

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

MICHIGAN CANNABIS INDUSTRY  
ASSOCIATION and PF  
MANUFACTURING, LLC,

Plaintiff-Appellees,

v

STATE OF MICHIGAN et al,

Defendant-Appellants.

Court of Appeals No. 379076

Court of Claims, LC Docket No. 25-000160-  
MM

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**AMICI CURIAE MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF  
IN SUPPORT OF DEFENDANT-APPELLANTS' APPLICATION FOR LEAVE TO  
APPEAL**

Dated: January 29, 2026

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NOW COME proposed amici curiae, Michigan Public Transit Association, Michigan Association of Transportation Systems, and Michigan Environmental Council, by and through undersigned counsel, and pursuant to MCR 7.305(F) and MCR 7.211, move this Honorable Court for leave to file the proposed amicus curiae brief, attached as Exhibit A, in support of Defendant-Appellants' interlocutory application for leave to appeal. In support, amici state as follows:

### **RELIEF REQUESTED**

Amici respectfully request an order:

- A. Granting leave to file the attached proposed Amicus Curiae Brief (Exhibit A) in support of Defendant-Appellants' Application for Leave to Appeal;
- B. Accepting the proposed brief as filed contemporaneously with this motion (or, in the alternative, setting a briefing deadline consistent with MCR 7.305(F)); and
- C. Granting such other relief as the Court deems just and appropriate.

### **STATEMENT OF INTEREST**

Proposed amici curiae are a coalition of statewide organizations representing Michigan public transit providers and environmental and transportation stakeholders. Amici have a direct interest in the stability and implementation of the Comprehensive Road Funding Tax Act and in the proper administration of Article 2 § 9 as applied to new statewide revenue measures. Because this interlocutory appeal presents a controlling question with immediate consequences for transportation funding and governance, amici respectfully seek leave to participate and provide context that will assist the Court in resolving the application.

### **ARGUMENT**

#### **A. Amici satisfy the standard for amicus participation at the application stage.**

Under MCR 7.305(F), an amicus curiae brief in response to an application for leave to appeal may be filed on motion granted by the Court. Amici seek leave because this appeal presents questions of statewide importance concerning the scope of Article 2, § 9's initiative-protection doctrine as applied to taxation, and because prompt appellate guidance will materially aid the Court in evaluating the application.

Amici's perspective is distinct from the parties'. The State's application contends that, once the Court of Claims correctly concluded CRFTA does not "effectively amend" MRTMA under the statutes' plain language, Article 2, § 9 was resolved as a matter of law—and that the court's decision to proceed into discovery on asserted "purpose frustration" both lacks doctrinal footing and improperly positions the judiciary as a check on the Legislature's tax-policy choices. Amici will address the practical implementation consequences of uncertainty for transportation planning and transit operations, and explain why an open-ended, econometric "frustration of purpose" inquiry would destabilize long-term funding for multimodal and public transportation.

**B. Leave should be granted because amici will assist the Court on issues of statewide significance.**

This case raises a controlling question about whether a court may convert an Article 2, § 9 analysis—as applied to taxation—into a fact-intensive inquiry requiring economic modeling and expert disputes. The resolution of that question will affect not only the challenged statute, but also the predictability of Michigan's ability to calibrate tax policy over time where voter-initiated statutes operate in the same regulatory field.

Amici's proposed brief explains why stable and predictable transportation funding is essential for multi-year planning, procurement, and capital commitments in public transit; and why prolonged uncertainty surrounding a statewide revenue mechanism risks immediate and non-remediable harm to transit service, regional mobility initiatives, and environmental outcomes.

**C. The motion is timely, and the Court may permit filing now to aid its consideration of the application.**

MCR 7.305(F) provides that an amicus brief in response to an application for leave to appeal must be submitted within 21 days after the timely filing of the answer or within 21 days after the time for filing the answer has passed, unless the Court directs otherwise. As of the date of filing, Plaintiff-Appellees have not yet filed an answer to Defendant-Appellants' application (to amici's knowledge). Amici request leave to file now because the issues presented are time-sensitive and because the Court may act on the application without further briefing. Early submission will assist the Court by providing focused context on the implementation consequences of the legal standard at issue.

## **CONCLUSION AND PRAYER FOR RELIEF**

For the foregoing reasons, amici respectfully request that the Court grant this Motion for Leave to File Amicus Curiae Brief and accept the proposed brief attached as Exhibit A (or set a filing deadline consistent with MCR 7.305(F)).

Respectfully submitted,

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Date: January 29, 2026

## **CERTIFICATE OF SERVICE**

I certify that on January 29, 2026, I served this Motion for Leave to File Amicus Curiae Brief and Exhibit A on all counsel of record via MiFILE, as indicated on the Court's e-filing system.

/s/ Zachary Kolodin (P84131)

## **EXHIBIT A**

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**PROPOSED AMICUS CURIAE BRIEF  
IN SUPPORT OF DEFENDANT-APPELLANTS' APPLICATION FOR LEAVE TO  
APPEAL**

Dated: January 29, 2026

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## STATEMENT OF QUESTIONS PRESENTED

**Question 1:** Whether Article 2, § 9 allows courts to treat the Legislature's authority to enact a revenue measure by simple majority as contingent on disputed economic predictions about how the measure might affect a separate voter-initiated regulatory scheme.

**Amici proposed answer:** No.

**Question 2:** Whether immediate appellate review is warranted where the order below converts Article 2, § 9 into an open-ended economic discovery inquiry with significant consequences for statewide fiscal and transportation policy.

**Amici proposed answer:** Yes.

## INTEREST OF AMICI CURIAE

1. Amici are a coalition of statewide organizations with an interest in promoting public transportation, sustainable transportation solutions, and infrastructure to support environmental well-being. Amici applauded the passage of the Comprehensive Road Funding Tax Act because it provides long-awaited funding for critical state infrastructure needs. Amici are concerned that this case could unwind the bargain struck in the Comprehensive Road Funding Tax Act, and, more fundamentally, undermine future efforts to obtain sustainable funding for transportation, infrastructure, and sustainability priorities.
2. **Michigan Public Transit Association (MPTA).** Founded in 1974, MPTA is a 501(c)(6) nonprofit representing Michigan's public transit agencies. Its membership includes more than 80 local public transit agencies and specialized service providers, as well as business members who support statewide mobility systems.
3. **Michigan Environmental Council (MEC).** Founded in 1980, the MEC, a 501(c)3 nonprofit organization, champions lasting protections for Michigan's air, water, and the places we love. MEC is a result of the combination of efforts from what was once known as the West Michigan Environmental Action Council, the East Michigan Environmental Action Council, The Sierra Club Mackinac Chapter, Michigan Audubon, the Detroit Bird Alliance, and the now-defunct Flint Environmental Action Team.
4. **Michigan Association of Transportation Systems (MASSTrans).** Founded in 1996, MASSTrans is a non-profit coalition of public transportation systems from across Michigan that focuses on advocacy and frontline employee training. MASSTrans advocates to improve the level, predictability and fairness of state funding, and to make public transportation systems more efficient and responsive to the needs of Michigan citizens.

## ARGUMENT

### **I. Public-Interest and Implementation Context Supporting Interlocutory Review**

This section explains (1) what is at stake in this case for Michigan residents, the economy, and the environment; (2) why Michigan’s long history of transit underinvestment makes stable incremental support, such as is provided by the Comprehensive Roads Funding Tax Act (CRFTA), unusually consequential; and (3) how the CRFTA’s transit funding design—centered on the Neighborhood Roads Funds’ operating support and the Infrastructure Projects Fund—depends on predictability to translate revenue into service and infrastructure. Against that backdrop, it then shows why ongoing legal uncertainty undermines CRFTA’s ability to deliver those benefits even if collections continue, and why the practical result of treating NRF resources as contingent is delayed projects, diminished planning horizons, and heightened risk of service retrenchment.

#### ***I.1. Public Transit Is a Critical Public Good***

Public transportation is often supported through state subsidies because local funding alone cannot reliably sustain systems whose benefits—mobility, access, and regional economic connectivity—extend across rural, suburban, and urban jurisdictions. Transit systems supported through the Comprehensive Transportation Fund (“CTF”) and Local Bus Operating (“LBO”) assistance are the backbone of day-to-day mobility for populations who would otherwise be isolated from work, healthcare, education, and basic services. In Michigan, these systems serve—among others—workers without reliable access to a vehicle, seniors, individuals with disabilities, and low-income residents, as well as rural and small urban communities that depend on demand-response and other non-urbanized services. The statutory design of statewide transit support reflects that reality, including distribution features that expressly recognize and protect rural agency needs.

Transit is also an investment in economic development. Reliable service expands labor-force participation, connects employers to broader labor pools, and supports regional growth strategies. When operating resources are constrained, agencies reduce frequency, shorten service

hours, and delay route expansions—changes that immediately reduce access to jobs and undermine workforce reliability.

Indeed, the Growing Michigan Together Council Report of 2023 tightly tied Michigan’s growth and competitiveness agenda to building stronger transit systems. It concluded that, “for Michigan to compete for jobs and talent,” the State needs “a robust public transit system that functions well within communities and seamlessly connects people to their jobs [and] their region.” Indeed, it framed transit (alongside housing and climate-resilient infrastructure) as one of the “fundamentals” needed to make Michigan communities magnets for employers and talent. (Growing Michigan Together Council Report 50–51 (Dec. 14, 2023).)

### ***1.2. Public Transit Produces Significant Environmental Benefits***

Public transit is also a meaningful environmental tool. By shifting trips from single-occupant vehicles to shared transportation, transit reduces vehicle miles traveled, lowers transportation-sector emissions, and improves local air quality—particularly in corridors where congestion and idling concentrate pollutants. Transit investments also reduce traffic congestion and energy consumption on a per-passenger-mile basis, helping Michigan achieve more efficient mobility outcomes with fewer environmental externalities.

One major benefit of public transit is reducing the total vehicle miles traveled (VMT) by private cars. Every trip taken on a bus or train can replace what would have been a solo car trip, thereby cutting down congestion and fuel usage. Nationally, the “leverage effect” of transit – by enabling more efficient land use and offering an alternative to driving – saves an estimated *4.2 billion gallons of gasoline annually*. This is equivalent to tens of billions of car miles avoided each year. In practical terms, households located near good transit drive much less: people living within 1/4 mile of a rail station or 1/10 mile of a bus stop drive 4,400 fewer miles per year on average compared to those with no transit access. This reduction in driving directly translates into lower fuel consumption and fewer emissions. *See American Public Transportation Association, Public Transportation’s Role in Reducing Greenhouse Gas Emissions 3 (2007).*

Shifting trips from cars to transit also reduces harmful air pollutants, yielding cleaner air – particularly in urban corridors with heavy traffic. Tailpipe pollutants from personal vehicles (such as fine particulate matter, nitrogen oxides, volatile organic compounds, carbon monoxide, and others) are major contributors to smog and local air quality problems. By carrying numerous

travelers in one vehicle, public transit lowers the total volume of tailpipe emissions released on busy roads. Fewer cars on the road means less idling and stop-and-go traffic, further cutting pollution. Southeast Michigan’s Healthy Climate Plan notes that actions like expanding transit produce co-benefits of improved local air quality through reduced emissions of VOCs, PM<sub>2.5</sub>, NO<sub>x</sub>, CO, and other pollutants. These pollutants are linked to respiratory problems and haze, so their reduction has direct public health benefits. *See* Southeast Michigan Council of Governments, Southeast Michigan Healthy Climate Plan 5-6 (Dec. 23, 2025) (noting that transit expansion reduces emissions of VOCs, PM<sub>2.5</sub>, NO<sub>x</sub>, CO, and improves local air quality).

### ***1.3. Michigan Has Chronically Underinvested in Public Transit***

The Legislature’s consideration of the CRFTA occurred in the context of longstanding constraints on transit operating funding and growing recognition that existing revenue mechanisms were insufficient to sustain reliable service levels. State operating assistance to Michigan’s local transit agencies has declined substantially over the past two decades: in FY 2000-01, the Comprehensive Transportation Fund reimbursed urban transit agencies at 38.1% of eligible operating expenses and nonurban agencies at 45.7%, but by FY 2022-23, those rates had fallen to just 29.2% and 35.0%, respectively—well below the statutory targets of 50% and 60%. (Mich. House Fiscal Agency, Fiscal Brief: The Comprehensive Transportation Fund (CTF) and State Support for Local Public Transportation 4–5 (Aug. 8, 2023).) And prior to 2025, transit capital lacked a dedicated funding mechanism. Uncertainty in expected transit funding streams predictably delays project delivery and increases costs: agencies cannot rely on stable, multi-year funding, they are forced into “pay-as-you-go” approaches that slow schedules or delay projects until funds accumulate, resulting in longer delivery timelines and associated cost escalation for materials and supplies. *See* Am. Pub. Transp. Ass’n, *The Benefits of Reliable Federal Funding for Public Transportation* 20–21 (2015).

Agencies therefore face intensifying pressure to reduce service, defer fleet replacement, and limit expansion even as mobility needs grow and regional systems increase in size and complexity. When operating support lags behind costs year after year, agencies are forced into a cycle of service retrenchment, deferred maintenance, and reduced reliability—conditions that suppress ridership and weaken the economic and environmental returns that transit is capable of delivering.

This backdrop is important to the interlocutory question before the Court. Where funding has been historically constrained, new operating and project-support mechanisms are not merely marginal improvements; instead, they are the difference between maintaining service and cutting it. That is why stable, predictable revenue design matters so much in Michigan’s transit context.

#### **I.4. The CRFTA Is Designed, in Part, to Remedy Underinvestment in Transit Through Stable Transit Support and Multimodal Investment**

The CRFTA’s transportation revenue architecture was designed to address these structural deficiencies by strengthening both (i) operating support for existing systems and (ii) the State’s ability to launch and sustain new mobility projects. In particular, the Neighborhood Roads Fund (“NRF”) structure integrates into Michigan’s transit funding framework by providing new operating resources through the CTF and by establishing the Infrastructure Projects Authority Fund (“IPAF”) to support high-capacity mobility and other multimodal initiatives. *See* Mich. House Fiscal Agency, *House Legislative Analysis of HB 4180* (Mar. 11, 2025).

For transit operations, the CRFTA framework contemplates a predictable multi-year infusion of CTF operating support—resources intended to bolster LBO reimbursements and help agencies maintain service levels as operating costs rise. (*Id.*) For innovation and expansion, the IPAF component supplies seed capital to plan and implement high-capacity mobility projects, first/last-mile solutions, regional connections, and specialized services suited to lower-density areas—while also enabling targeted supplemental operating support for new projects during ramp-up periods. (*Id.*) And by explicitly prioritizing multimodal and high-capacity mobility investments, the NRF/IPAF design aligns transportation finance with outcomes that include reduced congestion and improved environmental performance.

In other words, the CRFTA is not simply about raising revenue. It is structured to convert a revenue stream into implementable transit outcomes: stabilized operations, improved service reliability, and the capacity to plan and execute new mobility investments over a multi-year horizon. That design depends on predictability. A funding mechanism that is treated as legally contingent—subject to months or years of fact-intensive constitutional litigation—cannot perform the function it was built to perform, even if collections continue in the interim.



## **I.5. Continued Litigation Undermines CRFTA’s Ability to Deliver Transit Benefits Even if Revenues Continue to Be Collected**

The harm from prolonged constitutional uncertainty is not limited to the hypothetical loss of revenue years from now. Even if taxes continue to be collected while this case proceeds, the ongoing pendency of a challenge that subjects the CRFTA’s revenue design to an open-ended, fact-intensive “purpose frustration” inquiry undermines the statute’s capacity to deliver the benefits it was enacted to provide.

Transit is uniquely sensitive to uncertainty because its benefits are realized through commitments—multi-year service plans, procurement schedules, labor planning, intergovernmental coordination, and project delivery. Agencies and local partners cannot prudently build recurring service levels or multi-year capital programs around funds that may later be judicially invalidated, curtailed, or placed under continuing legal cloud. The rational institutional response is to treat those dollars as contingent: to delay obligations, scale back planned expansions, shorten planning horizons, and avoid long-term contractual commitments that depend on dependable operating support.

This “chilling effect” is itself a form of irreparable harm. The value of a dedicated funding stream lies in its ability to unlock action—launching new services, sustaining frequency, and executing projects on predictable timelines. Uncertainty prevents that conversion of revenue into service and infrastructure. It converts a statutory commitment into a provisional promise, discouraging the very planning and capital formation that the CRFTA was designed to induce.

For these reasons, the pendency of this case undermines CRFTA implementation even under the most favorable assumption that collections continue uninterrupted. The injury is not simply fiscal; it is practical and operational: delayed projects, deferred service decisions, and lost opportunities that cannot be recaptured by a later merits ruling.

## **II. Leave Should Be Granted Because the Order Raises a Controlling Legal Question and Immediate Review Is Necessary**

### ***II.A Controlling Question of Law***

This interlocutory appeal turns on a controlling legal question: does Article 2, § 9 allow courts to treat the Legislature’s authority to enact a revenue measure by simple majority as contingent on disputed economic predictions about how the measure might affect a separate

voter-initiated regulatory scheme? The clear answer is no. Turning the analysis under Michigan Constitution, Art. 2 § 9, into a fact-intensive “frustration of purpose” test invites the substituting judicial policy judgment for that of the legislature (violating separation of powers), risks fiscal ossification by inviting frustration of purpose challenges to every new tax that touches on a subject regulated by an initiated law, and risks turning litigation around initiated laws in Michigan into mini-antitrust proceedings reaching far beyond the requirements of the Michigan Constitution.

### ***II.B Immediate Review is Necessary to Prevent Irreparable Harm***

This Court should grant leave to appeal because the order below subjects the CRFTA’s core revenue mechanism to an extended uncertainty period at the very moment implementation decisions must be made. The challenged approach invites prolonged litigation over whether a duly enacted tax measure frustrates the purpose of a voter-initiated law based on contested economic effects. In practice, that uncertainty—rather than any ultimate merits outcome—threatens immediate and non-remediable harm to CRFTA’s transportation objectives.

The urgency is particularly acute for public transportation. Transit requires long advance planning. Service expansions, route redesign, and multi-jurisdiction coordination are executed on multi-year timelines. When a dedicated funding stream is placed under a litigation cloud that signals years of unresolved constitutional exposure, agencies and local partners rationally defer commitments, postpone procurement, and slow program design. Those delays defeat CRFTA’s objective of translating enacted policy into timely improvements.

Moreover, transit requires capital certainty. Transit capital programs depend on long-horizon commitments to vehicles, facilities, technology, and maintenance—often through multi-year contracts and financing arrangements. Counterparties and local partners price legal uncertainty; the result is higher costs, less favorable terms, reduced participation, and, in some cases, the loss of projects that are only feasible with dependable funding. Even if the State later prevails, a final judgment cannot restore procurement windows missed, projects abandoned, or costs inflated by avoidable uncertainty.

## ***II.C Interlocutory Review Will Materially Advance the Proceedings***

Immediate review will materially advance the proceedings by clarifying the proper analytical framework and avoiding unnecessary litigation burdens. Without guidance from this Court, the case proceeds under an erroneous standard that transforms a constitutional limits question into a sprawling inquiry into economic effects, market behavior, and legislative efficiency.

First, immediate review will prevent unnecessary and intrusive discovery. If the question under Article 2, § 9 is properly a legal inquiry—focused on whether the statute’s text directly conflicts with an initiative’s operative provisions or unmistakable purposes—then the factual record is largely irrelevant. Allowing the case to proceed under a “purpose frustration” framework invites precisely the kind of discovery the Constitution does not require: expert battles over economic incidence, consumer substitution, and the downstream effects of tax policy.

Second, appellate clarification will determine whether dispositive motion practice is even available. If the trial court is correct that the constitutional analysis under Art. 2 § 9 requires factual development on market response and legislative effect, then no future tax that relates to a voter-initiated regulatory framework can be adjudicated on the pleadings. That approach freezes the litigation posture and obstructs judicial economy—outcomes that immediate review can and should prevent.

Third, this is not a case where the ordinary costs of litigation justify deferral. Treating legislative tax powers as contingent on disputed economic outcomes invites serial litigation every time the Legislature adjusts revenue streams related to an initiated law. The chilling effect on tax legislation is immediate, and the harm to initiative integrity is speculative at best. The constitutional balance demands resolution now—not after years of avoidable litigation.

## **III. Conclusion**

For these reasons, the Court should grant Defendant–Appellants’ application for leave to appeal and provide immediate guidance that an Article 2, § 9 initiated-law challenge to a tax statute is a legal question not requiring broad economic factfinding. Consistent with *Mothering Justice*, because CRFTA does not impose an undue burden on voters’ initiative rights, the Court

should reverse the order below to the extent it authorizes a fact-intensive “purpose frustration” inquiry and remand for disposition under the correct legal standard—including, if appropriate, entry of judgment for Defendants as a matter of law. (*Mothering Justice v Attorney General*, \_\_\_ Mich \_\_\_, \_\_\_ (2024) (Docket No. 165325) (cleaned up); slip op at 11; 2024 WL 3610042, at \*5, opinion clarified 10 NW3d 845 (Mich, 2024).) Indeed, the Court of Claims already resolved the dispositive legal question when it held that MRTMA is not the exclusive vehicle to tax marijuana transactions. (Court of Claims Op & Order, Dec. 8, 2025, at 12.) In other words, because the voters contemplated new taxes being levied (evidenced by MRTMA’s “all other taxes” language), MRTMA’s 10% excise tax and the CRFTA’s 24% wholesale tax can coexist without obstructing the rights of the electorate exercised through the initiated law process. (MCL 333.27963(1).)