No. 22-387

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES EDWARD WHITE,
PETITIONER,
v.
MICHIGAN STATE UNIVERSITY
UNEMPLOYMENT COMPENSATION DIVISION,
MICHIGAN UNEMPLOYMENT INSURANCE
AGENCY,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MICHIGAN SUPREME COURT

PETITION FOR REHEARING OF DENIAL OF PETITION FOR WRIT OF CERTIORARI

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NEW QUESTIONS PRESENTED

1. Are courts and executive agencies now absolved from following legislated sovereign law and long settled just and equitable rules of law protected by the Constitution of the United States? Particularly, can the "will of the legislator" be ignored by not applying in due process the fundamental "[w]ords are generally to be understood in their usual and most known signification[1]" rule of law?
2. Have governmental structural protections of the U.S. Constitution (i.e., state v. federal checks) been unconstitutionally removed by Supreme Court Case Selections Act of 1988 (28 U.S.C. § 1257) or earlier acts favoring Supreme Court workload reduction over the long-held due process and impartial judiciary rights of the people? "[N]o man can be a judge in his own case"[2] now being appended with "but a State can be a judge in its own cause" (disregarding MCL 8.3l[3]) and bypassing the protection intended by U.S. Const. Art. III, § 2, 2. If not as a general rule then particularly where a sole judge may have participated in agency law interpretation then bypassed judicial interpretation in a case where plain reading (vs. "interpretation") is critical?

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[1] Sir William Blackstone, Esq., *Commentaries on the Laws of England*

[2] *Williams v. Pennsylvania*, 579 U. S. 1, 8–9 (2016)

[3] MCL 8.3l The word "person" may extend and be applied to bodies politic and corporate, as well as to individuals.

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Cites below include cases, etc. internal to quotes from other cases, etc. where Petitioner has added emphasis by bolding important text.

Cases Name and Citation:

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PETITION FOR REHEARING

Petitioner pursuant to Supreme Court Rule 44.2 respectfully submits this Petition for Rehearing of the Court's denial on January 9, 2023, of the Petition for Writ of Certiorari ("Petition") in this case.

SUMMARY

For the reasons set forth under the Argument heading below, and in accord with fundamental rights and rules of law, which constitute substantial grounds not previously presented by the Petition, the Court should optionally 1) issue a so-called GVR order in this case — granting certiorari, vacating the decision below by the Michigan Supreme Court and the Michigan courts below as contrary to fundamental rules of law and/or due process, and remanding this case for transparent interpretation of the laws of Michigan as requested by petitioner below, or 2) request from at least the respondents (and perhaps also the courts), per Supreme Court Rule 44.3, a response to this Petition for Rehearing providing clear reasons for deviating from Petitioner's plain reading of the relevant Michigan laws, or 3) take other action as this Court considers appropriate for achieving Justice under the Constitutions and laws of Michigan and the United States of America.

BACKGROUND

This case presents substantial issues of unquestionable importance for the public's understanding of the laws that aid in their governance and to the Constitution's federal check on state governments. The disputes all arose from a

contrary-to-plain-law Michigan Unemployment Insurance Agency denial of unemployment benefits for the week ending September 30, 2017 due to a contrary-to-contract Michigan State University September 29, 2017 payout of an accrued and irrevocably vested vacation account during a short layoff. The obvious intent of the payout, to Petitioner anyway, appeared to be for MSU to avoid $724 in unemployment insurance obligations.

The basic rules of law being broken by the state of Michigan predate Blackstone's Commentaries on the Laws of England of 1765 which the framers of the US Constitution were well aware of and, as Blackstone's Commentaries were 4 volumes long, the framers assumed the therein stated rights and general rules of law were to continue in the United States (see Federalist Papers #84 and Address to the People of N.Y.[4]).

In particular, as argued below the laws are plain on their face but by the simple expedient of stonewalling all the way up the long chain of appeal the State of Michigan has enforced apparently some unwritten, unpublished law or rule or precedent that

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[4] 1787: Jay, Address to the People of N.Y. "We are told, among other strange things, that the liberty of the press is left insecure by the proposed Constitution, and yet that Constitution says neither more nor less about it, than the Constitution of the State of New York does. We are told that it deprives us of trial by jury, whereas the fact is, that it expressly secures it in certain cases, and takes it away in none—*it is absurd to construe the silence of this, or of our own constitution, relative to a great number of our rights, into a total extinction of them—silence and blank paper neither grant nor take away anything.*" (*emphasis added*)

is contrary to the plain wording of MCL 421.48(2) (Petition Appendix E Page # 54) and MCL 421.34(7-8) (Petition Appendix KK Page # 80-81) and omitted the due process of providing interpretation.

ARGUMENT

MCL 421.48(2) second sentence:

> However, payments for a **vacation** or holiday, **or the right to which has irrevocably vested**, after 14 days following a vacation or holiday **shall not be considered wages or remuneration** within the meaning of this section.[5]

MCL 421.34(7) last sentence:

> **Unless an interested party, within 30 days** after mailing of a copy of a decision of the Michigan compensation appellate commission or of a denial of a motion for a rehearing, **files an appeal from the decision or denial, or seeks judicial review** as provided in section 38, the decision shall be final.

Regarding MCL 421.48(2) the Administrative Law Judge record shown in Petition Appendix E Pages # 54-55 clearly notes "[t]he payment was charged against his **accrued vacation** time" and that the payment of September 29, 2017 was more than 14 days after final accrual of vested vacation on

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[5] The full MCL 421.48(2) can be found at Petition Appendix E Page # 54 or an easier to follow parsed version at Petition Appendix QQQ Pages # 119-121 because it is an "intricate" (Blackstone's word) section.

August 31, 2017. These facts are supported by Petition Appendix JJJ & KKK Pages # 110-111 (also R34-39) showing contract and policy. For both or either separately the "vacation ... irrevocably vested" or "payment ... after 14 days" make the "**However**"[6] of the MCL 421.48(2) sentence quoted apply and thereby negate any "vacation" text preceding the quoted second sentence of section (2). And thus the sentence's "**shall not be considered wages or ... remuneration**" overrides MCL 421.27(c) (Petition Appendix E Pages # 51-53) also.

Regarding MCL 421.34(7) the Petition Appendix UU Page # 91 shows the UIAC rule (Michigan Admin. Code R. 792.11432) implementing the "**Unless**" sentence quoted above which states Petitioner's rights to (a) appeal to court, (b) appeal for rehearing, or (c) appeal for reopening. Petitioner timely did both (b) and (c) (R86-88) but UIAC ignored those until a Superintending Control Complaint (R97) was filed. Upon the UIAC's response (Petition Appendix O Pages # 62-63) Petitioner was able to do (a), appeal to court under "section 38." Additionally the courts failed due process to discuss anything that would render the MCL 421.34(8) "further appeal" words (Petition Appendix KK Page # 81) to mean anything other than their plain meaning.

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[6] However. *adv.* 3. Nevertheless; notwithstanding; yet. *A Dictionary of the English Language*, by Samuel Johnson. 1755. Accessed 2023/01/26. https://johnsonsdictionaryonline.com.

However, *adv.* Nevertheless; notwithstanding; yet; still; ... Webster's New Universal Dictionary: Unabridged Second Edition, The World Publishing Company, 1968

To date, the courts of Michigan have completely stonewalled and not addressed the MCL 421.48(2) "However" sentence statement of law even though it has been presented first to the UIA then all the way through the Michigan Supreme Court and to the U.S. Supreme Court. The State of Michigan apparently hopes that by stonewalling the Petition will be swept away by a final "discretionary" U.S. Supreme Court denial. **This is contrary to all expectations of common sense and common law particularly 1) fundamental law interpretation, 2) the due process that accomplishes that interpretation, and 3) the error correcting responsibilities of appeals courts, including the U.S. Supreme Court.**

The only attempt by Michigan to address the "However" sentence was done by the Michigan Unemployment Insurance Agency attorney in reply to Petitioner's application for leave to appeal to the Michigan Supreme Court:

> The second sentence of § 48(2) provides that "payments for a vacation or holiday, or the right to which has irrevocably vested, after 14 days *following a vacation or holiday* shall not be considered wages or remuneration within the meaning of this section." MCL 421.48(2) (emphasis added). The plain language of this section contemplates that vacation pay covering *a vacation or holiday already having occurred* do not constitute remuneration. But this does not apply here because White has not alleged that the payments relate to a completed vacation or holiday, nor does the record indicate that the

payments relate in any way to a completed vacation or holiday period.

That reading effectively disregards the "However" that begins the sentence, completely ignores the "or the right to which has irrevocably vested" clause subsumed into the meaning of the "holiday or vacation" phrase, and incorrectly insists a real vacation was required where vesting actually applied. Ignoring the "**or the right to which has irrevocably vested**" is a violation of the plain language and fundamental rule of law as shown in the quotes subsequently presented in this Petition for Rehearing.

Petitioner has found **no precedent nor has Michigan provided one** for overriding the "However" sentence and its "vested" clause. Petitioner finds a possibly thought to be applicable precedent maybe assumed by the UIA and UIAC **in a pair of cases** (*Hickson v. Chrysler Corp.*, 232 NW 2d 667 - Mich: Supreme Court 1975 and *Brown v. LTV Aerospace Corp.*, 232 NW 2d 656 - Mich: Supreme Court 1975**) in which the employer "allocation"** (of sentence 1 of MCL 421.48(2), Petition Appendix E Page # 54) **was permitted by contract and law** but in those cases contract language was far different from the contract **"accrue vacation"** and policy **"layoff"** language (Petition Appendix JJJ && KKK Pages # 110-111, and more completely at R33-39) in Petitioner's case and the court in neither above cited case had to reach or discuss the second sentence of MCL 421.48(2) and its **"or the right to which has irrevocably vested"** clause (the primary

controlling law clause) applicable to Petitioner's case.

Likewise the courts of Michigan have stonewalled on the MCL 421.34(7) "Unless"[7] and "final" (plus the MCL 421.34(8) "further appeals") plain text meanings instead jumping straight to assertions in the State's own interests and intentionally bypassing both the law and the UIAC's rules (Petition Appendix UU Page # 91) Petitioner counted on. The UIAC deliberately failed to provide the instructions of their rule choosing instead to suggest a short circuit (a) appeal to court only (Petition Appendix P Page # 63-64). At every level the State has allowed itself to retain $362 granted by right to Petitioner by MCL 421 by simply ignoring the issue of what the Michigan legislators enacted to reduce the "hazards of unemployment" (MCL 421 Preamble, Petition Appendix GG Page # 75). The State has acted as its own judge and the judges at the appeal levels, rather than doing any correcting or noting "misbehavior," have simply acquiesced rather than provide Blackstone's expected "heavy censure" (see quotes subsequently).

The Michigan legislature has *not* granted the UIA or UIAC authority to make rules with the force of law (MCL 421.4(1), Petition Appendix HH Page #

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[7] Unless. *Conjct.* Except; if not; supposing that not. *A Dictionary of the English Language*, by Samuel Johnson. 1755. Accessed 2023/01/26. https://johnsonsdictionaryonline.com.

Unless, *prep.* except; save (with a verb implied); as, unless disaster, nothing will result. Webster's New Universal Dictionary: Unabridged Second Edition, The World Publishing Company, 1968

76) therefore no *Chevron* (agency interpretation) rule can apply.

The below extensive quotes show universal and fundamental rights and rules of law whether expected by Parliament or Congress or Legislature and the like both modern and pre-Constitution. **Bolding** in the quotes is Petitioner's emphasis and Petitioner's commentary is placed in footnotes to reduce interruption of understood fundamentals. Cite information for a long set of quotes (such as this first Blackstone set) may often appear only at the end of the last quote.

> ...It is likewise "a rule proscribed." Because a bare resolution, confined in the breast of the legislator, without manifesting itself by some external sign, can never be properly a law. ...
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> It [*i.e., enacted law*] may lastly be notified by writing, printing, or the like; ...
>
> Sovereignty and legislature are indeed convertible terms; one cannot subsist without the other. ...
>
> The fairest and most rational method to interpret the **will of the legislator**, is by exploring his intentions at the time when the law was made, **by signs** the most natural and probable. And these signs **are** either the **words**, the context, the subject-matter, the effects and consequence, or the spirit and reason of the law. ...
>
> 1. **Words are generally to be understood in their usual and most known signification**; not so much

regarding the propriety of grammar, as their general and popular use. ... terms of art, or technical terms, must be taken according to the acceptation of the learned in each art, trade, and science.

2. **If[8] words happen to be still dubious**, we may establish their meaning from the context; with which it may be of singular use to compare a word, or a sentence, whenever they are ambiguous, equivocal, or intricate[9]. Thus the proeme, or preamble[10], is often called in to help the construction of an act

3. As to the subject-matter, **words are always to be understood as having a regard thereto**; for that is always supposed to be in the eye of the legislator, and all his expressions directed to that end.[11]

One part of a statute must be so construed by another, that the whole may (if possible) stand: *ut res magis*

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[8] Petitioner does not believe the "irrevocably vested" of MCL 421.48(2) or the vacation accrual and layoff vs. termination words of the contract and policy (Petition Appendix JJJ & KKK Pages # 110-111) are dubious but that **the State is choosing to ignore them in its opinions precisely because they are not dubious**. Nor is "unless..." dubious.

[9] MCL 421.48(2) is "intricate" no doubt but see Petitioner Appendix QQQ Pages # 119-121 for a parsed version.

[10] Petitioner Appendix GG Pages # 75-76 "protection of the people of this state from the hazards of unemployment" MCL 421.

[11] In other words, treating legislature words as surplusage or nugatory is improper and violates due process.

valeat, quiam pereat [the whole subject matter may rather operate than be annulled].

These reports [*i.e. judicial opinions*] are histories of the several cases, with a short summary of the proceedings which are preserved at large in the record, **the arguments on both sides,** and the **reasons** the court gave for its judgement;

For it is a settled and invariable principle in the laws of England, that every right when withheld must have a remedy, and every injury its proper redress.[12] (V2)

...little courts however communicated with others of a larger jurisdiction, and those with others of a still greater power; **ascending gradually from the lowest to the supreme courts, which were respectively constituted to correct the errors of the inferior ones**[13]... (V3)

Challenges to the polls *in capita* [in chief], are exceptions to particular jurors; and seem

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[12] In this case the underlying "right" is to a weekly unemployment insurance payment granted by MCL 421 but all attempts at redress have been thwarted by stonewalling on the words of the law from the UIA through the courts.

[13] In the present case the chain of appeal agencies and courts are simply abdicating with no cognizable reason(s) provided. Additionally the Supreme Court Case Selections Act of 1988 (28 U.S.C. § 1257) and perhaps earlier acts appear to have removed this fundamental "rule of law" and perhaps procedural expectation (due process) understood by the framers of the Constitution.

> to answer the *recusatio judicis* [objection to the judge] in the civil and canon laws; by the constitutions of which a judge might be refused upon any suspicion of partiality. By the laws of England also, in the times of Bracton and Fleta a judge might be refused for good cause; but now the law is otherwise, and it is held that judges or justices cannot be challenged. For the law will not suppose a possibility of bias or favor in a judge, who is already sworn to administer impartial justice, and whose authority greatly depends upon that presumption and idea. **And should the fact at any time prove flagrantly such, as the delicacy of the law will not presume beforehand, there is no doubt but that such misbehavior would draw down a heavy censure from those, to whom the judge is accountable for his conduct.**[14] (V3)

All of the above are quotes from Sir William Blackstone, Esq., *Commentaries on the Laws of England* (1765) combining first and second editions (volume 1 unless otherwise noted) as found at www.lonang.com. It is tempting to massively quote Blackstone's fundamental rights and rules of law but it is equally useful to show their modern light.

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[14] The judiciary of the State of Michigan, in judging in the State's own case, seems to Petitioner to be keeping its eyes shut regarding any "misbehavior" and therefore absolving itself of any essential "heavy censure." The failure of the U.S. Supreme Court to provide error correction particularly where due process of law "interpretation" has been omitted by lower courts in a State vs. individual case would seem to violate this fundamental too.

In taking up this question, we bear an important caution in mind. **"[I]t's a `fundamental canon of statutory construction' that words generally should be `interpreted as taking their ordinary ... meaning** ... at the time Congress enacted the statute. '" *Wisconsin Central Ltd. v. United States,* 585 U.S. ___, ___, 138 S.Ct. 2067, 2074, 201 L.Ed.2d 490 (2018) (quoting *Perrin v. United States,* 444 U.S. 37, 42, 100 S.Ct. 311, 62 L.Ed.2d 199 (1979)). See also *Sandifer v. United States Steel Corp.,* 571 U.S. 220, 227, 134 S.Ct. 870, 187 L.Ed.2d 729 (2014). After all, if judges could freely invest old statutory terms with new meanings, **we would risk amending legislation outside the "single, finely wrought and exhaustively considered, procedure" the Constitution commands.** *INS v. Chadha,* 462 U.S. 919, 951, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983). **We would risk, too, upsetting, reliance interests in the settled meaning of a statute.** Cf. 2B N. Singer & J. Singer, Sutherland on Statutes and Statutory Construction § 56A:3 (rev. 7th ed. 2012). *New Prime, Inc. v. Oliveira,* 139 S. Ct. 532 - Supreme Court 2019

The following quotes are taken from Justice Gorsch's dissent in *598 U.S. ___ (2022)* regarding a denied Petition for Writ of Certiorari No. 21—972 Thomas H. Buffington v. Denis R. McDonough, Secretary of Veteran Affairs:

In this country, we like to boast that persons who come to court are entitled to have **independent judges**[15], not politically motivated actors, resolve their rights and duties under law. Here, we promise, individuals may appeal to **neutral magistrates to resolve their disputes about "what the law is.**" *Marbury v. Madison*, 1 Cranch 137, 177 (1803). Everyone, we say, is entitled to a judicial decision "without respect to persons," 28 U. S. C. §453, and a "**fair trial in a fair tribunal**," *In re Murchison*, 349 U. S. 133, 136 (1955).

Often we insist that it is a **basic requirement of due process that "'no man can be a judge in his own case.'"**[16] *Williams v. Pennsylvania*, 579 U. S. 1, 8–9 (2016). As far back as Calder v. Bull, 3 Dall. 386 (1798), this Court recognized that it would be "against all reason" to "entrust a

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[15] See Petition Pages # 33-35 re the Judge of the 30th Circuit Court of Michigan.

[16] One question in this case being can a State be its own final judge without deliberate review of the U.S. Supreme Court on appeal? And, yes, the State has a financial interest in keeping the $362 it has gotten away with so far. But yet it also seems to Petitioner that while 28 U.S.C. § 1257 (state courts and appeals course first) makes sense from a federal efficiency point of view yet U.S. Const. Art. III, § 2, 2. "and those in which a State shall be Party" clearly precludes the Supreme Court having "may" "discretion" when a State is a party. As we see in the present case and undoubtedly hundreds if not thousands of others, the States (and particularly their courts) might step into this void to get away with vast incursions against their citizen's rights by simple stonewalling of the U.S. Supreme Court.

Legislature" with the power to "mak[e] a man a Judge in his own cause," and therefore "it cannot be presumed that [the people] have done it," id., at 388 (opinion of Chase, J.) (emphasis deleted).

Traditionally, too, our courts have long and often understood that, "**as between the government and the individual[,] the benefit of the doubt" about the meaning of an ambiguous law must be "given to the individual, not to authority; for the state makes the laws**[17]." *Lane v. State*, 120 Neb. 302, 232 N. W. 96, 98 (1930); see, e.g., *Caldwell v. State*, 115 Ohio St. 458, 460–461, 154 N. E. 792, 793 (1926).

When reading statutes, we insist that courts pay careful attention to text, context, and traditional tools of interpretation. **We demand interpretations that comport with how a reasonable reader would have understood the law at the time of its adoption.** See, e.g., *New Prime Inc. v. Oliveira*, 586 U. S. ___, ___ (2019). A rule requiring us to suppose that statutory silences and ambiguities are both always intentional and always created by Congress to favor the government over its citizens fits with none of this. A rule like that is neither a traditional nor a reasonable way to read

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[17] Petitioner does not believe there is any ambiguity about MCL 421.48(2) and particularly "or the right to which has irrevocably vested," but if there is, the UIA on up should accordingly not be deciding it in favor of "the State" (i.e., themselves).

> laws. It is a fiction through and through—and "one that requires a pretty hefty suspension of disbelief at that." *Gutierrez-Brizuela v. Lynch*, 834 F. 3d 1142, 1153 (CA10 2016) (Gorsuch, J., concurring).

The following are from Antonin Scalia and James Madison re Constitutional law referring to federal and state legislatures, executive branches, and their judiciaries:

> Discussing "considerations particularly applicable to the federal system of America," [James Madison in *Federalist No. 51*] wrote:
>
> > In a single republic, all the power surrendered by the people is submitted to the administration of a single government; and the usurpations are guarded against by a division of the government into distinct and separate departments. **In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.**[18]

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[18] The current Supreme Court Case Selections Act of 1988 (28 U.S.C. § 1257), and perhaps prior similar acts, leaves us with only a semblance or husk of this cross control of states vs. federal particularly when allowing discretionary denial of

> **Those who seek to protect individual liberty ignore threats to this constitutional structure at their peril.** Antonin Scalia, *Foreword: The Importance of Structure in Constitutional Interpretation*, NOTRE DAME L. REV. 1417, 1418–19 (2008).

The following are from B. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2152 (2016):

> Statutory interpretation has improved dramatically over the last generation, thanks to the extraordinary influence of Justice Scalia.1 Statutory text matters much more than it once did. **If the text is sufficiently clear, the text usually controls.** 2 The text of the law is the law. As Justice Kagan recently stated, "we're all textualists now."3 By emphasizing the centrality of the words of the statute, Justice Scalia brought about a massive and enduring change in American law.
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> **... courts should seek the best reading of the statute by interpreting the words of the statute, taking account of the context of the whole statute...**
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> See, e.g., *Allapattah*, 545 U.S. at 568 ("**As we have repeatedly held, the authoritative**

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certiorari review in the case of an individual against a State. The "may" of that act is probably appropriate in general but denial of certiorari without stating clear reasons may exceed the Constitution's intent in structuring governance at two levels.

statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms."); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999) ("As in any case of statutory construction, our analysis begins with 'the language of the statute.' **And where the statutory language provides a clear answer, it ends there as well.**" (quoting *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992))).

This tenet — adhere to the text — is neutral as a matter of politics and policy. The statutory text may be pro-business or pro-labor, pro-development or pro-environment, pro-bank or pro-consumer. **Regardless, judges should follow clear text where it leads.**

...ambiguity-dependent canons include: (1) in cases of textual ambiguity, avoid interpretations raising constitutional questions; (2) rely on the legislative history to resolve textual ambiguity; and (3) in cases of textual ambiguity, defer to an executive agency's reasonable interpretation of a statute, also known as *Chevron*[19] deference.

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[19] *Chevron USA Inc. v. Natural Resources Defense Council*, Inc., 467 US 837 - Supreme Court 1984

Judges Should Determine the Best Reading of the Statute, Not Whether It Is Clear or Ambiguous

Courts should try to read statutes as ordinary users of the English language might read and understand them. That inquiry is informed by both the words of the statute and conventional understandings of how words are generally used by English speakers. Thus, the "best reading" of a statutory text depends on (1) the words themselves, (2) the context of the whole statute, and (3) any other applicable semantic canons, which at the end of the day are simply a fancy way of referring to the general rules by which we understand the English language.

1. The Constitutional Avoidance Canon. — Under the constitutional avoidance canon, judges must interpret ambiguous statutes so as to avoid a serious constitutional question, or actual unconstitutionality[20]...

2. Legislative history –[*deemed poor*]

3. *Chevron* Deference. — Under Chevron, courts uphold an agency's reading of a statute — even if not the best reading — so long as the statute is ambiguous and the agency's reading is at least reasonable.

... And *Chevron* does not apply at all unless "Congress delegated authority to

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[20] This seems to imply that 28 U.S.C. § 1257 and prior cannot override intent of U.S. Const. Art. III, § 2, 2.

> **the agency generally to make rules carrying the force of law, and . . . the agency interpretation claiming deference was promulgated in the exercise of that authority.**

The next quotes are from *Supreme Court Justice Brett Kavanaugh: 2023 Notre Dame Law Review Federal Courts Symposium* https://law.nd.edu/news-events/news/2023-law-review-federal-courts-keynote-justice-brett-kavanaugh/ or https://www.youtube.com/watch?v=b8w9xttTLwc

> 9:36 ... I think we should just do what footnote 9 of *Chevron* instructed us to do, to use the tools of statutory construction, **figure out the best reading of the statute, figure out then whether the executive crossed that**, and that will be the key to being a good judge. One key is to be consistent to apply that **no matter who the parties are** no matter which administration it is and no matter what the issue is...
>
> 21:41 ... to be a good judge and a good person it's important to understand other people's perspectives and when you're on our court you need to ... try to understand their perspectives **to try to make sure they [the people] realize that you're at least listening to them**[21]...

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[21] From the UIA on up in this case there has been no effort at all by the State actors that demonstrates Petitioner's plain reading of the law was heard. The relevant passages of the law (particularly "irrevocably vested" and "unless") were simply

22:10 I try to reflect that in my opinions that I understand the arguments from both sides

31:00 **When writing an opinion ... I want the losing party...to understand why ... I disagree with them**[22]...

The following quotes are from the *Appeals & Opinions Benchbook - Second Edition*, Michigan Judicial Institute, 2023. All from 1.7.A unless otherwise noted. Citations and some matter, punctuation, and quote marks omitted.

The rules of statutory construction apply to both statutes and administrative rules.

All words and phrases shall be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

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silently ignored in favor of the State exercising its bully power position. But more importantly for this case as explained at Petition Pages 35-36 Michigan Supreme Court Judges appear to be in violation of the Michigan Constitution when providing completely unexplanatory "not persuaded" denials to Applications for Leave to Appeal. Even Blackstone as quoted previously wanted case reports to be meaningful with "the arguments on both sides, and the reasons the court gave for its judgement."

[22] This again accords well with Blackstone's "reports" though it fails on silent denials of certiorari. But this makes certiorari "DENIED" problematic particularly when a State gets its way without review.

When construing a statute, [a court's] primary obligation is to ascertain the legislative intent that may be reasonably inferred from the words expressed in the statute.[23]

Courts must "construe a statute in light of the circumstances existing at the date of its enactment, not in light of subsequent developments. . . . **The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.**[24]

In discerning legislative intent, **a court must give effect to every word, phrase, and clause in a statute, . . . [and] consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme.** The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. If the language of a statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and **the statute must be enforced as written**. A necessary corollary . . . is that a court may read nothing into an unambiguous statute that is not within the

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[23] First, of course, the court must make that effort or it denies due process!

[24] See footnotes 6 and 7 for pre-Constitution and modern definitions of "however" and "unless" that seem to indicate a long held plain understanding.

manifest intent of the Legislature as derived from the words of the statute itself.

A provision of law is ambiguous only if it irreconcilably conflict[s] with another provision or when it is equally susceptible to more than a single meaning.

Courts must "**avoid an interpretation that would render any part of the statute surplusage or nugatory**. A court "may not rewrite the plain statutory language or substitute its own policy decisions for those decisions already made by the Legislature.

Undefined statutory terms are to be given their plain and ordinary meaning, unless the undefined word or phrase is a term of art. A lay dictionary may be consulted "when defining common words or phrases that lack a unique legal meaning. It is best to consult a dictionary from the era in which the legislation was enacted.

Where "the determination whether [a] hearing officer's decision is 'authorized by law,' Const 1963, art 6, § 28, . . . turns on statutory interpretation," the issue "is a question of law [that the appellate court] reviews de novo[25]. Respectful consideration' of an agency's statutory interpretation is not akin to 'deference'; . . . [w]hile an agency's interpretation can be a helpful aid in construing a statutory

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[25] The Michigan courts have simply failed to do that in this case hence no due process.

provision with a 'doubtful or obscure' meaning, [the] courts are responsible for finally deciding whether an agency's interpretation is erroneous under traditional rules of statutory construction." (2.2.A.2)

A couple of miscellaneous quotes follow:

The Court's decisions have held that **the Due Process Clause protects two categories of substantive rights**—those rights guaranteed by the first eight Amendments to the Constitution and **those rights deemed fundamental that are not mentioned anywhere in the Constitution**. In deciding whether a right falls into either of these categories, the question is whether **the right is "deeply rooted in [our] history and tradition" and whether it is essential to this Nation's "scheme of ordered liberty."** [26] *Timbs* v. *Indiana,* 586 U. S. ___, ___ (internal quotation marks omitted). *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 - Supreme Court 2022

Is it to be contended that where the law, in precise terms, directs the

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[26] The right to know what judicial interpretation is being applied to words, clauses, sentences, etc. in the law is shown above from Blackstone through Michigan's own Benchbook to be "deeply rooted in [our] history and tradition" and clearly "is essential to this Nation's 'scheme of ordered liberty.'" Yet the Michigan agencies and courts are ignoring that right by keeping the why and/or reasons of their decisions regarding at least the second sentence of MCL 421.48(2) below the publish(ed/ing) radar.

> **performance of an act in which an individual is interested, the law is incapable of securing obedience to its mandate? Is it on account of the character of the person against whom the complaint is made? Is it to be contended that the heads of departments are not amenable to the laws of their country?**[27] ... It is not believed that any person whatever would attempt to maintain such a proposition [to deny remedy]. *Marbury v. Madison* 5 U.S. 137

CONCLUSION

For the above and foregoing reasons, Petitioner requests the issuance of a writ of certiorari to the Michigan Supreme Court or any other option as suggested in the Summary near the beginning of this Petition for Rehearing. Rights at least to interpretations of law as the legislature intentionally wrote it, to judicial procedural due process consideration of same (certainly where plain reading and agency application differ), and to error correcting review on appeal (especially of the U.S. Supreme Court to a State court when the State is a party) are fundamental rights under the Constitution of the United States whether spelled

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[27] Remedy, in this case, for the withholding of $362 rightfully due Petitioner under the legislatively created unemployment insurance laws of Michigan and which Michigan State University, seemingly in collaboration with the UIA (and UIAC), attempted to use to retain $724 of MSU's unemployment insurance obligations.

out therein or predating the Constitution and assumed by its framers.

Respectfully,

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2/1/23

RULE 44(2) CERTIFICATE

I hereby certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2. Respectfully submitted,

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