *Blank v Dep't of Corr*, 462 Mich 103, 117 (2000) (observing that, absent an unconstitutional statutory legislative veto, "the only way that the Legislature could influence the promulgation of the rules would be to enact new legislation"). See also *Bowsher v Synar*, 478 US 714, 733 (1986) ("[O]nce Congress makes its choice in enacting legislation, its participation ends.") (citation omitted); *id.* at 733–734 ("Congress can thereafter control the execution of its enactment only indirectly—by passing new legislation."), citing

Immigration & Naturalization Serv v Chadha, 462 US 919, 958 (1983). This principle reflects a fundamental aspect of separation of powers—each branch must exercise its constitutional powers within defined boundaries and cannot retain ongoing control over matters that have passed into another branch's constitutional sphere.

Although Michigan's separation-of-powers provision "does not require so strict a separation as to provide no overlap of responsibilities and powers" between the branches, *Judicial Attorneys Association v Michigan*, 459 Mich 291, 296 (1998), such sharing of power is permissible only if the authority granted is "limited and specific and does not create encroachment or aggrandizement of one branch at the expense of the other," *id*. Here, the authority granted to the Appropriations Committees by MCL 18.1451a(3) is exclusively executive in character, and it therefore encroaches on the executive branch's constitutional role. When an appropriations bill becomes law, constitutional responsibility shifts to the executive branch. Through its mandate to "take care that the laws be faithfully executed," the executive assumes responsibility for implementing legislative appropriations and spending appropriated funds for their designated purposes. See *UAW*, 194 Mich App at 501. As case law and Attorney General opinions have long observed, allocating and expending appropriated funds are inherently executive functions. See, e.g., *id.* ("The executive branch of the government executes the laws and spends appropriated funds for designated purposes."); OAG, 1975–1976, No. 4896, p 133, 151 ("The executive branch of government is responsible for the implementation of

appropriation acts, not the legislative branch of government."); OAG, 1955–1956, No. 2249, pp 565, 568 ("[B]efore the fund appropriated can be used for governmental purposes, they must be 'allocated' or 'expended.' This is a function of the executive or administrative branch of the government."). This power necessarily confers discretion over the specific mechanisms and timing of expenditures, provided the executive branch does not "frustrate the Legislature's intent." *UAW*, 194 Mich App at 501.

Attorney General Frank Kelley underscored these principles in OAG No. 4896, analyzing a provision of the General Government Appropriations Act that required legislative committee approval for consultant contracts exceeding $50,000.00.[2] The Attorney General concluded that this requirement unconstitutionally encroached upon the executive sphere:

> [T]he legislature may not perform executive functions. . . . [Once] having [appropriated funds], the legislature does not possess, retain or have access to any form of administration or monitoring thereof. [OAG, 1975–1976, No. 4896, pp 133, 150–151.]

Although Attorney General Kelley noted that the Legislature may require the executive branch to furnish informational reports regarding funded programs, he concluded that the Legislature "cannot assume administrative controls" over those funds once the appropriation is made. *Id.* at 151. In short, the Legislature's

[2] Section 8(6) of the General Government Appropriations Act, HB 4439, provided in part that "[a]ll proposed consultant contracts exceeding $50,000.00 shall: (a) be reviewed and approved by the appropriations committees, and (b) be posted for public information prior to management science approval in the secretary of state, Lansing office." OAG, 1975–1976, No. 4896, pp 133, 149.

appropriation power ends at the point of enactment, leaving only the executive branch with the power to implement and expend appropriated funds.

Applying these principles to the factual circumstance presented, MCL 18.1451a(3) allows the House Appropriations Committee to unilaterally discontinue $645 million in funding, which moves beyond a permissible "overlap" and into an unconstitutional "aggrandizement" of legislative power. By empowering a single legislative committee to negate the State Budget Director's work-project designations, the statute reserves the very administrative control that the separation of powers forbids. This disapproval mechanism effectively creates a "legislative veto"—or, more accurately, a "legislative committee veto"—which constitutes an unconstitutional reservation of administrative control over the executive branch's core function of executing the laws. Under Article 3, § 2, when an appropriation is enacted, the Legislature's role ends, and the executive branch's duty to faithfully execute the law begins.

Whether the Director faithfully executed the law consistent with legislative intent as it relates to the creation of work projects depends on the *purpose* for which funds were appropriated, not the *duration* those funds remain available. The Constitution and statutory framework make this distinction clear. Article 9, § 17 requires that funds be "paid out of the state treasury . . . in pursuance of appropriations made by law"—that is, consistent with a legislatively specified purpose. Similarly, MCL 18.1452(2) mandates that "[e]ach of the amounts appropriated shall be used solely for the respective purposes stated in the budget

act." Both provisions focus on the substantive use of funds, not the temporal mechanics of their availability.

The work-project statute reinforces this distinction. MCL 18.1451a(1)(a) requires that "[t]he work project shall be for a specific purpose"—the same purpose already designated in the appropriation itself. A work-project designation does not change what the funds are spent on; it affects only how long they remain available to be spent for that legislatively determined purpose. In other words, the purpose remains fixed by the original appropriation.

MCL 18.1451a further confirms that the Director's work-project designations faithfully executed the law and implemented only the Legislature's expressed intent. In enacting the work-project statute, the Legislature acknowledged the practical reality that some appropriations—for example, infrastructure improvements, multi-year studies, or complex procurements—often require more time to execute than a single fiscal year allows. Indeed, it would frustrate legislative intent for appropriated funds to lapse merely because they could not be spent within an arbitrary 12-month window, particularly where the Legislature has already determined that the normal lapse rule should not apply to work projects meeting the statutory criteria. The Director's designation authority exists precisely to implement the Legislature's policy choice that certain appropriations should not be artificially constrained by the fiscal year.[3] When the Director designates such

[3] Further, the threat of a unilateral rescission of funds by a single committee may create a perverse incentive for recipients to engage in "use it or lose it" spending—

appropriations as work projects, he or she is faithfully executing the law and carrying out the Legislature's intent that funds appropriated for projects of this nature should remain available until completion.

The legislative committee veto power circumvents constitutional bicameralism and presentment requirements.

Beyond the general prohibition against reserving administrative control of appropriated funds, the legislative committee veto in MCL 18.1451a(3) violates the Constitution for a similar, related reason: it permits a single committee to exercise legislative power without adhering to the constitutional mandates of bicameralism and presentment.

The legislative power is exercised in the form of "legislation," which "*shall* be by bill and may originate in either house." Const 1963, art 4, § 22 (emphasis added). And "[e]very bill passed by the legislature shall be presented to the governor before it becomes law." Const 1963, art 4, § 33. In other words, while legislative power can be exercised in myriad ways and across various areas of policy, it must be "exercised in accord with a single, finely wrought and exhaustively considered [ ] procedure." *Chadha*, 462 US at 951.

This conclusion is firmly established in both federal and state jurisprudence. As recognized in both *Chadha* (federal) and *Blank* (state), the Legislature cannot

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rushing to exhaust funds before they are discontinued. Such hurried expenditures risk the unwise or inefficient use of taxpayer dollars.

circumvent the formal lawmaking process by reserving to itself a veto over executive action, whether by both houses, a single house, or a legislative committee. Under the rubric set forth in those cases, the legislative committee veto authorized by MCL 18.1451a(3) is unconstitutional.

The core issue in *Chadha* was the constitutionality of the one-House legislative veto provision contained in § 244(c)(2) of the Immigration and Nationality Act,[4] which authorized either the U.S. Senate or House of Representatives, by resolution, to invalidate the executive branch's decision to allow a deportable individual to remain in the United States. 462 US at 923.

Chadha's nonimmigrant student visa had expired, and he had been granted a suspension of deportation by an immigration judge acting pursuant to authority delegated to the Attorney General under § 244(a)(1) of the Act. *Id*. at 923–925. Subsequently, under § 244(c)(2), the House of Representatives passed a resolution vetoing the suspension, which reversed the Attorney General's determination and mandated Chadha's deportation. *Id*. at 925–928.

The question before the Court was whether this process—which did not follow the constitutional requirements of bicameral passage and presentment to the President, as outlined in Article I, § 7 of the U.S. Constitution—violated the separation of powers. Thus, the Court was tasked with evaluating whether "the challenged action under § 244(c)(2) is of the kind to which the procedural

[4] At the time *Chadha* was decided, this provision was codified at 8 USC 1254(c)(2).

requirements of Art. I, § 7 apply." *Id.* at 952. While "[n]ot every action taken by either House is subject to the bicameralism and presentment requirements of Art. I," if the action taken is "in law and fact, an exercise of legislative power," then Congress was required to follow the strictures of Article I—bicameralism and presentment. *Id.*

To evaluate whether the act was "an exercise of legislative power," the Court considered several factors. *Id.* First, it examined whether the action taken under the statute is "essentially legislative in purpose and effect." *Id.* The Court concluded that the act of overriding the Attorney General's statutorily endowed judgment "had the purpose and effect of altering the legal rights, duties and relations of persons, including the Attorney General, Executive Branch officials and Chadha, all outside the legislative branch." *Id.*

Second, the Court found important "the character of the Congressional action it supplants." *Id.* at 952–953. Without § 244(c)(2), the only way the Attorney General's deportation decision could be overridden would be via legislation achieved through bicameralism and presentment. *Id.* at 953–954.

Third, "[t]he nature of the decision implemented by the one-House veto" was significant. *Id.* at 954. Although Congress was of course permitted to, and did, "delegate to the Executive Branch . . . the authority to allow deportable aliens to remain in this country in certain specified circumstances," *id.*, disagreement with the specific execution of that authority by the Attorney General "involves

determinations of policy that Congress can implement in only one way"—via legislation. *Id.*

Finally, and perhaps most crucially, the Court understood that "when the Framers intended to authorize either House of Congress to act alone and outside of its prescribed bicameral legislative role, they narrowly and precisely defined the procedure for such action." *Id.* at 955. The Court identified four provisions in the Constitution—all "explicit and unambiguous"—that permitted action by only one House of Congress. *Id.* at 955.[5] These "carefully defined exceptions from presentment and bicameralism," which are "narrow, explicit, and separately justified," did not authorize the legislative veto in § 244(c)(2). *Id.* at 956. Thus, as an exercise of legislative power, "what has been attempted by one House of Congress in this case requires action in conformity with the express procedures of the Constitution's prescription for legislative action: passage by a majority of both Houses and presentment to the President." *Id.* at 958. Accordingly, the legislative veto in § 244(c)(2) was unconstitutional. *Id.* at 959.

In a 2000 plurality opinion, the Michigan Supreme Court considered and applied *Chadha*'s analysis to a legislative veto in Michigan law. *Blank*, 462 Mich at

[5] The four provisions are US Const, art I, § 2, cl 6 (giving the House the power to initiate impeachments); US Const, art I, § 3, cl 5 (giving the Senate the authority to conduct impeachment trials and to convict after trial); US Const, art II, § 2, cl 2 (giving the Senate the power to approve or disapprove presidential appointments); and US Const, art II, § 2, cl 2 (giving the Senate the power to ratify treaties). See *Chadha*, 462 US at 955.

114–115. Similar to *Chadha*, the issue in *Blank* was the constitutionality of legislative mechanisms in §§ 45 and 46 of the Administrative Procedures Act (APA), MCL 24.245 and MCL 24.246, that required administrative agencies to obtain the approval of a joint committee of the Legislature, or the Legislature itself, before enacting new administrative rules. Faced with a state statute with similarities to the Immigration and Nationality Act's § 244(c)(2), the lead opinion in *Blank* looked to the rubric from *Chadha*, finding it applicable because, "pursuant to §§ 45 and 46, the Legislature has the power to render illusory its delegation of rulemaking authority." *Blank*, 462 Mich at 115.

The lead opinion in *Blank* assessed the *Chadha* factors, ultimately determining that "the action of [the joint committee] or the Legislature in exercising the authority granted by §§ 45 and 46 of the APA is inherently legislative," *id.*, and therefore required bicameralism and presentment. That opinion concluded that the statute invalidly vested the committee or the Legislature with "the power to alter the rights, duties, and relations of parties outside the legislative branch" as its action "affect[s] the duty of the [Department of Corrections (DOC)] director, who is an individual outside the legislative branch." *Id.* at 116. Moreover, vetoing administrative rules "promulgated by DOC involves policy determinations"—made after receiving testimony and comments from the public—and policy determinations are "fundamentally a legislative function." *Id.* As in *Chadha*, that policy decision "supplants other legislative methods for reaching the same result," because "the only way that the Legislature could influence the promulgation of the rules would

be to enact new legislation." *Id.* at 117. Because the statute purported to authorize the use of legislative power, bicameralism and presentment were required.

The analyses of *Chadha* and *Blank* apply to the legislative committee veto contained in MCL 18.1451a(3). Like the one-House override of the Attorney General's decision regarding deportation in *Chadha* and the requirement of legislative approval of agency promulgated rules in *Blank*, MCL 18.1451a(3) purports to permit a single legislative committee to unilaterally "disapprove" of executive action. Whether that act violates the Constitution in this manner is therefore subject to the considerations analyzed in *Chadha* and *Blank*. Each of which is discussed below.

The Appropriations Committee's disapproval had both the "purpose and effect" of affecting persons outside of the legislative branch.

The first consideration is whether the challenged action had the "purpose and effect of altering the legal rights, duties and relations of persons . . . outside the legislative branch." *Chadha*, 462 US at 952. Like the one-House veto in *Chadha*, the House Appropriations Committee's "disapproval" "operated in this case to overrule" the State Budget Director's designation of work-project appropriations. *Id.* See also *Blank*, 462 Mich at 116 (finding that the legislative committee's action "affect[s] the duty of the DOC director, who is an individual outside the legislative branch"). The House Appropriations Committee's "disapproval" of work projects affects not only the Director, but also the intended recipients and beneficiaries of those legislative appropriations, appropriations that could not be altered by the

Legislature after enactment. OAG, 1955–1956, No 2249, p 565; *Bowsher*, 478 US at 733. But for the House Appropriations Committee's action, the appropriations would be designated as work-project appropriations.

The Appropriations Committee's action supplanted legislative action.

As in *Chadha* and *Blank*, absent the second sentence in MCL 18.1451a(3), the Legislature (let alone a single committee of one house) would have no power or authority to disapprove work-project designations or otherwise make appropriations decisions outside of the legislative process. As a result, the legislative committee veto in MCL 18.1451a(3) supplants legislation. See *Chadha*, 462 US at 953–954. Yet it is only through the standard legislative process that our Constitution grants the Legislature the authority to make laws, including decisions concerning the appropriation of funds. In other words, "the only way that the Legislature could influence the [appropriation of funds] would be to enact new legislation." *Blank*, 462 Mich at 117.

The Appropriations Committee's action is an expression of policy.

Again, as in both *Chadha* and *Blank*, the action of "disapproval" is one of policymaking. Decisions regarding appropriations of funds are paradigmatic legislative policy matters. See *Regents of Univ of Michigan v State*, 395 Mich 52, 70 (1975) ("[T]he Legislature holds the power of the purse."); see also *United States v Butler*, 297 US 1, 85 (1936) (STONE, J., dissenting) ("This independent grant of the power of the purse, and its very nature, involving in its exercise the duty to insure

expenditure within the granted power, *presuppose freedom of selection among divers[e] ends and aims*, and the capacity to impose such conditions as will render the choice effective") (emphasis added).

The legislative power of appropriations is exercised in the form of "legislation," which "shall be by bill." Const 1963, art 4, § 22; see also Const 1963, art 4, § 26 ("No bill shall become a law without the concurrence of a majority of the members elected to and serving in each house."); Const 1963, art 9, § 17 ("[n]o money shall be paid out of the state treasury except in pursuance of appropriations *made by law*") (emphasis added). And the decision whether to authorize appropriations, or to subsequently disapprove the executive's work-project designation of such appropriations, "involves determinations of policy that [the Legislature] can implement in only one way"—via legislation. *Chadha*, 462 US at 954.

The constitution explicitly empowers the Appropriations Committee to act only in a single, narrow, emergency instance that does not authorize its purported work-project disapproval authority here.

This conclusion is reinforced by the fact that the Constitution establishes a narrowly defined circumstance in which legislative committees *do* have what amounts to a legislative committee veto. See Const 1963, art 5, § 20. The Framers knew how to create a lane for legislative committees to have authority outside of that of the whole Legislature, and they did so—but in only one specific, emergency circumstance that is inapplicable here: where reductions in expenditures are required due to actual revenues falling below estimates. *Id.* That specific

constitutional grant of authority, coupled with the absence of any such grant in this particular circumstance, further confirms the unconstitutionality of the legislative committee veto in MCL 18.1451a(3). Indeed, the fact that a single committee of a single chamber, without any specific grant of constitutional authority, has been granted this statutory authority highlights the separation-of-powers problem.

Both *Chadha* and *Blank* explain that the existence of other, specific constitutional provisions that deviate from the standard rules of bicameralism and presentment for passing legislation is strong evidence that other such exceptions are not permitted. In *Chadha*, the U.S. Supreme Court recognized that discrete exceptions to the bicameralism and presentment requirements provide strong evidence of the Framers' intent that there are no others. 462 US at 955. The Court observed: "[W]e see that when the Framers intended to authorize either House of Congress to act alone and outside of its prescribed bicameral legislative role, they narrowly and precisely defined the procedure for such action." *Id.* The Court identified four "explicit and unambiguous" provisions of the federal Constitution authorizing "one House [to] act alone with the unreviewable force of law." *Id.* The Court then drew a strong inference from the Constitution's silence on Congress's claimed power to override the U.S. Attorney General's decision to permit a particular deportable individual to remain in the country:

> Clearly, when the Draftsmen sought to confer special powers on one House, independent of the other House, or of the President, they did so in explicit, unambiguous terms. These carefully defined exceptions from presentment and bicameralism underscore the difference between the legislative functions of Congress and other unilateral but important and binding one-House acts provided for in the Constitution.

> *These exceptions are narrow, explicit, and separately justified; none of them authorize the action challenged here.* On the contrary, they provide further support for the conclusion that Congressional authority is not to be implied and for the conclusion that the veto provided for in § 244(c)(2) is not authorized by the constitutional design of the powers of the Legislative Branch. [*Id.* at 955–956 (footnote omitted; emphasis added).]

Thus, the Court determined that "[s]ince it is clear that the action by the House under § 244(c)(2) was not within any of the express constitutional exceptions authorizing one House to act alone, and equally clear that it was an exercise of legislative power, that action was subject to the standards prescribed in Article I," *i.e.*, "[t]he bicameral requirement, the Presentment Clauses, the President's veto, and Congress' power to override a veto[.]" *Id.* at 956–957.

Likewise, in *Blank*, the Michigan Supreme Court considered the relevance of the Michigan Constitution's limited grant of authority to the Legislature to empower a joint legislative committee to suspend any rule or regulation promulgated *during a recess of the Legislature*. Const 1963, art 4, § 37. Relying on that provision, the petitioners broadly argued for the constitutionality of the Joint Committee on Administrative Rule's (JCAR) authority to "approve or disapprove rules proposed by executive branch agencies." *Blank*, 462 Mich at 118. But *Blank* disagreed and confirmed that the *limited* grant of authority to "*temporarily* suspend the implementation of a rule" foreclosed the premise that the constitution implicitly granted "the authority *permanently* to block implementation of a rule." *Id.* at 119 (emphasis added). What is more, the temporary suspension power in Article 4, § 37

was best understood as a "restrict[ion] [on] the Legislature's power over agency rulemaking." *Id.* at 120.

Applying *Chadha* and *Blank* here yields further evidence that the disapproval mechanism in MCL 18.1451a(3) purports to authorize an unconstitutional legislative committee veto. The Michigan Constitution *does* create a limited grant of authority to the Appropriations Committees, but only in a specific and narrow situation that is not relevant here—where the revenue projections on which a state budget was formulated turn out to be inaccurate, necessitating emergency funding adjustments. See Const 1963, art 5, § 20. The existence of this targeted authority—a plain deviation from the Constitution's bicameralism and presentment requirements—speaks volumes about the absence of any constitutional authority for a single committee's veto power over work-project designations.

Article 5, § 20 provides:

> No appropriation shall be a mandate to spend. The governor, *with the approval of the appropriating committees of the house and senate*, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. *Reductions in expenditures shall be made in accordance with procedures prescribed by law*. The governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes. [Emphasis added.]

In the narrow, emergency circumstance where "actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based," the Governor shall reduce expenditures, but must first receive approval from the House and Senate appropriating committees. Const 1963, art 5, § 20.

The unusual nature of this grant of authority was apparent to the convention delegates, who discussed the proposal during the constitutional convention at some length. See 1 Official Record, Constitutional Convention 1962, pp 1666–1670. The constitutional convention debates can be "illuminating" and may serve to "support" the common understanding of the ratifiers. *Mothering Justice v Attorney Gen*, 515 Mich 328, 354 (2024).

There was debate about the proper process in this "emergency" situation where the budget projections did not match the actual revenues. Delegates expressed concerns with both unilateral, unchecked action of the Governor in deciding what appropriations to cut, see, e.g., 1 Official Record, Constitutional Convention 1962 at 1668 (Statement of Delegate Staiger), and the impracticality of the full involvement of the Legislature in an emergency circumstance, particularly where the "legislature is not in session," see, e.g., *id.* After some debate, a middle-ground proposal was offered:

> This approach would leave the power with the governor to cut expenditures when he sees that the revenues are not meeting expectations but only with the approval of the appropriating committees of the 2 houses of the legislature, so that there is some check on that power. [*Id.* at 1668 (Statement of Delegate Staiger).][6]

Even in this emergency context, however, one delegate vigorously expressed concern about the "irregular" nature of giving "constitutional status to a

[6] One delegate endorsed this proposal as it would pair the head of the executive branch with "the appropriating committees which—of the entire body of the legislature—are also most familiar with these financial and fiscal problems." *Id.* at 1669 (Statement of Delegate Martin).

committee." *Id.* at 1668 (Statement of Delegate Faxon); see also *id.* ("I don't know that we have given this status to the other standing committees of the house and senate, and I think that this might be a departure from the tradition of not naming the legislative committees."). Indeed, Delegate Faxon noted that, "with all the other practice that we have in the constitution with regard to checking the power of the governor or checking the power of the judiciary or checking any power. *You never lodge the check within a select group of the body; you lodge it with the body itself*." *Id.* at 1669 (emphasis added). Thus, discussion at the Constitutional Convention recognized the unusual nature of identifying and empowering a committee of the Legislature in the Constitution. Yet the delegates decided to do so, but only in a narrow, emergency circumstance.

Crucially, however, even this constitutional exception preserves a feature of bicameralism. Article 5, § 20 requires the approval of the appropriating committees of *both* houses to effectuate a reduction. In contrast, MCL 18.1451a(3) lacks this constitutional symmetry, purporting to authorize a single committee from either house to unilaterally veto work-project designations. This statutory scheme thus creates an even more "irregular" power than the one the delegates cautiously debated, bypassing not only the full legislative body but also the second chamber entirely.

The existence of this aberrational provision in article 5, § 20, is further evidence that MCL 18.1451a(3)—which purports to grant a single committee of a

single house authority to revoke already-appropriated funds—contains an unconstitutional legislative committee veto.

In sum, the Framers of the Michigan Constitution saw fit to empower the Appropriations Committees in one specific emergency circumstance, but in no other. Absent "explicit and unambiguous" terms in the Constitution authorizing an exception from the requirements of bicameralism and presentment, *Chadha*, 462 US at 955, "a committee of the legislature" may not "act[ ] in an inherently legislative manner without adhering to the enactment and presentment requirements of the constitution," *Blank*, 462 Mich at 120. As a result, MCL 18.1451a(3)'s grant of veto authority to the Appropriations Committees violates the Constitution.

The unconstitutional legislative committee veto contained in MCL 18.1451a(3) is severable from the remainder of the provision.

Having concluded that the disapproval mechanism in MCL 18.1451a(3) amounts to a legislative committee veto that violates the Michigan Constitution, it is necessary to determine whether this portion of the statute can be severed, leaving the remainder of MCL 18.1451a intact and operative, or whether the invalidation of the legislative committee veto is instead fatal to the statutory provision as a whole. It can.

Michigan law explicitly favors severability:

> In the construction of the statutes of this state the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, that is to say:

> If any portion of an act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect the remaining portions or applications of the act which can be given effect without the invalid portion or application, provided such remaining portions are not determined by the court to be inoperable, and to this end acts are declared to be severable. [MCL 8.5.]

This directive is echoed in the Management and Budget Act's own severability clause, which declares the Act's provisions to be severable using nearly identical language. MCL 18.1501 ("If any portion of this act or the application of this act to any person or circumstances shall be found to be invalid by a court, the invalidity shall not affect the remaining portions or applications of this act which can be given effect without the invalid portion or application, if the remaining portions are not determined by the court to be inoperable, and to this end this act is declared to be severable.").

Under these rules, an unconstitutional provision should be excised if the Legislature "would have passed the statute had it been aware" of the infirmity. *In re Request for Advisory Opinion Regarding 2011 PA 38*, 490 Mich 295, 346 (2011) (cleaned up). Here, the intent of MCL 18.1451a is to regulate work-project designations through several independent limitations that remain fully functional without the legislative committee veto:

- Temporal constraints: The State Budget Director must propose designations within 45 days of the close of the fiscal year. MCL 18.1451a(3).
- Substantive criteria: The statute provides specific criteria to be used to define a "work project." MCL 18.1451a(1)(a)–(d).

- Reporting requirements: The Director must keep the Appropriations Committees informed through a yearly report including "a listing of all work project accounts, the balance in each account, the amount of funds that lapsed from any previously designated work projects, and the funds that received these lapses." MCL 18.1451a(4).

Because these limitations independently serve the legislative goal of fiscal oversight and are operable without the legislative committee veto, it is my conclusion that the Legislature would have passed the statute had it been aware that the legislative committee veto is "infirm" and would be excised from the act. In other words, it is unlikely that the Legislature intended for the entire regulatory framework to fail upon the invalidation of a single oversight limitation.

The Michigan Supreme Court's decision in *Blank* bolsters this conclusion. That opinion evaluated whether the infirm portion of the APA that violated the separation of powers could be severed. See *Blank*, 462 Mich at 122–124. The provisions that *Blank* determined to be an unconstitutional legislative veto could be severed from the remainder of the statute. *Id.* at 124. The operation and statutory language of the legislative veto in *Blank* mirrors the operation and statutory language of MCL 18.1451a(3). The JCAR had the purported statutory authority to "disapprove[ ] the proposed rule." *Blank*, 462 Mich at 109–110, quoting MCL 24.245(9). Here, the Appropriations Committees have the purported statutory authority to "disapprove[ ]" the "appropriations proposed to be designated as work projects." MCL 18.1451a(3). Given this similarity, *Blank* strongly counsels in favor of severance.

In sum, while the disapproval mechanism in MCL 18.1451a(3) amounts to an unconstitutional legislative committee veto that violates the Constitution, it is not fatal to the statute as a whole. Because the remaining provisions regarding temporal limits, substantive criteria, and reporting requirements are independently operable and further the Legislature's intent for fiscal oversight, the invalid portion is legally severable. Under the mandates of MCL 8.5 and MCL 18.1501, and consistent with the Michigan Supreme Court's decision in *Blank*, the legislative committee veto should be excised, leaving the balance of the work-project designation framework intact and enforceable.

CONCLUSION

It is my opinion, therefore, that the disapproval mechanism in MCL 18.1451a(3) amounts to a legislative committee veto that violates Article 3, § 2 of the Michigan Constitution, which requires the separation of powers among the three branches of government. Similarly, the legislative committee veto violates Article 4, § 33, which requires legislation to be completed consistent with the bicameralism and presentment requirements set forth in the Michigan Constitution. The legislative committee veto, however, may be severed from MCL 18.1451a(3), leaving the balance of the work-project designation framework intact and enforceable.

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