IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-PL-518

Eric J. Holcomb, Governor of the State of Indiana,
Appellant

–v–

Rodric Bray, in his official capacity as President Pro Tempore of the Indiana State Senate and Chairman of the Indiana Legislative Council; Todd Huston, in his official capacity as the Speaker of the Indiana House of Representatives and Vice-Chairman of the Indiana Legislative Council; The Indiana Legislative Council; and The Indiana General Assembly,
Appellees

Argued: April 7, 2022 | Decided: June 3, 2022

Appeal from the Marion Superior Court
No. 49D12-2104-PL-14068
The Honorable Patrick J. Dietrick, Judge

Opinion by Chief Justice Rush

Justices David, Massa, Slaughter, and Goff concur.

Rush, Chief Justice.

This case presents a dispute between the executive and the legislative branches of our state government over the scope of their respective constitutional authority. The General Assembly enacted a law that allows it to call itself into emergency session, which the Governor challenges as unconstitutionally co-opting a purely executive function.

The question before us is not whether it is sensible for the General Assembly to be able to set an emergency session. We decide only whether the Legislature's chosen mechanism is permissible under the relevant constitutional text, which requires the length and frequency of legislative sessions to be "fixed by law." That is, each session must be specifically set by a bill enacted by the full General Assembly when it is in session. Yet, the challenged law purports to delegate this authority to a small group of legislators and allows them to wield that power outside of session. Under our Constitution, the General Assembly simply cannot do what the challenged law permits absent a constitutional amendment.

Finding that the Governor has satisfied the high burden required to establish that the law is unconstitutional and rejecting the Legislative Parties' arguments that the suit is procedurally barred, we reverse in part and affirm in part.

Facts and Procedure

During the 2021 legislative session, in the midst of the COVID-19 pandemic, the Indiana House of Representatives introduced the bill that would become House Enrolled Act 1123 ("HEA-1123"). HEA-1123 authorizes the General Assembly to commence an "emergency session" if a small subset of legislators—eight members from each of the two chambers, known as the Legislative Council—adopts a resolution that finds the following:

> (1) The governor has declared a state of emergency that the legislative council determines has a statewide impact.

> (2) It is necessary for the general assembly to address the state of emergency with legislative action.
>
> (3) It is necessary for the general assembly to convene an emergency session, in accordance with its authority to determine the length and frequency of legislative sessions under Article 4, Section 9 of the Constitution of the State of Indiana.

Pub. L. No. 64, § 4, 2021 Ind. Acts. 731, 733 (codified at Ind. Code § 2-2.1-1.2-7). The Legislature passed HEA-1123 on April 5.

Four days later, Governor Eric J. Holcomb vetoed the bill, writing that he "firmly believe[s] a central part of this bill is unconstitutional." He went on to explain that, in his view, the law impermissibly gives the General Assembly "the ability to call itself into a special session, thereby usurping a power given exclusively to the governor under Article 4, Section 9 of the Indiana Constitution." Soon after, the General Assembly overrode the Governor's veto. And because an emergency was declared for HEA-1123, the law went into effect immediately.

On April 27, Governor Holcomb filed suit against the Indiana State Senate President Pro Tempore and Chairman of the Legislative Council; the Speaker of the Indiana State House of Representatives and Vice-Chairman of the Legislative Council; the Legislative Council; and the Indiana General Assembly (collectively the "Legislative Parties"). Governor Holcomb sought a declaration that certain provisions of HEA-1123 were unconstitutional and an injunction to permanently enjoin enforcement of those provisions.

Three days later, the Indiana Attorney General, appearing on behalf of both the Governor and the Legislative Parties, filed a motion to strike "the appearances and all filings by unauthorized attorneys purporting to represent the Governor of Indiana in this case." The Attorney General claimed that his office is solely responsible for the state's legal representation and that he had not authorized anyone outside of his office to represent the Governor. In response, the Governor asserted he did not need the Attorney General's consent to hire outside counsel "when

seeking to defend his . . . constitutional rights and responsibilities." After a hearing, the trial court denied the motion to strike, finding no legal authority preventing the Governor from hiring his own counsel under these circumstances. The Attorney General then moved to certify the trial court's order for interlocutory appeal, but the court denied the motion.

Soon after, the Governor and Legislative Parties filed cross-motions for summary judgment. The Governor argued the undisputed facts establish that HEA-1123 is unconstitutional and void as a matter of law since it "purports to grant the General Assembly, through its Legislative Council, a constitutional power exclusively granted to the governor." The Legislative Parties agreed that the facts were undisputed but claimed that they were entitled to summary judgment because HEA-1123 is a lawful exercise of the General Assembly's constitutional authority to set its own meeting times. They also set out several procedural arguments as to why the Governor could not pursue the lawsuit, including that the Governor lacks standing, the case is not yet ripe, the Governor lacks the authority to hire outside counsel to bring this suit since he did not first get consent from the Attorney General, and the relief sought by the Governor is barred by the legislative-immunity and political-question doctrines. After a hearing, the trial court rejected the procedural arguments but found that HEA-1123 is constitutional.

The Governor appealed, requesting direct transfer to this Court under Appellate Rule 56(A). We accepted the Governor's request.

Standard of Review

We review de novo the propriety of summary judgment and pure questions of law, including constitutional claims and the procedural defenses raised here. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014); *City of Hammond v. Herman & Kittle Props., Inc.*, 119 N.E.3d 70, 78 (Ind. 2019).

Discussion and Decision

The Indiana Constitution vests the executive power of our state in the Governor and the legislative power of our state in the General Assembly. Ind. Const. art. 4, § 1; *id.* art. 5, § 1. To ensure these powers remain separate, Article 3, Section 1 mandates that neither branch "shall exercise any of the functions of another, except as in this Constitution expressly provided." *Id.* art. 3, § 1. So, though this distribution-of-powers mandate generally prevents one branch of government from usurping the power constitutionally vested in another, some otherwise impermissible interference is authorized. *See, e.g.*, *State v. Monfort*, 723 N.E.2d 407, 412 (Ind. 2000) (finding that a constitutional provision in the judicial-branch article confers upon the Legislature a limited power); *State v. Denny*, 118 Ind. 382, 21 N.E. 252, 254 (1889) (finding that the executive and legislative branches share constitutional appointment power even though, generally, "the appointment to an office is an executive function").

The General Assembly's primary role is to exercise the legislative power of the state, which includes making and enacting laws. Inherent in this function is the ability to deliberate and debate—processes that occur in legislative sessions. Our Constitution provides details on such sessions in Article 4, Section 9:

> The sessions of the General Assembly shall be held at the capitol of the State, commencing on the Tuesday next after the second Monday in January of each year in which the General Assembly meets unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time by proclamation, call a special session. The length and frequency of the sessions of the General Assembly shall be fixed by law.

Ind. Const. art. 4, § 9. Notably, although legislative sessions are inherently a legislative-branch function, the second sentence of Article 4, Section 9—the special-session clause—gives the Governor the authority to "call a special session." But the last sentence—the length-and-frequency clause which was added by amendment in 1970—gives the General Assembly

authority over the length and frequency of its sessions, so long as it exercises that authority "by law."

Here, HEA-1123 permits the sixteen-member Legislative Council to set an emergency session after adopting a resolution at a time when the General Assembly is not in session. The Governor, finding no distinction between an emergency session and a special session and believing the authority to call a special session is vested solely in the executive branch, seeks a declaratory judgment that HEA-1123 is unconstitutional on several grounds. The Legislative Parties dispute those claims and also present several procedural reasons why the Governor should not be permitted to bring them in the first place.

We hold that HEA-1123 violates Article 4, Section 9's fixed-by-law requirement by authorizing an emergency session to be set through a simple resolution, rather than a properly enacted bill as our Constitution requires. We also hold that HEA-1123 violates Article 3, Section 1's distribution-of-powers mandate by allowing the setting of an emergency session to occur at a time when the General Assembly is not in session—authority conferred only upon the Governor. For these reasons, HEA-1123 is constitutionally infirm absent an amendment under Article 16.[1] We note, however, that despite HEA-1123's deficiencies, the General Assembly is not prohibited from setting additional sessions so long as it complies with Article 4, Section 9's fixed-by-law requirements.

Although we begin our discussion with an analysis of the constitutional challenges to HEA-1123, we first carefully considered the Legislative Parties' threshold procedural arguments for why we should not reach the merits of the Governor's claims. And while several of the procedural arguments are novel, we ultimately find none of them persuasive. In the end, we affirm in part and reverse in part.

[1] We reach this conclusion based solely on the challenged portions of HEA-1123. Though Indiana Code section 1-1-1-8.6 explicitly provides that "[t]he provisions of HEA 1123-2021 are severable," neither party has argued the law is severable.

I. Under our Constitution, the General Assembly must set the length and frequency of sessions in a properly enacted law, and a law can be properly enacted only during session.

The Governor claims that HEA-1123 violates three provisions of the Indiana Constitution: Article 3, Section 1 (distribution of powers); Article 4, Section 9 (legislative sessions); and Article 16 (amendments). For reasons explained below, each claim ultimately hinges on the meaning and scope of Article 4, Section 9. That provision states that the Governor "may, at any time by proclamation, call a special session" but also specifies that "[t]he length and frequency of the sessions of the General Assembly shall be fixed by law." Ind. Const. art. 4, § 9.

Recognizing that HEA-1123 authorizes an emergency session to be set by resolution, the Governor asserts that HEA-1123 violates Article 4, Section 9's requirement that the frequency of sessions be "fixed by law." The Governor also maintains that our Constitution contemplates only two types of legislative sessions: regular and nonregular. And, in his view, Article 4, Section 9's special-session clause vests with Indiana Governors the sole constitutional authority to ever call a special—nonregular—session. Because HEA-1123 provides a mechanism by which the General Assembly can convene an emergency—nonregular—session, the Governor contends HEA-1123 violates Article 3, Section 1's distribution-of-powers mandate. He therefore contends that the law constitutes an impermissible "end-run around" Article 16's requirements for amending the Constitution.

In addressing these arguments, we are mindful that all laws come "before us clothed with the presumption of constitutionality unless clearly overcome by a contrary showing." *Meredith v. Pence*, 984 N.E.2d 1213, 1218 (Ind. 2013) (quoting *Baldwin v. Reagan*, 715 N.E.2d 332, 337 (Ind. 1999)). Thus, the Governor bears a high burden to show that HEA-1123 is unconstitutional, and we will resolve any doubts about the law's constitutionality in the Legislature's favor. *Paul Stieler Enters., Inc. v. City of Evansville*, 2 N.E.3d 1269, 1273 (Ind. 2014).

When a question arises under our Constitution, we must examine "the language of the text in the context of the history surrounding its drafting and ratification, the purpose and structure of our Constitution, and case law interpreting the specific provisions." *Hoagland v. Franklin Twp. Cmty. Sch. Corp.*, 27 N.E.3d 737, 741 (Ind. 2015) (quoting *Nagy ex. rel. Nagy v. Evansville-Vanderburgh Sch. Corp.*, 844 N.E.2d 481, 484 (Ind. 2006)). In undertaking this examination, we treat the language in each provision with "deference, as though every word had been hammered into place." *Meredith*, 984 N.E.2d at 1218. The language is particularly valuable because it "tells us how the voters who approved the Constitution understood it." *McIntosh v. Melroe Co.*, 729 N.E.2d 972, 983 (Ind. 2000).

Thus, to resolve the Governor's constitutional claims, we first examine the history and evolution of the constitutional provisions conferring gubernatorial power to call a special session and those granting and restricting legislative control over the length and frequency of sessions.

A. History shows that the framers and ratifiers of our Constitution have conferred upon the General Assembly increasing control and flexibility over legislative sessions.

Indiana Governors have always had the constitutional authority to call a legislative session, but the scope of that authority has changed. The 1816 Constitution authorized the Governor to convene the General Assembly "in extraordinary occasions." Ind. Const. of 1816, art. IV, § 13. That power was in Article IV, which prescribed the authority of the executive branch. The legislative-branch article mandated that the General Assembly would meet annually on a specified date and "at no other period, unless directed by law, or provided for by this Constitution." *Id.* art. III, § 25.

In the years following adoption of the 1816 Constitution, there were several unsuccessful attempts to call a convention to amend the document. While myriad reasons for revision were offered, among the "major issues" identified were limiting the frequency and length of legislative sessions, allowing the General Assembly to fix "the time and place of meetings," and addressing the "governor's authority to call

special or emergency sessions." William P. McLauchlan, *The Indiana State Constitution: A Reference Guide* 5–6 (1996). In 1850, after Indiana voters were finally successful in calling for a convention, the delegates responded by making significant changes to legislative sessions.

One meaningful change was to the placement of the Governor's authority to convene the Legislature. That power was removed from the executive-branch article and a similar provision was added to the legislative-branch article authorizing the Governor to call a special session "by proclamation." Ind. Const. art. 4, § 9. Before this provision was adopted, however, delegates on multiple occasions submitted proposals to add language that would have expanded the Governor's special-session authority by requiring the General Assembly to act only on subjects specified in the Governor's proclamation. 1 *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana* 97 (1850); 2 *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana* 1067–71 (1850) [hereinafter *Debates*]. Even though the delegates placed considerable emphasis on constraining the Legislature's authority, *see* Donald F. Carmony, *The Indiana Constitutional Convention of 1850–1851* 11–13 (2009), the proposals to further expand the Governor's authority over special sessions were met with fervent opposition.

Recognizing that the convention had already agreed to impose biennial sessions, Delegate Jacob Chapman of Marion County noted that the General Assembly's power had been reduced by "at least fifty percent" and warned that expanding gubernatorial authority over special sessions "would nearly annihilate" the remaining legislative power. *Debates*, *supra*, at 1068. Delegate Horace Biddle of Cass County went further in his criticism, calling one of the proposals "the worst provision that has been introduced into this body" and opining that it "would bring the legislative power to the feet of the Executive." *Id.* at 1069. He remarked, "If there is a power in the State that should be kept free, above all others, it is the Legislative; and if there is a power to be restricted, it is the Executive." *Id.* Ultimately, the delegates not only moved the Governor's power to call special sessions into the legislative-branch article but also rejected the proposals to expand that power.

Nevertheless, the 1851 Constitution imposed significant restrictions on the General Assembly's control over legislative sessions. Aside from including the Governor's special-session authority, Article 4, Section 9 instituted biennial sessions and set their commencement date and location:

> The sessions of the General Assembly shall be held biennially at the capital of the State, commencing on the Thursday next after the first Monday of January, in the year one thousand eight hundred and fifty-three, and on the same day of every second year thereafter, unless a different day or place shall have been appointed by law. But if, in the opinion of the Governor, the public welfare shall require it, he may at any time by proclamation, call a special session.

Ind. Const. art. 4, § 9 (later amended in 1970). And Article 4, Section 29 imposed length restrictions: sixty-one days for biennial sessions and forty days for special sessions. *Id.* art. 4, § 29 (later amended in 1970). These constraints remained unaltered for over one hundred years—that is, until they proved unworkable.

By the mid-twentieth century, the magnitude and complexity of state government had grown substantially and showed no signs of slowing down. This trend resulted in a nationwide effort by state legislatures to regain their position as a coequal branch of government, often through constitutional amendments that eased or removed constraints on the length and frequency of sessions. Ind. Legis. Council, *Fall Referendum to Be Held on 3 Amendments*, 4 Legis. Ledger 3, 1–2 (July 1970); *State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wash. 2d 175, 492 P.2d 1012, 1016–19 (1972). One court aptly recognized the obvious "futility of state legislatures attempting to cope with the multiplying problems of modern government in biennial sessions of limited days." *Kinnear*, 492 P.2d at 1018 (quoting George S. Blair, *American Legislatures: Structure and Process* 151–52 (1967)). In Indiana, legal commentators characterized such constitutional restrictions as a "chief problem[] of the legislature" in need of revision. Louis E. Lambert & E.B. McPheron, *Modernizing Indiana's Constitution*, 26 Ind. L.J. 185, 190 (1950–51).

In light of these concerns, the 1965 General Assembly created the Study Committee on Legislative Operations and instructed it to study legislative needs and recommend changes during the next biennial session. S. Con. Res. 32, 94th Gen. Assemb., Reg. Sess. (Ind. 1965). The Committee's report subsequently recommended that the General Assembly propose a constitutional amendment to Article 4, Sections 9 and 29. Ind. Legis. Advisory Comm'n, *Biennial Report to the Indiana General Assembly* 23–24 (1967). The Committee suggested changing Section 9 in two ways. First, finding "that two months out of 24 is not sufficient time to transact the State's business," the Committee advised imposing annual sessions. *Id.* at 14, 23. And second, believing that the Legislature "should have the power to call itself into special session," the Committee recommended adding a clause that provided such a mechanism. *Id.* at 15, 23–24. It also suggested two changes to Section 29: (1) specify that the session-length restrictions are legislative days, not calendar days; and (2) mandate that a "regular session" not extend beyond April 30 and that a "special session" not extend beyond ninety calendar days. *Id.* at 15, 24.

The 1967 General Assembly heeded the recommendation to revise Article 4, Sections 9 and 29, but it ultimately modified the Committee's suggestions in a way that expanded the Legislature's flexibility over legislative sessions. Indeed, the General Assembly passed a resolution proposing an amendment that deleted the frequency restriction from Section 9 and the length restrictions from Section 29. S.J. Res. 11, 95th Gen. Assemb., Reg. Sess. (Ind. 1967). The proposed amendment instead added to Section 9 a requirement that "[t]he length and frequency of the sessions of the General Assembly shall be fixed by law." *Id.* There was also a schedule attached that would be in effect "until the length and frequency of such sessions are fixed by law." *Id.* But before the proposed amendment could be put to the voters, it needed approval by the next General Assembly in 1969. *See* Ind. Const. art. 16.

Meanwhile, in the fall of 1967, the Legislature established the Indiana Constitutional Revision Commission and charged it with "making recommendations relevant to revision of the Indiana Constitution." Const. Revision Comm'n, *Biennial Report to the Indiana General Assembly* 6 (1969). In its report, the Commission concluded that Article 4's length-and-

frequency restrictions "urgently require change." *Id.* at 17. And it strongly endorsed the revisions to Sections 9 and 29, identifying that the proposed amendment "would permit establishing the length and frequency of session by law rather than in the Constitution," thus giving the General Assembly flexibility to "change the duration or frequency as dictated by the needs of the State." *Id.* at 18.

The 1969 General Assembly responded by overwhelmingly approving the proposal, H.R.J. Res. 10, 96th Gen. Assemb., Reg. Sess. (Ind. 1969), meaning the amendment would be placed on the November 1970 ballot. In the interim, the Legislature tasked a committee with studying "the improvements necessary in the legislative process" if the amendment were ratified. Ind. Legis. Process Comm., *Report of the Legislative Process Committee* i (1969). Realizing that ratification would require the 1971 General Assembly to "enact a law prescribing the length and frequency of future sessions," the Committee drafted the Legislative Sessions and Procedures Act of 1971. *Id.* at 3, 5.

Then, just a few months before the ratification vote, the Legislature's internal newsletter included an article providing background and analysis on the amendment. Ind. Legis. Council, *supra*, at 2–3. That article highlighted the additional flexibility the revisions to Article 4, Sections 9 and 29 would provide by permitting "the General Assembly to determine how long and how often to meet—and, further, to change that determination if it proved unreasonable or unworkable." *Id.* at 2. Among the reasons advanced for the proposed changes was that "legislatures must have the power to act as required" and that "[t]he needs of the state should be met as they arise, not postponed for many months until the legislature can convene." *Id.*

That November, the election ballot asked voters whether the Indiana Constitution should "be amended to permit the General Assembly to meet annually instead of biennially, and to establish the length and frequency of its sessions and recesses by law?" The amendment passed. And, during the subsequent legislative session, the General Assembly enacted the Legislative Sessions and Procedures Act, rendering the amendment's

schedule obsolete. *See* Pub. L. No. 6, 1971 Ind. Acts 104 (codified at Ind. Code art. 2-2.1).

This history and evolution are telling. Changes from the 1816 Constitution to the 1851 Constitution resulted in moving the gubernatorial authority to call a special session from the executive-branch article to the legislative-branch article, rejecting proposals to increase the Governor's control over such sessions, and imposing significant restrictions on the length and frequency of sessions. Then, when the restrictions proved untenable, they were removed by constitutional amendment. And, notably, that amendment's addition to Article 4, Section 9, specifying that the "length and frequency of the sessions of the General Assembly shall be fixed by law," is unique—no other state constitution includes such broad language.[2] That new clause, coupled with the removal of length-and-frequency restrictions, shows that the ratifiers broadened the General Assembly's authority to control the length and frequency of sessions, so long as it exercises that authority "by law." This historical context provides the lens through which we now address the Governor's arguments that HEA-1123 is unconstitutional.

B. The General Assembly has unique constitutional authority over the length and frequency of its sessions, but because it must exercise that authority "by law," it can be done only when in session.

Emphasizing that Article 4, Section 9 requires a session's length and frequency to be "fixed by law," the Governor maintains that HEA-1123 is

[2] Like Indiana, thirteen other states lack a constitutional provision explicitly allowing their legislatures to call a special session. Eleven of those state constitutions include the governor's authority to call a special session in the executive-branch article. Ala. Const. art. 5, § 122; Ark. Const. art. 6, § 19; Idaho Const. art. IV, § 9; Ky. Const. § 80; Mich. Const. art. 5, § 15; Miss. Const. art. 5, § 121; N.D. Const. art. 5, § 7; R.I. Const. art. 9, § 7; S.C. Const. art. IV, § 19; Tex. Const. art. 4, § 8; Vt. Const. ch. 2, § 20. For the two states that include that constitutional authority in the legislative-branch article, neither provision contains language allowing their legislatures to fix by law the length and frequency of sessions. *Compare* Cal. Const. art. 4, § 3, *and* Minn. Const. art. 4, § 12, *with* Ind. Const. art. 4, § 9.

constitutionally infirm because it allows the Legislative Council to set an emergency session by resolution. The Governor also claims that Section 9's special-session clause vests in his office the sole constitutional authority to ever call a nonregular session. He therefore argues the law violates Article 3, Section 1's prohibition against commingling expressly conferred powers and impermissibly circumvents Article 16's requirements for amending the Constitution. The Legislative Parties respond that "the General Assembly may set 'by law' whatever rules it wishes to govern the timing of its sessions—which is precisely what it has done with HEA 1123."

Both the Governor and the Legislative Parties paint with too broad a brush. Any session set by the General Assembly must be fixed through a properly enacted bill, not a simple resolution. And thus, when the General Assembly is not in session, it cannot set an additional session. Because HEA-1123 authorizes the Legislative Council to set an emergency session by resolution, the law violates Article 4, Section 9's fixed-by-law requirement. Further, we agree with the Governor that HEA-1123, by allowing the Legislative Council to set an emergency session while the General Assembly is not in session, violates Article 3, Section 1's distribution-of-powers mandate and impermissibly circumvents Article 16's requirements for amending the Constitution. However, we disagree with the Governor that the General Assembly lacks the constitutional authority to ever set additional sessions. As we explain below, the problem with HEA-1123 is not necessarily the what (setting an additional session) but the how (by simple resolution) and the when (outside of a session).

1. By authorizing the Legislative Council to set an emergency session through a simple resolution, HEA-1123 does not comply with Article 4, Section 9's fixed-by-law requirement.

With the passage of the 1970 amendment to Article 4, Sections 9 and 29, Hoosiers broadened the General Assembly's authority over the length and frequency of its sessions. But how the legislature exercises that authority is not limitless—they must be "fixed by law." Ind. Const. art. 4, § 9. The

plain meaning of this phrase—both today and when it was adopted—is clear. The meaning of "by law" derives from the last clause in Article 4, Section 1, which states that "no law shall be enacted, except by bill." *Id.* art. 4, § 1. And the meaning of "fixed" in this context, and at the time of the amendment, is to be "securely placed or fastened . . . not adjustable." *Fixed*, *Webster's Third New International Dictionary of the English Language Unabridged* (3d ed. 1963). Thus, "fixed by law" means to definitively set through a properly enacted bill.

An emergency session under HEA-1123 meets this requirement on the length, *see* I.C. § 2-2.1-1.2-9 (limiting duration of an emergency session), but it falls short on the frequency. The law authorizes the Legislative Council, at a time when the General Assembly is not in session, to set an emergency session after adopting a simple resolution. *Id.* § -7. But the Legislature can only "fix" the frequency of its sessions "by law" when it is in session because a bill can be enacted only when both Houses are convened. *See* Ind. Const. art. 4, §§ 18, 25. And that bill becomes a law only after other constitutional requirements are satisfied. *Id.* art. 5, § 14.

Further, a simple resolution does not fix anything "by law." *See, e.g.*, *May v. Rice*, 91 Ind. 546, 551 (1883). Indeed, a simple resolution is "inferior in efficiency to both a concurrent and a joint resolution, each of which is, in its turn, less effective, as the expression of legislative will, than a bill where enacted into a law." *Rice v. State*, 95 Ind. 33, 46 (1884). Aside from Article 4, Section 9, the framers included similar "by law" restrictions in numerous other constitutional provisions. *See, e.g.*, Ind. Const. art. 4, §§ 4, 5, 29; *id.* art. 5, § 10(b); *id.* art. 7, § 5; *id.* art. 8, § 1; *id.* art. 9, § 1; *id.* art. 10, §§ 1(a), 8. These provisions reveal the consequences of allowing the by-law restriction to be satisfied by a mere resolution of the Legislative Council. For example, the General Assembly could pass a statute allowing the Legislative Council to set Indiana's "property assessment and taxation" under Article 10, Section 1(a) or the state's income tax exemptions under Article 10, Section 8. Such a result would be contrary to our open, transparent, and accountable system of governance.

For these reasons, HEA-1123 violates Article 4, Section 9's fixed-by-law requirement. We acknowledge that, under the provision's plain language,

the Legislature could—during a session—enact a law designating that the General Assembly will convene at a future date and place and for a specified period of time. Or it could—during a session—revise sections of the Legislative Sessions and Procedures Act such as the session-length requirements and the mandatory sine die adjournment dates. *See* I.C. §§ 2-2.1-1-2, -3; *cf. League of Women Voters of Wis. v. Evers*, 929 N.W.2d 209, 219 (Wis. 2019) (describing Wisconsin's statutory scheme whereby its legislature is continually "in session" until a sine die adjournment, the date of which is not set by statute). But when the General Assembly is not in session, it cannot fix by law the frequency of an additional session—which is precisely what HEA-1123 permits. So, as to his claim that HEA-1123 violates Article 4, Section 9's fixed-by-law requirement, the Governor has clearly overcome the law's presumption of constitutionality. And he has also made that showing on other grounds.

2. By authorizing the Legislative Council to set an emergency session at a time when the General Assembly is not in session, HEA-1123 infringes on constitutional authority vested only in the Governor.

Our distribution-of-powers provision mandates that no person, charged with official duties under one of the three branches of government, "shall exercise any of the functions of another, except as in this Constitution expressly provided." Ind. Const. art. 3, § 1. Relying on Article 4, Section 9's special-session clause, the Governor claims that the "[a]uthority to trigger. . . non-regular sessions is given to one person," Indiana's Governor. And because HEA-1123 authorizes the Legislature to set an additional, nonregular session, the Governor claims that the law violates Article 3, Section 1's prohibition "against commingling powers" and disenfranchises Indiana voters of their constitutional right under Article 16 to vote on proposed amendments. Though we ultimately agree with these claims as to HEA-1123 specifically, we disagree that the Legislature lacks the constitutional authority to set additional sessions.

The framers and ratifiers of the 1851 Constitution viewed sessions as a function of the legislative branch and the Governor's limited power to call a special session as an exception to that function. Indeed, at the 1850–1851

constitutional convention, the delegates removed the gubernatorial power to convene the Legislature from the executive-branch article and inserted a new provision conferring that power in the legislative-branch article. Moreover, when the convention approved an Address to the Electors summarizing the newly proposed Constitution, the Governor's special-session authority was included in the section of the Address titled "In The Legislative Department." Carmony, *supra*, at 140, 142. This change is compelling evidence that the framers and ratifiers of the 1851 Constitution viewed the Governor's authority to call a special session as an exception to a legislative-branch function.

Further supporting this conclusion is the limited nature of the Governor's authority over special sessions. Indeed, the Governor can neither control the agenda of a special session, *Woessner v. Bullock*, 176 Ind. 166, 93 N.E. 1057, 1058 (1911), nor set its duration, Ind. Const. art. 4, § 9. These are powers reserved to the General Assembly; powers that are "limited only by the express inhibitions of the Constitution," *State v. Morris*, 199 Ind. 78, 155 N.E. 198, 202 (1927). And no constitutional provision expressly inhibits the Legislature from setting multiple sessions.

In fact, the plain meaning of the length-and-frequency clause indicates that the General Assembly can set additional sessions. That clause uses "sessions," plural, authorizing the General Assembly to set their length and frequency as long as it does so by law. From the time that clause was proposed in 1967 to its ratification in 1970, legislators understood the revision would provide them with increased flexibility to respond to the needs of the state as they arise. *See* Ind. Legis. Council, *supra*, at 2; Const. Revision Comm'n, *supra*, at 18. Further, the ballot language describing the amendment informed ratification voters of the General Assembly's broad new power to modify session frequency and thus call additional sessions. The ballot description concisely asked voters if Article 4, Sections 9 and 29 should be amended to allow the General Assembly "to establish the length and frequency of its sessions and recesses by law?" The power to control "frequency" and use of the plural "sessions" imply the authority to set multiple sessions. It is thus reasonable that a ratifier would have understood the amendment to permit the General Assembly to set additional sessions. *Cf. Snyder v. King*, 958 N.E.2d 764, 780 (Ind. 2011)

(recognizing the significant importance of "what those who ratified the Constitution understood it to mean").

In short, the history and plain meaning of the length-and-frequency clause reveal that the gubernatorial special-session authority is an "expressly provided" Article 3 exception to a legislative-branch function. *See Woessner*, 93 N.E. at 1059 (observing that the Constitution "clothes" the Governor "with certain legislative power"). And thus, so long as the General Assembly sets the length and frequency of a session through a properly enacted bill (among other constitutional requirements), it has the constitutional authority to do so. *Cf. Book v. State Off. Bldg. Comm'n*, 238 Ind. 120, 149 N.E.2d 273, 296 (1958) (observing that Article 3, Section 1 "does not prohibit the Legislature from engaging in activities which are properly incidental and germane to its legislative powers"). HEA-1123, however, extends beyond that authority.

Though the Legislature can set additional sessions, to do so at a time when the General Assembly is not in session violates our Constitution's distribution-of-powers mandate. Article 4, Section 9's length-and-frequency clause requires the General Assembly to exercise its authority over legislative sessions "by law" and, thus, only during a lawful session. This means that only the Governor has the constitutional authority to call a special session, i.e., one that is set at a time when the General Assembly is not in session. And so, by allowing the Legislative Council to set an emergency session at a time when the General Assembly is not convened, HEA-1123 infringes on a specific power given only to the Governor and is therefore constitutionally infirm absent an amendment under Article 16. Thus, the Governor has clearly overcome the law's presumption of constitutionality on these grounds as well.

We now turn to the Legislative Parties' threshold arguments that the Governor was procedurally barred from bringing this lawsuit. Though we discuss these claims after having concluded that HEA-1123 is unconstitutional, we thoroughly considered them before reaching that decision. And, as we explain below, we find each argument unpersuasive.

II. The Governor may pursue this action for declaratory and injunctive relief.

The Governor here seeks a declaratory judgment that HEA-1123 is unconstitutional and a corresponding injunction to prevent the law from being enforced. In addition to challenging the merits of the Governor's claims, the Legislative Parties assert numerous procedural arguments and contend that, for any one of these reasons, we need not address the above constitutional claims. They argue the Governor cannot bring a declaratory action since he is not a "person" authorized to seek declaratory relief under Indiana's Declaratory Judgment Act (DJA). And since, they insist, the Governor "is in no immediate danger of suffering a direct injury" from HEA-1123, he lacks standing and his claims are not ripe. They also assert the Governor lacks the unilateral authority to sue without the Attorney General's consent, which he did not receive. And they would have us find that both the legislative-immunity and the political-question doctrines bar the Governor from seeking injunctive relief against the Legislature. We ultimately disagree with each claim and note that some of them implicate further separation-of-powers concerns.

A. The Governor is a "person" with standing to seek a declaratory judgment, and his claims are ripe to decide.

Declaratory judgments are an expeditious and economical way to decide controversies while there is still time for "peaceable judicial settlement." *Volkswagenwerk, A.G. v. Watson*, 181 Ind. App. 155, 390 N.E.2d 1082, 1084–85 (1979), *trans. denied*. They allow courts to declare the rights of parties and to express an opinion on a question of law without necessarily ordering the parties to take any specific action. *See* Ind. Code §§ 34-14-1-1, -12. But to bring a declaratory judgment action under the DJA, a party must first satisfy certain criteria.

Section 34-14-1-2 of the DJA establishes who may seek a declaratory judgment:

> Any person . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or

> franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

I.C. § 34-14-1-2. Thus, the Governor must make three showings: (1) he is a "person"; (2) his "rights, status, or other legal relations are affected by a statute"; and (3) he is questioning the construction or validity of that statute. *Id.*

Notably, though the Legislature did not define what it meant to be "affected by a statute" under the second requirement, we find it requires a plaintiff must have standing and that their claims must be ripe. *See Zoercher v. Agler*, 202 Ind. 214, 172 N.E. 186, 189 (1930). Standing asks whether a litigant is entitled to have a court decide the substantive issues of the claims presented, *Solarize Ind., Inc. v. So. Ind. Gas & Elec. Co.*, 182 N.E.3d 212, 216 (Ind. 2022), while ripeness asks whether the claim is sufficiently developed to merit judicial review, *Ind. Dep't of Env't Mgmt. v. Chem. Waste Mgmt., Inc.*, 643 N.E.2d 331, 336 (Ind. 1994). The Legislative Parties argue the Governor's claims do not—and cannot—satisfy these threshold requirements.[3]

We find that the Governor has made the third showing—he questions the validity of several statutes. But the remaining requirements are less clear: whether he is a "person" under the DJA, whether he has standing, and whether his claims are ripe for adjudication. We address each in turn.

1. The Governor is a "person" under the DJA.

The Legislative Parties assert that the Governor does not fall within the DJA's definition of "person"; the Governor responds that he—as a

[3] The Governor maintains he did not bring this suit under the DJA, and so its requirements should not apply to him. The Legislative Parties respond that the only way for the Governor to seek a declaratory judgment is through the DJA, and thus, he must satisfy its requirements. Because we ultimately find that the Governor satisfies the DJA's requirements, we need not address whether there is an alternate path by which he can seek a declaratory judgment.

constitutional officer—satisfies that definition. The DJA defines "person" as "any person, partnership, limited liability company, joint stock company, unincorporated association, or society, or municipal or other corporation of any character whatsoever." I.C. § 34-14-1-13. Applying our rules of statutory construction, we find that the Governor, under these circumstances, fits the bill.

Our goal when interpreting a statute is to determine and further the Legislature's intent. *West v. Off. of Ind. Sec'y of State*, 54 N.E.3d 349, 353 (Ind. 2016). Noting that the statute is the best evidence of that intent, we "first examine whether the language of the statute is clear and unambiguous." *State v. Am. Fam. Voices, Inc.*, 898 N.E.2d 293, 297 (Ind. 2008). We construe statutes only where there is some ambiguity requiring our construction. *Id.*

The DJA's definition of "person" is ambiguous. The list of potential litigants includes "any person." I.C. § 34-14-1-13. To be sure, "person" is an ordinary word to which we could apply an ordinary definition—a "human being" according to *Black's Law Dictionary* (10th ed. 2014). But we have previously determined that "person," under the DJA, does not necessarily include all "human beings." *See Ind. Fireworks Distrib. Ass'n v. Boatwright*, 764 N.E.2d 208, 210 (Ind. 2002). And when we view the term "any person" in the context of the rest of the statute's definition, it is clear that "any person" does not mean all "human beings" in all capacities.

The Legislature included "any person" as part of a list that also includes partnerships, LLCs, joint stock companies, unincorporated associations, societies, and corporations. I.C. § 34-14-1-13. The associated-words canon instructs that words grouped in a list should be given similar meanings. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 195 (2012). Thus, we find the inclusion of these entities in the DJA's definition instructive as to which persons the Legislature intended to be able to seek declaratory relief. *See 600 Land, Inc. v. Metro. Bd. of Zoning Appeals of Marion Cnty.*, 889 N.E.2d 305, 310–11 (Ind. 2008). Each is a nonhuman entity created by law and afforded the legal rights and duties of a human being. *See Person*, *Black's Law Dictionary* (10th ed. 2014) (definition number 3). In other words, they have concrete legal

interests that can be affected by the declaration they seek. *City of Hammond v. Bd. of Zoning Appeals*, 152 Ind. App. 480, 284 N.E.2d 119, 126 (1972). Thus, a "person" under the DJA is an entity with rights that can be directly and personally affected and which is acting on its own behalf. *See id.* at 126–27.

The Legislative Parties assert that the Governor—as a state official—cannot be a "person" under this definition based on our decision in *Indiana Fireworks Distributors Association v. Boatwright*, 764 N.E.2d 208. We find that case distinguishable. There, we explained that state agencies and the officials that represent them cannot seek declaratory relief because they are not "persons" under the DJA. *Id.* at 210; *see also Ind. Wholesale Wine & Liquor Co., Inc. v. State ex. rel. Ind. Alcoholic Beverage Comm'n*, 695 N.E.2d 99, 103 (Ind. 1998). Importantly, however, the state official in that case did not allege that his own rights, statuses, or relationships would be directly or personally affected by the relief he sought. *Boatwright*, 764 N.E.2d at 209–10. The same is not true here.

The Governor, state official or not, is a person vested with specific constitutional rights and powers including the authority to call a special session. Ind. Const. art. 4, § 9. And here, he is seeking on his own behalf a declaration on the constitutionality of a law that he alleges directly and personally infringes upon that authority. *Cf. Clark Cnty. Drainage Bd. v. Isgrigg*, 963 N.E.2d 9, 19–20 (Ind. Ct. App. 2012) (finding a county surveyor could seek declaratory relief after alleging the statutory rights and obligations assigned to him had been infringed based on the way a county board had managed recent projects). For these reasons, we hold that the Governor, in this instance, is a "person" under the DJA. But being a person who may seek declaratory relief is not enough; the Governor must also establish standing and that his claims are ripe for adjudication.

2. The Governor has standing.

Standing requires litigants to demonstrate a sufficient injury before a court can decide the substantive issues of their claims. *Solarize*, 182 N.E.3d at 217. The Legislative Parties claim the Governor has not experienced an injury and is not in any immediate danger of suffering an injury stemming

from HEA-1123. They maintain that the law "merely permits the Legislative Council to call an emergency legislative session under specified circumstances" and thus "in no way limits the Governor's authority." The Governor responds that HEA-1123 does interfere with his "exclusive constitutional authority" to call a special session, and thus this injury has already occurred and is ongoing.

We initially note that, as a threshold issue, we determine standing by looking at a lawsuit's allegations—not its outcome. *See id.* at 215; *see also Pence v. State*, 652 N.E.2d 486, 487 (Ind. 1995). And so, without regard to our decision on the merits of the Governor's claims, we address the Legislative Parties' argument that the Governor has not suffered a sufficient injury.

An injury must be personal, direct, and one the plaintiff has suffered or is in imminent danger of suffering. *Solarize*, 182 N.E.3d at 217. Under the DJA, which is designed to allow parties to resolve conflicts while there is still time for "peaceable judicial settlement," *Volkswagenwerk, A.G.*, 390 N.E.2d at 1084–85, plaintiffs can satisfy the injury requirement by showing their rights are implicated in such a way that they could suffer an injury. *See* I.C. § 34-14-1-1 (permitting declaratory judgments "whether or not further relief is or could be claimed"); *id.* § -12 (mandating that the DJA "is to be liberally construed and administered").

Looking at the Governor's allegations—that HEA-1123 infringes on his constitutional authority to call a special session—we find he has satisfied the injury requirement. He alleges the injury is unique to him, arguing that it is his constitutional power, and his alone, being infringed. The allegations are also clear that HEA-1123 directly caused this injury. Further, while under the DJA we need not find that an injury has occurred or is imminent, the Governor alleges he has already suffered this injury and has been suffering it since HEA-1123 was enacted over his veto.

Moreover, we have previously recognized that an "infringement by the legislative branch of the government on the constitutional power of the executive would be repugnant to the doctrine of separation of powers." *State ex rel. Branigan v. Morgan Superior Ct.*, 249 Ind. 220, 231 N.E.2d 516, 519 (1967) (per curiam) (citing *Tucker v. State*, 218 Ind. 614, 35 N.E.2d 270

(1941)). It follows that an allegation of this type of injury—as the Governor has made here—satisfies our injury requirement. *Cf. Romer v. Colo. Gen. Assembly*, 810 P.2d 215, 220 (Colo. 1991) ("The governor has alleged a wrong that constitutes an injury in fact to the governor's legally protected interest in his constitutional power to veto provisions of an appropriations bill. Therefore, the governor has standing to bring this action."). In short, the Governor has alleged a sufficient injury to establish standing.

3. The question of HEA-1123's constitutionality is ripe.

In addition to requiring the person seeking declaratory relief to have standing, claims must also be ripe. *See, e.g.*, *Zoercher*, 172 N.E. at 189. "[T]here must exist not merely a theoretical question or controversy but a real or actual controversy, or at least the ripening seeds of such a controversy." *Id.* In other words, the issues in a case must be based on actual facts rather than abstract possibilities, and there must be an adequately developed record upon which we can decide those issues. *Ind. Dep't of Env't Mgmt.*, 643 N.E.2d at 336.

The Legislative Parties assert that, since "no HEA 1123 emergency session is in the offing," the Governor's claims are not ripe. They further contend that "the Legislative Council has neither acted nor threatened to act in a manner that would present an immediate danger directly affecting" the Governor's constitutional right to call a special session. The Governor counters that an emergency session need not be called for his claims to be ripe and that waiting for a future emergency to challenge the law is "neither prudent nor legally required." We agree with the Governor.

The dispute here is far from theoretical, and the parties have sufficiently developed a record upon which we can decide the constitutionality of HEA-1123. Since the Governor alleges the law is unconstitutional on its face, we need not consider specific facts about a particular situation in which an emergency session could be called. It is thus unnecessary to wait for the Legislative Council to call an emergency session or a law to be passed during that session. Neither occurrence

would add anything to the record to help us address HEA-1123's constitutionality.

Having found the Governor is a person under the DJA who has alleged a sufficient injury to establish standing with claims that are ripe for adjudication, we now consider whether Indiana law required him to first get consent from the Attorney General before bringing this lawsuit.

B. The Governor can hire outside counsel without consent from the Attorney General.

The Legislative Parties next argue that the Governor lacks the authority to bring this action without the consent of the Attorney General. Indiana law is clear that the Attorney General "shall prosecute and defend all suits instituted by or against the state of Indiana." Ind. Code § 4-6-2-1(a). And it is also clear the Attorney General "shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency." *Id.* § -3-2(a). Further, "[n]o agency . . . shall have any right to name, appoint, employ, or hire any attorney or special or general counsel to represent it or perform any legal service in [sic] behalf of the agency and the state without the written consent of the attorney general." *Id.* § -5-3(a). Though these statutes give the Attorney General exclusive power to both represent and direct litigation strategy for state agencies and the state, another statute—Indiana Code section 4-3-1-2—explicitly gives the Governor power to hire outside counsel irrespective of the Attorney General's consent.

Section 4-3-1-2 provides that "[t]he governor may employ counsel to protect the interest of the state in any matter of litigation where the same is involved." I.C. § 4-3-1-2. Acknowledging this statute, the Legislative Parties claim it was "impliedly repealed" by this Court in *State ex rel. Sendak v. Marion Superior Ct.*, 268 Ind. 3, 373 N.E.2d 145 (1978). They are incorrect.

In *Sendak*, we did not "impliedly repeal" section 4-3-1-2. Our concern with the statute was limited "to the extent" that it was "inconsistent with the Attorney General's duties as prescribed by law." *Sendak*, 373 N.E.2d at 149. Notably, the question there was whether the Governor could hire

private counsel **on behalf of a state agency** without the Attorney General's consent. *Id.* at 147. And because section 4-6-5-3(a) gives the Attorney General exclusive authority to represent all state agencies, we determined the Governor's hiring of outside counsel for the agency interfered with that authority. *Id.* at 149. Our holding was therefore limited to this narrow situation; it did not attempt to "repeal" the statute.

We also emphasize that we cannot and will not tell the Legislature that a statute has been impliedly repealed. Doing so would violate the most fundamental tenets of separation of powers. The legislative branch is responsible for enacting—and repealing—laws. *See* Ind. Const. art. 4, § 1. The judicial branch is responsible for interpreting those laws and applying their interpretations to the cases brought before it. *See id.* art. 7, § 1. And, as emphasized above, one branch cannot exercise the powers given to another except as permitted by our Constitution. *Id.* art. 3, § 1. Thus, if the Legislature no longer wants section 4-3-1-2 on the books, it needs to repeal the statute.

The Legislative Parties nevertheless claim section 4-3-1-2 does not apply and the Governor instead falls within section 4-6-5-3(a), the statute that requires state agencies to get written consent from the Attorney General to hire outside counsel. In support, they point to section 4-6-3-1, which defines state agency as, among other things, an "office" or "officer," which they argue includes the Governor. We disagree for three reasons.

First, that definition applies only to "this chapter"—Title 4, Article 6, Chapter 3. I.C. § 4-6-3-1. But the statute requiring agencies to get Attorney General consent is in Chapter 5. Second, even if the definition applied to Chapter 5, the Governor is not necessarily an "office" or "officer." He is not merely an office or officer of the state—he is the head of our state's executive branch. Further, if the Legislature intended for a statute to specifically limit the Governor's ability to hire his own counsel to protect the state's interests, it should do so explicitly. *Cf. Franklin v. Massachusetts*, 505 U.S. 788, 800–01 (1992) ("Out of respect for the separation of powers and the unique constitutional position of the President, we find that textual silence is not enough to subject the President to the provisions of the APA. We would require an express statement by Congress before

assuming it intended the President's performance of his statutory duties to be [subject to the APA]."). And third, accepting the Legislative Parties' argument would render the governor-specific section 4-3-1-2 meaningless. It is well settled that we must presume the Legislature did not enact a useless provision. *Robinson v. Wroblewski*, 704 N.E.2d 467, 475 (Ind. 1998). We therefore find that the Legislature did not intend to require the Governor to get written consent from the Attorney General before hiring outside counsel to protect the interests of the state in a suit, particularly in one he has initiated.

We also cannot ignore the separation-of-powers implications of what the Legislative Parties ask us to hold: requiring the Attorney General to consent to the Governor bringing this action would effectively give that office veto power over any suit by the Governor it doesn't agree with. The Attorney General's authority, statutorily granted by the General Assembly, simply cannot trump the Governor's implied power to litigate in executing his enumerated power under the take-care clause without violating our Constitution's careful distribution of powers. *See* Ind. Const. art. 3, § 1; *id.* art. 5, § 16; *see also Dye v. State ex rel. Hale*, 507 So. 2d 332, 338 (Miss. 1987) (en banc) ("We refuse to relegate to the Attorney General either the exclusive authority to bring a suit such as this or the discretion whether and how that authority should be exercised.").

To summarize, while the Attorney General's office may direct litigation on behalf of state agencies and the state as a whole, it cannot prevent the Governor from bringing a suit and hiring outside counsel to do so. We next address the Legislative Parties' final two procedural arguments—that the legislative-immunity and political-question doctrines bar the Governor from bringing this suit.

C. Neither the legislative-immunity doctrine nor the political-question doctrine bars us from deciding the constitutionality of HEA-1123.

The Legislative Parties finally assert that two defenses unique to the Legislature protect them from the Governor's suit: the legislative-immunity doctrine and the political-question doctrine. Since we find

neither doctrine applicable to a constitutional challenge like the one before us, we also reject these final procedural defenses.

1. The legislative-immunity doctrine protects legislators from challenges to their personal conduct, not from constitutional challenges to bills they pass.

The federal legislative-immunity doctrine derives from the Speech and Debate Clause of the United States Constitution which protects legislators from being "questioned" outside of the Capitol for "any Speech or Debate" that occurs "in either House." U.S. Const. art. I, § 6, cl. 1; *see also Kilbourn v. Thompson*, 103 U.S. 168, 201–02 (1881). Over the years, the doctrine has been expanded to protect legislators from being sued for any actions taken within the sphere of legitimate legislative activity. *Sup. Ct. of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731–32 (1980). Many states, including Indiana, have similar speech-and-debate clauses. Ours reads, "For any speech or debate in either House, a member shall not be questioned in any other place." Ind. Const. art. 4, § 8. Thus, our Constitution's protections under this provision are limited to speech or debate conducted in legislative chambers.

The Legislative Parties nevertheless ask us to expand our state constitutional protection to cover any legislative act and then apply it to bar the Governor's suit. But, notably, even if we were to expand the doctrine, it is intended to protect individual **legislators**, not the Legislature. *See, e.g.*, *Gravel v. United States*, 408 U.S. 606, 615–16 (1972). And it protects them from personal liability for things said in resolutions, reports, and open sessions and for the act of voting. *Kilbourn*, 103 U.S. at 204. Indeed, the test for application of the federal doctrine is whether the conduct at issue is "an integral part of the deliberative and communicative processes" by which legislators participate in legislative proceedings. *Gravel*, 408 U.S. at 625. It is thus not meant to prevent a court from declaring a law unconstitutional. *See Romer*, 810 P.2d at 225; *see also Walker v. Jones*, 733 F.2d 923, 925 (D.C. Cir. 1984).

Here, though individual legislators are named in this suit, it does not seek to hold them personally liable for anything they said or did in

session. The suit does not question the legislators' motives or reasons for passing the statute. It does not reference what was said in passing the law. It does not mention who voted for it. Rather, it challenges only the constitutionality of an enacted law. And considering the Governor's constitutional requirement to "take care that the laws are faithfully executed," Ind. Const. art. 5, § 16, such a challenge serves as an important check on the General Assembly's authority.

But even if we adopted an expanded form of the doctrine, the only way it could help the Legislative Parties here is by protecting members from being compelled to testify or produce documents relating to their intentions, motivations, and activities concerning the passage of HEA-1123. *See League of Women Voters of Pa. v. Commonwealth*, 177 A.3d 1000, 1005 (Pa. Commw. Ct. 2017). And nothing in the record suggests that the Governor seeks such information. *Cf. Knights of Columbus v. Town of Lexington*, 138 F. Supp. 2d 136, 139 (D. Mass. 2001) (finding the "individual and inner-most thoughts" of legislators, which would be protected, are "simply . . . not controlling on the issue of constitutionality of legislation"). Thus, even if we were to expand the legislative-immunity doctrine, it is simply inapplicable here.

2. The political-question doctrine does not apply since setting legislative sessions is not solely a legislative-branch function.

The political-question doctrine prevents courts from getting involved in the internal matters of the legislative branch. *Berry v. Crawford*, 990 N.E.2d 410, 417–18 (Ind. 2013). It raises a question of justiciability—whether we should decline to hear a case due to "prudential concerns over the appropriateness of a case for adjudication." *Id.* at 418. Specifically, "where a particular function has been expressly delegated to the legislature by our Constitution without any express constitutional limitation or qualification, disputes arising in the exercise of such functions are inappropriate for judicial resolution." *Id.* at 421; *see also State ex rel. Masariu v. Marion Superior Ct. No. 1*, 621 N.E.2d 1097, 1098 (Ind. 1993). The Legislative Parties claim that the issue before us is such a political question involving the internal matter of scheduling a legislative session. We disagree.

Though the function at issue is an inherent legislative-branch function, it is not a solely legislative one. As discussed above, our Constitution also recognizes a role for the Governor in setting a special legislative session. Ind. Const. art. 4, § 9. Thus, setting legislative sessions is not a purely internal operation of the Legislature. And since the law involves questions that are not purely internal to the legislative branch, the political-question doctrine does not apply.

Conclusion

The Governor is not procedurally barred from seeking declaratory relief on the constitutionality of HEA-1123, and we hold that the law is unconstitutional. By allowing the Legislative Council to set an emergency session by simple resolution, HEA-1123 violates Article 4, Section 9's fixed-by-law requirement. And, by permitting the Legislative Council to set an emergency session at a time when the General Assembly is not in session, HEA-1123 infringes on constitutional authority vested only in the Governor and thus violates Article 3, Section 1. Simply put, absent a constitutional amendment under Article 16, the General Assembly cannot do what HEA-1123 permits. This does not, however, mean the Legislature lacks the constitutional authority to set additional sessions. While our Constitution authorizes only the Governor to call a special session, the General Assembly can set additional sessions—but only by fixing their length and frequency in a law passed during a legislative session and presented to the Governor.

We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.[4]

David, Massa, Slaughter, and Goff, JJ., concur.

[4] We commend the trial court for its detailed, thorough order in this case. And we also thank amici curiae Indiana Constitutional Scholars for their helpful brief.

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