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STATE OF MICHIGAN
SUPREME COURT

JOSEPH RUMAN, DAVID J. PETERS, and CYNTHIA A. PETERS, on behalf of themselves and all others similarly situated,

Plaintiffs/Appellants,

v.

CITY OF WARREN MICHIGAN,

Defendant/Appellee.
______________________________________/

MSC Case No. 166329

COA Case No. 364537

Macomb County Circuit Court
Case No. 22-002396-CZ

JOHN BATE, individually and as representative of a similarly situated class of persons and entities,

Plaintiff/Appellant,

v.

CITY OF ST. CLAIR SHORES, MICHIGAN, a municipal corporation,

Defendant/Appellee.
______________________________________/

MSC Case No. 166333

COA Case No. 364536

Macomb County Circuit Court
Case No. 22-002395-CZ

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DEFENDANT/APPELLEE CITY OF ST. CLAIR SHORES'
ANSWER TO PLAINTIFF/APPELLANT'S APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT REGARDING THE ORDER APPEALED AND THE RELIEF SOUGHT

Plaintiff/Appellant John Bate ("Plaintiff") seeks leave to appeal the Court of Appeals' August 17, 2023 per curiam opinion affirming the trial court's January 5, 2023 order granting Defendant/Appellee City of St. Clair Shores' Motion for Summary Disposition of Plaintiff's Complaint in its entirety. Plaintiff also seeks leave to appeal the Court of Appeals' September 26, 2023 order denying Plaintiff's Motion for Reconsideration of the Court of Appeals' August 17, 2023 opinion.

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COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. The Headlee Amendment to the Michigan Constitution, Const 1963, art 9, §31, does not apply to taxes that were "authorized by law or charter" before Headlee was ratified in 1978. *Am Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 362; 604 NW2d 330 (2000). Does the Court of Appeals' per curiam opinion affirming dismissal of Plaintiff's purported Headlee Amendment claim against defendant City of St. Clair Shores (the "City") warrant this Court's review where the disputed police and fire retirement taxes were authorized by the Fire Fighters and Police Officers Retirement Act, MCL 38.551 ("Act 345" or the "Act") as early as 1951, decades before Headlee was ratified?

The City answers: no

Plaintiff would answer: yes

II. It is undisputed that the City's residents voted to assess Act 345-authorized taxes to fund what the City has determined are essential police and fire retirement benefits. The plain language of Act 345 establishes a broad "retirement system" consisting of "pensions and other benefits" for police and fire retirees. MCL §§ 38.556c(2), 38.559(2). Act 345 establishes a floor – not a ceiling – on the type and/or amount of retirement benefits a municipality may fund with Act 345 dollars, delegating the "other benefits" afforded by a a retirement system to the collective bargaining process. MCL 38.556e. Yet, Plaintiff claims that Act 345 does not give the City discretion to fund police and fire retiree healthcare benefits in addition to pension benefits and thus, he and other taxpayers are entitled to millions of dollars of "refunds."

Does the Court of Appeals' per curiam opinion affirming summary disposition of Plaintiff's Complaint in favor of the City warrant this Court's review where the plain language of Act 345 broadly authorizes the City to fund police and fire retiree healthcare benefits?

The City answers: no.

Plaintiff would answer: yes.

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INTRODUCTION

Plaintiff aims to divest the first responders of the City of St. Clair Shores (the "City") of their voter-approved retirement benefits by demanding millions of dollars in taxpayer "refunds" based on the spurious argument that the City has improperly used taxes assessed under the Fire Fighters and Police Officers Retirement Act of 1937, MCL 38.551 *et seq* ("Act 345" or the "Act") to fund police and firefighter retiree healthcare benefits. Although Plaintiff concedes that the City's residents voted to assess Act 345-authorized taxes to fund what the community has already determined are essential police and fire retirement benefits, Plaintiff insists that the City has violated the Headlee Amendment to the Michigan Constitution because, supposedly, Act 345 only permits payment of pension, death, and disability benefits (and nothing else). Neither the Michigan Legislature nor any court of this state has recognized a Headlee claim or an interpretation of Act 345 like the one Plaintiff has concocted here.

The Court of Appeals properly found that Plaintiff's lawsuit fails as a matter of law under two straightforward principles of Michigan jurisprudence (and thus, there are only two questions for this Court to consider – not fifteen, as Plaintiff posits). First, the disputed taxes are exempt from Headlee analysis by Headlee's own terms – terms that this Court has held explicitly limit Headlee's application to taxes first authorized by law or charter after Headlee's ratification in 1978. *Am Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 362; 604 NW2d 330 (2000). Because the City's police and fire retirement taxes were authorized by Act 345 as early as 1951, Plaintiff has no viable claim against the City.

Second, Plaintiff's lawsuit is predicated on a fundamental mischaracterization of the plain statutory language of the Act – an interpretation that would seriously disrupt the constitutionally-enshrined collective bargaining process in this state. Plaintiff repeatedly suggests that Act 345 "only" permits the establishment of a lone pension plan for police and fire retirees. But nothing

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in Act 345 is as proscriptive as Plaintiff argues. No provision in Act 345 states that a municipality is authorized to establish "only" a "pension plan." And no provision in Act 345 states that a municipality may "only" impose taxes sufficient to fund its annual contributions to the "Act 345 pension plan." (*See id.*). In short, the word "only" is simply not there. Nor does Act 345 merely apply to a "pension plan."

Instead, as the Court of Appeals recognized, Act 345 establishes a broader "retirement system" that consists of "pensions and other benefits." MCL 38.556c(2), 38.559(2)(emphasis added). Act 345 establishes a floor – not a ceiling – on the type and/or amount of police and fire retirement benefits a municipality may fund with Act 345 dollars. Nothing in the Act suggests that those "other" benefits cannot include health benefits. To the contrary, a reading of Act 345 - both in isolation and in conjunction with related public employee retirement benefit statutes - confirms that Act 345 benefits may, in the municipality's discretion, include health benefits. Ultimately, an Act 345 retirement system can provide any benefits collectively bargained by the municipality and its retirees. MCL 38.556e. Employees have the right to bargain the terms and conditions of their employment, including benefits. Plaintiff's construction of Act 345 – limiting an Act 345 retirement system to only pensions, death, and disability benefits – would undermine the Act itself (along with other law clearly prioritizing the duty to bargain).

There is no reason for this Court to grant leave to review the Court of Appeals' well-reasoned per curiam opinion. Plaintiff does not seek leave to appeal because this case involves novel issues of Michigan jurisprudence. Plaintiff seeks leave to appeal because the Court of Appeals' opinion is binding precedent foreclosing seven identical class action lawsuits (including this one) that Plaintiff's counsel, Kickham Hanley, PLLC ("Kickham Hanley") has filed demanding that millions of dollars in police and fire retirement benefits be "refunded."

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The City's residents voted to enact an Act 345 retirement system. The Michigan Constitution specifically mandates that both Michigan constitutional and statutory law be liberally construed in municipalities' favor, and this Court has confirmed that municipalities must have broad discretion to conduct local affairs like the assessment of taxes to fund police and fire retirement benefits under Act 345. Plaintiff's Application should be denied.

COUNTER-STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Plaintiff's Lawsuit Against the City

The City of St. Clair Shores is a municipality located in Macomb County, Michigan. (Complaint ("Compl."), ¶10.) The City maintains and operates paid police and fire departments. (*Id*. ¶12.) The City also provides retirement benefits to qualified retired members of the City's police and fire departments. (*Id*. ¶¶17-20, 50.) The City funds police and fire retirement benefits through taxes assessed under Act 345.[1] (*Id.* ¶¶2-4, 45-48, 50.) Plaintiff concedes that the City's voters have approved taxes assessed under Act 345. (*Id*. ¶6.) Once Act 345 is approved by a municipality's voters, "the Act allows a municipality to impose property taxes to finance its obligations under the Act." (*Id*. ¶13.)

Section 9 of Act 345 provides, among other things:

> (2) For the purpose of creating and maintaining a fund for the payment of the pensions and other benefits payable as provided in this act, the municipality, subject to the provisions of this act, shall appropriate, at the end of such regular intervals as may be adopted, quarterly, semiannually, or annually, an amount sufficient to maintain actuarially determined reserves covering pensions payable or that might be payable on account of service performed and to be performed by active members, and pensions being paid to retired members and beneficiaries. The amount of the appropriation in a fiscal year shall not be less than 10% of the aggregate pay received during that fiscal year by members of the retirement system unless, by actuarial determination, it is satisfactorily established that a lesser percentage is needed. All deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and

[1] See Ex. 3 (full text of Act 345).

> appropriations into the retirement system. Except in municipalities that are subject to the 15 mill tax limitation as provided by section 6 of article IX of the state constitution of 1963, the amount required by taxation to meet the appropriations to be made by municipalities under this act shall be in addition to any tax limitation imposed upon tax rates in those municipalities by charter provisions or by state law subject to section 25 of article IX of the state constitution of 1963.

MCL 38.559(2); see also Compl. ¶13.

Plaintiff is a property owner in the City who has paid the taxes assessed to fund police and fire retirement benefits under Act 345. *(Id.* ¶9, 67.) On or about June 30, 2022, Plaintiff filed the Complaint, a purported class action alleging that the City's Act 345 taxes violate the Headlee Amendment to the Michigan Constitution, Const 1963, art 9, §31. Plaintiff claims that the disputed taxes violate Headlee because they "generate millions of dollars more than is needed to fund the City's actual annual contributions to the Act 345 pension plan." *(Id.* ¶4.)

Plaintiff alleges that the City "improperly" uses what he calls "excess" Act 345 dollars to fund Other Post-Employment Benefits ("OPEB," i.e., retiree healthcare benefits) for its police and fire department members. (*Id*. ¶¶50-58.) Specifically, Plaintiff claims that "a municipality's 'appropriations' under Act 345 – i.e., the amounts that can be paid through the taxes authorized by Act 345 – are limited to the amounts necessary to fund pension, death and disability benefits provided by the Act 345 pension plan." (*Id*. ¶¶6, 16.) Plaintiff asserts that the phrase "other benefits payable as provided in this Act" in MCL 38.559(2) refers only to death and disability benefits referenced in MCL 38.556(2). (*Id*. ¶16.) Thus, according to Plaintiff, it is a violation of Headlee to use Act 345 taxes to fund retiree healthcare benefits because the City's "voters never approved" a tax to fund anything other than pension, death, and disability benefits for police and fire retirees when they voted to approve an Act 345 retirement system. (*Id*. ¶¶ 6, 16, 50-58.)

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The Circuit Court Grants the City's Motion for Summary Disposition

On September 29, 2022 the City filed a motion for summary disposition of Plaintiff's Complaint under MCR 2.116(C)(8) in lieu of filing an answer. (Ex. 4.)[2] In its submissions supporting its motion (Exs. 4 and 5), the City argued that Plaintiff's Complaint failed as a matter of law because, among other things, the City's Act 345 taxes were authorized by law before Headlee's ratification, and the plain statutory language of the Act authorizes the City to use Act 345 taxes to fund a "retirement system" offering police and fire retiree benefits (be they pension or healthcare or any other benefits). Plaintiff also filed a cross-motion for partial summary disposition under MCR 2.116(C)(10).[3] The parties stipulated to consolidate the pending Rule 2.116(C) motions for purposes of hearing in this matter with dispositive motions filed in a nearly identical lawsuit brought by Plaintiff's counsel pending before the same judge in *Ruman, et al v City of Warren*, Macomb County Circuit Court Case No. 22-2396-cz ("*Ruman*"). (Stipulation, Ex. 6.). The circuit court held oral argument on the pending dispositive motions in this case and *Ruman* on November 2, 2022.

On January 5, 2023, the circuit court entered its opinion and order granting the defendant municipalities' motions for summary disposition and denying the plaintiffs' motions for partial summary disposition under MCR 2.116(C)(10) in this case and *Ruman*. (Circuit Court Opinion and Order ("CC Op."), Ex. 2)[4] The circuit court held that summary disposition in favor of the defendants was warranted because the provision of police and fire retiree healthcare benefits

[2] The City's circuit court briefs are attached without exhibits.

[3] The City's Response to Plaintiff's MCR 2.116(C)(10) motion is attached as Ex. 7.

[4] While the circuit court's opinion and order states that the City's motion for summary disposition was granted under MCR 2.116(C)(10) (CC Op. at 6), the record demonstrates that City brought (and briefed) its motion to dismiss under MCR 2.116(C)(8) only. (See Exs. 4 and 5, Briefs.) Plaintiff does not dispute this. (See Ex. 8, Pl's COA Brief (excerpt) at 18.)

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“come[s] within the plain language” of Act 345. (*Id.* at 4-5.) The circuit court noted that MCL 38.599(2) explicitly permits Act 345 appropriations for “pensions and *other benefits*,” which could include retiree healthcare benefits. (*Id.* at 4.)(emphasis added). In addition, the circuit court emphasized that Michigan’s statutory scheme addressing retirement benefits for public employees clearly includes retiree healthcare within the scope of “retirement benefits.” (*Id.* at 4-5, quoting MCL 38.2803(m)(“‘Retirement benefit’ includes a retirement health benefit or retirement pension benefit, or both”); MCL 38.2803(p)(“‘Retirement system’ means a retirement system . . . that . . . provides retirement pension benefits or retirement health benefits, or both.”).)

The circuit court rejected Plaintiff’s attempt to assert a Headlee claim based on the City’s alleged failure to comply with certain procedural elements of Act 345. “Plaintiff Bate,” the court noted, “has not cited any authority for the proposition that defendant St. Clair Shore’s apparent failure to rely on actuarial data in determining appropriations for retiree health care expenses precludes defendant St. Clair Shores from otherwise using Act 345 to fund those expenses.” (CC Op. at 5.)

Finally, the circuit court agreed with the City that Plaintiff failed to state a Headlee Amendment claim because Act 345 was enacted before Headlee was ratified and, thus, taxes assessed under Act 345 are exempt from Headlee’s restrictions. *Id.* at 6, citing *Taxpayers United for Michigan Constitution, Inc v City of Detroit*, 196 Mich App 463, 466; 493 NW2d 463 (1992). The court noted that “Act 345 was originally adopted in 1957 [decades before Headlee was ratified] and permitted – without limitation – the imposition of taxes” to fund the City’s Act 345 retirement system. (CC Op. at 5-6.)

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The Court of Appeals Agrees That the City's Use of Act 345 Dollars to Fund Police and Fire Retiree Healthcare Does Not Violate the Headlee Amendment

On August 17, 2023, after reviewing extensive briefing and hearing oral argument, the Court of Appeals issued a published per curiam opinion affirming dismissal of Plaintiff's Complaint in its entirety in both this case and the consolidated *Ruman* matter. (Ex. 1, COA Op.) The Court of Appeals held that on a plain-language reading of Act 345, "Defendant cities are . . . permitted to appropriate tax dollars to help pay for healthcare benefits to retired firefighters and police officers who are members of the retirement system and entitled to those benefits." (*Id*. at 5.) Thus, the Court of Appeals concluded, "because the [Act 345] tax was authorized before the Headlee Amendment was ratified, plaintiffs cannot establish a violation of Const 1963, art 9, § 31." (*Id*. at 8, citing *Am Axle*, 461 Mich at 357; *Midwest Valve & Fitting Co v City of Detroit*, ____ Mich App ___, ____; NW2d___ (Docket No. 358868)(2023), slip op at 4.)

The Court of Appeals based its opinion that Plaintiff failed to state a Headlee claim on both a detailed analysis of the statutory text of Act 345 and the Michigan Constitution's "require[ment] that the "constitution and law concerning . . . cities . . . shall be liberally construed in their favor." (Op. at 8, citing Const 1963, art 7, § 34.) The Court of Appeals found that Plaintiff's claim that Act 345 only permits appropriations for "the payment of pension benefits, disability benefits, and death benefits" was overly narrow and did not comport with basic canons of statutory interpretation that "give effect to every word, phrase, and cause in a statute, and avoid any interpretation that would render part of the statute surplusage or nugatory." (COA Op. at 7, citing *South Dearborn Environmental Improvement Ass'n, Inc v Dep't of Environmental Quality*, 502 Mich 349, 361; 917 NW2d 603 (2018).) In particular, the Court of Appeals found that "[d]espite plaintiffs' focus on the terms 'meet' and 'appropriations,' the operative words and phrases 'retirement system,' 'pension,' and 'other benefits payable' are within MCL 38.559(2) and must

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be examined." (COA Op. at 6.) Plaintiff's restrictive analysis of Act 345 failed to acknowledge that these key terms "also repeatedly appear" throughout the entire statutory text of Act 345. (*Id.* at 6, n.2.)

In its analysis of the Act 345 terms that Plaintiff ignores, the Court of Appeals noted that because Act 345 does not contain definitions for many of the terms relevant to the analysis of Plaintiff's claims (including, among others, "retirement system," "pension," and "other benefits payable"), it could "consult dictionary definitions to determine the plain and ordinary meaning of the term." *Midwest Valve, supra,* at 9; see also Op. at 6. After consulting dictionary definitions for these terms as well as analyzing the terms as they appear within Act 345 as a whole, the Court of Appeals found that "'retirement system' involves the manner in which retirement benefits, such as 'pensions' and 'other benefits payable,' are funded and dispersed under Act 345," (COA Op. at 7) and, further, that "MCL 38.559(2) requires defendant cities to set aside tax dollars so it can fully pay benefits owed under the retirement system." (*Id.* at 6.)

The Court of Appeals also emphasized that the plain language of Act 345 did not support Plaintiff's claim that the statute concerns itself near-exclusively with police and fire retire pensions. For instance, the Court of Appeals noted, "in discussing 'age and service retirement benefits,' the statute uses the term 'retirement benefits,' as distinguished from 'pension benefits,' and it indeed uses the two terms in a manner that suggests that they are not equivalents." (Op at 7.) The Court of Appeals further explained that the Legislature's use of the word "other" in MCL 38.559(2) indicated that the Legislature intended "other benefits payable" to be distinct from "pensions":

> [U]se of the word "other" [in MCL 38.559(2)] was intended to distinguish the term "other benefits payable" from "pensions." "Benefit" is defined as "a payment or service provided for under an annuity, pension plan, or insurance policy," and "a service (as health insurance) or right (as to take vacation time)[.]" *Merriam-*

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> *Webster's Collegiate Dictionary* (11th ed.). "Payable" is defined as "may, can, or must be paid[.]" *Merriam-Webster's Collegiate Dictionary* (11th ed.). Accordingly, "other benefits payable" includes healthcare benefits, in the event the benefits "must be paid[.]" Defendant cities are therefore permitted to appropriate tax dollars to help pay for healthcare benefits to retired firefighters and police officers who are members of the retirement system and entitled to those benefits.

(COA Op. at 7.) "Thus," the Court of Appeals noted, "although plaintiffs conflate the terms, 'retirement benefits' are broader than 'pension benefits,' and the fact that MCL 38.556 does not specifically identify healthcare benefits as other 'retirement benefits' is inconsequential." (*Id.*) Contrary to Plaintiff's narrow focus on benefits referenced in MCL 38.556, "[w]hen Act 345 is examined as a whole, it expressly identified that 'other benefits' were payable as noted in MCL 38.559(2)." (*Id.*) The Court of Appeals concluded "[a]ccordingly, like the trial court, we reject plaintiffs attempt to exclude healthcare benefits from the 'other benefits payable' in MCL 38.559(2) by relying on a distorted interpretation of MCL 38.556." (*Id.*)

The Court of Appeals likewise rejected Plaintiff's claim that the City's financial statements and other reporting documents regarding the administration of the City's Act 345 retirement system establish that the City assessed an "illegal tax" under Headlee. The Court of Appeals noted that Plaintiff's citation to documents regarding "the management and administration of the pension funds by defendant cities . . . do not entitle plaintiffs to appellate relief." (COA Op. at 8.) Instead, because the language of Act 345 is unambiguous, the Court of Appeals found that "the statute must be enforced as written, no further judicial construction is permitted, and resort to extrinsic evidence is prohibited." (*Id.*, citing *Bailey v Antrim Co*, 341 Mich App 411, 420-421; 990 NW2d 372 (2022).) The Court of Appeals also found that Plaintiff's disagreement with the City alleged administration of its Act 345 benefits was irrelevant to Plaintiff's Headlee claim: it "matters not that the pension benefits and the healthcare benefits are administered separately; they are two

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components of the same retirement system, and each constitutes an aspect of the retirement benefits that are authorized under Act 345." (COA Op. at 7, n.3)

Finally, the Court of Appeals declined Plaintiff's invitation to inject his interpretation of legislative history into its analysis of the unambiguous statutory text of Act 345:

> Consideration of legislative history is only proper when a statute is ambiguous and judicial construction becomes necessary. *In re Certified Question from United States Court of Appeals for Sixth Circuit*, 468 Mich. at 116, 659 N.W.2d 597. Indeed, this Court does not "resort to legislative history to cloud a statutory text that is clear." *Id.* (quotation marks and citations omitted). The unambiguous language of Act 345 establishes that defendant cities are permitted to appropriate tax dollars to help pay for healthcare benefits to retired firefighters and police officers who are members of the retirement system and who are entitled to those benefits.

(Op. at 8). The Court of Appeals denied Plaintiff's Motion for Reconsideration on September 26, 2023. (Ex. 9.)[5]

The Court of Appeals' Opinion Binds Kickham Hanley's Numerous Identical Act 345 Lawsuits

This case is one of numerous recent lawsuits in which courts have dismissed identical Headlee Amendment claims advanced by Plaintiff's counsel, Kickham Hanley. See March 7, 2023 Order in *Westland Retail Center, LLC et al v City of Westland*, Wayne County Cir. Case No. 22-006933-CZ ("*Westland Retail*") (Ex. 10) (granting Westland's motion for summary disposition of plaintiff's complaint and denying plaintiffs' motion for partial summary disposition); March 14, 2023 Order in *O'Donnell v City of Southgate*, Wayne County Cir. Case No. 22-007854-CZ ("*O'Donnell*")(Ex. 11) (granting Southgate's MCR 2.116(C)(8) motion for summary disposition

[5] Plaintiff notes that he seeks leave to appeal the Court of Appeals' order denying his Motion for Reconsideration (Pl's Lv. App. at iv) but does not address that order separately. The grounds for denying Plaintiff's Application for Leave to Appeal the Court of Appeals' August 17, 2023 opinion set forth in this Answer apply equally to Plaintiff's Motion for Reconsideration.

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of the plaintiffs' complaint); May 31, 2023 Order in *Androsian v City of Taylor*, Wayne County Cir. Case No. 22-007507-CZ (Ex. 12)(granting Taylor's motion for summary disposition of plaintiffs' complaint and denying plaintiffs' motion for summary disposition). Like Plaintiff here, the plaintiffs in *Westland Retail*, *O'Donnell,* and *Androsian* claimed that the defendant municipality's assessment of taxes to fund police and fire retiree healthcare benefits under Act 345 was allegedly unconstitutional under the Headlee Amendment to the Michigan Constitution, Const 1963 art 9 § 31, and violated Act 345. (See Exs. 10, 11, and 12.) In all three cases, the trial courts rejected these claims and granted summary disposition in favor of the defendant municipalities based on many of the same arguments the City advances here.

Kickham Hanley has confirmed that it has filed a total of seven class action lawsuits against municipalities in southeast Michigan claiming Act 345-based Headlee violations like those alleged in this case. (Ex. 13, KH Motion to Stay *O'Donnell* Appeal, at 2.) To date, circuit courts have dismissed at least five of these cases (including this matter, *Ruman*, *O'Donnell*, *Westland Retail*, and *Androsian*), and none of these cases, to the best of the City's knowledge, have survived summary disposition.[6] While Kickham Hanley initiated appeals as of right in all five cases in the Court of Appeals, Kickham Hanley moved to stay at least three of these appeals (*O'Donnell*, *Westland Retail*, and *Androsian*) pending the outcome of the instant Application for Leave to Appeal.[7] In its Motions to Stay, Kickham Hanley conceded that "the outcome of the *Bate* and *Ruman* cases likely will control the outcome of this case. The legal issues are identical." (See,

[6] Kickham Hanley's identical case against Dearborn Heights, *Yazbek v Dearborn Heights*, Wayne County Cir. Case No. 22-007655-CZ, was stayed on or about September 21, 2023, after the Court of Appeals released its opinion in this case. (Ex. 14, *Yazbek* docket.) *Yazbek* is pending before the same judge who dismissed *Androsian* and, given the similarity of the claims in both cases, *Yazbek* will likely be dismissed as well.

[7] See *Westland Retail* (COA Case No. 367808); *O'Donnell* (COA Case No. 366886); *Androsian* (COA Case No. 366521.)

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e.g., Ex. 13 at 2.) Plaintiff's counsel further asserted that a stay of its pending appeals in the Court of Appeals was warranted because "**Plaintiffs recognize that, at this point, the Court [of Appeals'] opinion in *Bate* and *Ruman* is binding and Plaintiffs further concede that, if the Supreme Court does not reverse the Court's August 17, 2023 opinion, that opinion will likely be dispositive of [Kickham Hanley's other] appeal[s]**." (Ex. 13 at 3, emphasis in original.)

The Court of Appeals denied all three of Plaintiff's Motions to Stay. (Exs. 15-17, COA Orders Denying Motions to Stay.) Plaintiff's appeals thus remain pending in *O'Donnell*, *Westland Retail*, and *Androsian* even though Kickham Hanley admits that the Court of Appeals' opinion controls the outcome of these cases in favor of the defendant municipalities. See Ex. 13 at 2-3; MCR 7.215(C)(2)("the filing of an application for leave to appeal in the Supreme Court . . . does not diminish the precedential effect of a published opinion of the Court of Appeals.").

OVERVIEW OF MICHIGAN LAW GOVERNING STATUTORY AND CONSITITUTIONAL INTERPRETATION

I. CONSTRUCTION OF LAWS IN FAVOR OF MUNICIPALITIES.

The Michigan Constitution expressly recognizes the power of local governments, mandating that "the provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor." Const 1963, art 7, §34. Section 34 was added to the Constitution to guide courts on how to treat municipalities. The Michigan Constitutional Convention of 1961 remarked that this section was intended

> to direct the courts to give a liberal or broad construction to statutes and constitutional provisions concerning all local governments. Home rule cities and villages already enjoy a broad construction of their powers and it is the intention here to extend to counties and townships within the powers granted to them equivalent latitude in the interpretation of the constitution and statues.

2 Official Record, Constitutional Convention 1961, p 3395.

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As recently as 2016, this Court held that the current Michigan Constitution reflects "the people's will to give municipalities even greater latitude to conduct their business," and reaffirmed the idea that municipalities have extensive authority over "municipal concerns, property and government," and should be allowed to exercise their powers without fear that every single action will be second-guessed by the judiciary. See *Associated Builders and Contractors v City of Lansing*, 499 Mich 177, 186-87; 880 NW2d 765 (2016)(holding that municipality did not exceed its constitutional authority in enacting a prevailing wage ordinance). This Court stated that "[u]nder our current Constitution, there is simply no room for doubt about the expanded scope of authority of Michigan's cities and villages." *Id.* at 187.

Const 1963, art 7, §34 applies to the two laws that Plaintiff claims the City has violated: the Headlee Amendment and Act 345. Both laws concern "counties, townships, cities and villages." The Headlee Amendment prohibits "units of local government" from assessing new taxes without a vote of the electorate and provides a grandfather clause for any new taxes authorized by charter or law before Headlee was ratified. Const 1963, art 9, § 31. Act 345 "provide[s] for the establishment, maintenance, and administration of a system of pensions and retirements for the benefit of the personnel of fire and police departments employed by cities, villages, or municipalities […]." (Act 345, Preamble.) Thus, because both Headlee and Act 345 concern "cities," this Court should construe both Headlee and Act 345 liberally in the City's favor to preserve the City's right to self-direct its municipal affairs.[8]

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[8] Plaintiff ignores Const 1963, art 7, §34 and this Court's precedent interpreting it. Instead, he references *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 702; 550 NW2d 596 (1996), citing *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994) for the proposition that "[w]hen there is doubt, tax laws are to be construed in favor of the taxpayer." These cases are inapposite. Neither case dealt with Const 1963, art 7, §34, which controls this Court's interpretation of Act 345 here because both Headlee and Act 345 are "law[s] concerning counties, townships, cities and villages." Regardless, both *Sharper Image* and

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II. PRINCIPLES OF STATUTORY CONSTRUCTION.

Michigan courts apply well-settled standards of statutory construction to interpret statutes like Act 345. "[T]he purpose of statutory construction is to discern and give effect to the intent of the Legislature." *Potter v McLeary,* 484 Mich 397, 410; 774 NW2d 1, 8 (2009)(citations omitted). "In determining the intent of the Legislature, the Court must first look to the language of the statute." *Potter*, 484 Mich at 410. Further,

> [a]s far as possible, effect should be given to every phrase, clause, and word in the statute. The statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended. Moreover, when considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. In defining particular words in statutes, we must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme. A statute must be read in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained.

Id. at 410–11 (citations omitted). "Finally, the statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme." *Id.* at 411. "Undefined statutory terms must be given their plain and ordinary meanings, and it is proper to consult a dictionary for definitions." *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004)(citations omitted).

"When the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted." *Griffith ex rel Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 526; 697 NW2d 895, 898 (2005). "It is only where a statute is unclear and susceptible to more than one interpretation that judicial construction is allowed." *People v Morris,* 450 Mich 316, 326, 537 NW2d 842, 846 (1995). "It is a general rule of construction that

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Michigan Bell noted only that construction of a tax statute in favor of a taxpayer may be appropriate in the case of an ambiguous tax statute that does not explicitly provide the authority to tax. That is not the case here, where Act 345 unambiguously authorizes the City to make appropriations for "creating and maintaining a fund for the payment of the pensions and other benefits payable as provided in this act." MCL 38.559(2).

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lawmaking bodies are presumed to know of and legislate in harmony with existing laws." *People v Harrison,* 194 Mich 363, 369; 160 NW 623, 625 (1916). Further, under the doctrine of *in pari materia*, "statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law." *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201, 206 (2015).

ARGUMENT

I. PLAINTIFF'S APPLICATION DOES NOT MERIT THIS COURT'S REVIEW.

An application for leave to appeal must show that the issues involved in the case meet one of the six grounds for this Court's review in MCR 7.305(B). Although Plaintiff claims that this case "meets virtually every criteria warranting review by this Court," this case is no different from any case in which the Court of Appeals applies bedrock principles of constitutional and statutory interpretation to conclude that a plaintiff fails to make out a cognizable claim.

The reason Plaintiff wants this Court to grant leave to appeal is not because this case involves principles of major significance to this Court's jurisprudence, or because the Court of Appeals' opinion is clearly erroneous and will cause material injustice. It is because the Court of Appeals' opinion is binding precedent foreclosing the seven identical class action lawsuits (including this one) that Kickham Hanley has filed seeking the refund of millions of dollars of retiree healthcare benefits under an unsupportable interpretation of Act 345. See MCR 7.215(C)(2). As Kickham Hanley acknowledged in its unsuccessful motion to hold the appeals of its additional Act 345 lawsuits in abeyance, "**Plaintiffs recognize that the Court [of Appeals]' opinion in *Bate* and *Ruman* is binding and Plaintiffs further concede that, if the Supreme Court does not reverse the Court's August 17, 2023 opinion, that opinion will likely be dispositive of [Kickham Hanley's other] appeal[s]**." (Ex. 13, Motion to Stay *O'Donnell* appeal

(emphasis in original).) If this Court declines to review Plaintiff's Application, Kickham Hanley essentially admits that it will have gambled on its legal theory here and lost. This, however, is not a reason for this Court to grant Plaintiff's Application.

Plaintiff emphasizes that the Court of Appeals' opinion is published, urging this Court to grant leave to appeal because the Court of Appeals' publication decision allegedly signals an "alter[ation] in the landscape of Headlee Amendment jurisprudence." (*Ruman* Lv. App. at 18.)[9] But the Court of Appeals' opinion signals no such thing. A likelier reason for the opinion's publication is that the opinion "construes as a matter of first impression a provision of a constitution, statute, regulation, ordinance, or court rule." MCR 7.215(B)(2). Because Kickham Hanley's lawsuit advances a statutory interpretation of Act 345 that no court of this state has ever recognized, the Court of Appeals' published opinion reassures stakeholders depending on voter-approved Act 345 funding of retiree healthcare benefits that Plaintiff's unprecedented interpretation of Act 345 is unfounded. The Court of Appeals was also undoubtedly aware from the parties' prior briefing in this case and *Ruman* (and the Court's own docket reports) that Kickham Hanley has many identical Act 345 class action lawsuits in the pipeline, both at the trial court and appellate levels. By publishing its opinion affirming that the plain language of Act 345 permits funding for police and fire retiree healthcare benefits, the Court of Appeals ensured that the opinion would govern over Kickham Hanley's other cases advancing the same flawed legal theory advanced here.

[9] Plaintiff's Application for Leave to Appeal notes that it "incorporates by reference the 'Argument' section from the plaintiffs/appellants' Application for Leave to Appeal in *Ruman v. City of Warren,* Supreme Court Case No. 166329." Citations to Plaintiff's Application for Leave to Appeal filed in this case are referenced herein with the prefix "Pl's Lv. App." Citations to Plaintiffs' Corrected Application for Leave to Appeal filed in *Ruman* are referenced with the prefix "*Ruman* Lv. App."

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Plaintiff cannot show that the Court of Appeals' straightforward application of principles of constitutional and statutory construction was clearly erroneous or significantly affects principles of Michigan jurisprudence. He can only show that he is dissatisfied with a decision confirming that Act 345 simply does not limit its funding to police and fire retiree pensions. Plaintiff's Application should be denied.

II. THE COURT OF APPEALS CORRECTLY HELD THAT PLAINTIFF FAILED TO STATE A CLAIM BECAUSE THE DISPUTED TAXES WERE AUTHORIZED BY ACT 345 BEFORE HEADLEE'S RATIFICATION.

For more than 40 years, state law has precluded courts from applying the Headlee Amendment to legally preauthorized taxes. Headlee (adopted by referendum effective December 23, 1978) amended the Michigan Constitution to limit the assessment of *new* taxes without voter approval. Const 1963, art 9, §6, 25-34. Specifically, the Headlee Amendment applies only to taxes that were "not authorized by law or charter" when Headlee was ratified in 1978:

> Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon.

Const 1963, art 9, §31.

This Court has expressly held that this means that any assessment that was "authorized" before Headlee's ratification in December 1978 is not subject to the amendment's limitations. According to this Court, "the plain language of art. 9, §31, excludes from its scope the levying of a tax, or an increased rate of an existing tax, that was authorized by law when that section was ratified." *Am Axle & Mfg, Inc v City of Hamtramck*, 461 Mich 352, 362; 604 NW2d 330 (2000). This ruling affirms "the decisions of several panels of this Court that the Headlee exemption of taxes authorized by law when the section was ratified permits the levying of previously authorized

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taxes even where they were not being levied at the time Headlee was ratified and even though the circumstances making the tax or rate applicable did not exist before that date." *Id.* at 357; see also COA Op. at 4. Simply put, taxes "authorized" by law or charter before December 1978 are not subject to Headlee.

"Authorized" within the meaning of Headlee "does not require that a tax actually be levied on the date that that the Headlee Amendment became effective." *Id.* at 357 (quoting *Bailey v Muskegon Cty Bd of Comm'rs*, 122 Mich App 808, 821; 333 NW2d 144 (1983)).[10] "Rather, it requires only that a local government be *empowered* to levy the tax on the date that the Headlee Amendment was ratified, even if the local government had not exercised its authority." *Id.* (emphasis in original). Thus, if a municipality was empowered to levy a tax before Headlee, but did not actually levy the tax until after, the tax is not subject to challenge as unconstitutional under Headlee. See *id.* Moreover, "nowhere does Headlee require a direct vote of the electors in order to permit a local unit of government to increase taxes if the local unit of government has the authority by law or charter to levy the increase." *Am Axle*, 461 Mich at 358 (quoting *Smith v Scio Twp*, 173 Mich App 381, 384; 433 NW2d 855 (1988)). Only an allegedly "new *kind* of tax" not authorized prior to Headlee is subject to Headlee's restrictions.[11] *Am Axle*, 461 Mich at 359

[10] In *Bailey*, for example, the Court of Appeals concluded that the Headlee Amendment's exemption applied to Muskegon County's accommodations tax, which had statutory authority predating Headlee but had not been levied by the county until after Headlee's enactment. The Court emphasized that the drafters of the Amendment "expressly intended" the exemption to apply in such a context. *Bailey*, 122 Mich App at 821 (emphasis added). See also *Duverney v Big Creek-Mentor Util Auth,* 469 Mich 1042; 677 NW2d 836, 837 (2004) (Corrigan, J., concurring) ("[I]f a municipality's authority to authorize a tax existed before the effective date of the Headlee Amendment, no Headlee violation can arise").

[11] In *American Axle*, taxpayers from Hamtramck brought a Headlee challenge to a tax imposed to cover an unpaid civil judgment against the city. *Am Axle*, 461 Mich at 354. The city assessed the tax pursuant to MCL 600.6093, a statute that authorized judgment levies and was enacted *before* Headlee was ratified. *Id*. at 360. This Court therefore rejected the plaintiff's argument that

(quoting *Saginaw Cty v Buena Vista Sch Dist*, 196 Mich App 363, 366; 493 NW2d 437 (1992)) (emphasis added).

Plaintiff contends that Act 345 taxes exceeding any pension-related amount are taxes that are not authorized by Headlee. (*Ruman* Lv. App. at 18-23.) But that is only because Plaintiff takes the narrow view that Act 345 only authorizes the creation and maintenance of a pension plan. By its plain terms, Act 345 authorizes the creation and maintenance of a retirement system. And what is authorized to be taxed under Section 9 of the Act – which Plaintiff admits has been in place at least as far back as 1951 – is "an amount required . . . to meet the appropriations to be made by municipalities under this act." MCL 38.559(2); Plaintiff's Court of Appeals Appendix ("Pl's COA App'x"), at Ex. 13 (1951 version of Act 345 containing same operative language in MCL 38.559(2)). This pre-Headlee provision legally forecloses Plaintiff's Headlee claim because it expressly codified the City's authority to tax before Headlee's ratification. The Court's obligation to construe both Headlee and Act 345 in favor of the City compels this conclusion.

Specifically, Section 9(2) of Act 345 confirms that all amounts required to meet the appropriations made by municipalities under the Act are exempt from Headlee's voter approval requirement. Moreover, this same provision explicitly provides that Act 345 taxes "shall be in addition to any tax limitation imposed upon tax rates in those municipalities by charter provisions or by state law subject to section 25 of article IX of the state constitution of 1963 [i.e., the Headlee Amendment]." MCL 38.559(2). Plaintiff's Complaint already concedes that this Court has

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Headlee required Hamtramck's judgment tax to be put to a vote. *Id.* at 362. The challenged provision was "in effect at the time the Headlee Amendment was approved," and thus taxes levied under the provision (even those levied after Headlee's ratification) were not subject to Headlee analysis. *Id.* at 360. The pre-Headlee provision "was a preexisting authorization for the levy of the judgment tax, and thus the levy [was] not subject to voter approval." *Id.* at 364.

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“expressly recognized that the taxes authorized by Act 345 were the type of taxes that were exempt from Headlee because such taxes were ‘authorized by law or charter’ in 1978,” before Headlee was ratified. (Compl. ¶31.)

Faced with this Court’s acknowledgement that Headlee exempts precisely the type of taxes he challenges in this lawsuit, Plaintiff resorts to a fear campaign. Plaintiff warns that the Court of Appeals’ opinion “has conferred absolutely unlimited taxing authority on municipalities with Act 345 retirement systems.” (*Ruman* Lv. App. at 16.) According to Plaintiff, the dismissal of his Headlee claim will unleash a spending spree under which municipalities will use Act 345 funds to “buy hunting and fishing cabins for every retired police and fire fighter,” and leave “briefcases of cash” in the trunk of each police and fire retiree’s car “to be happily found on their last day of work.” (*Id*. at 41-42.) Plaintiff’s hand-wringing is unfounded. The Court of Appeals’ opinion has done nothing other than confirm that the plain language of Act 345 permits the City to make appropriations to fund police and fire retiree health benefits. This was already the interpretation adopted by the many municipalities being sued by Kickham Hanley and there is no evidence that any of them have engaged in any of the questionable conduct Plaintiff predicts. Plaintiff does not dispute that the City’s voters already approved the establishment of an Act 345 retirement system. (Complaint ¶6.) Nor does Plaintiff dispute that OPEB is a retirement benefit. Thus, the Court of Appeals correctly found that City’s decision, in its discretion and per the will of its voters, to provide healthcare coverage to its retired first responders under an Act 345 retirement system does not violate Headlee.

Because there is pre-Headlee authorization for the City’s assessment of an “amount required by taxation to meet the <u>appropriations</u> to be made by municipalities under [Act 345],” there is no viable Headlee claim here – irrespective of whether the appropriations themselves

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comply with Act 345.[12] The authorization is for appropriations that a municipality makes under the Act. It does not matter when the City began to assess the taxes, or whether the City is complying with the strict terms of Act 345. (COA Op. at 4, 8.) All that matters is that the City has the legal authority to assess taxes in an amount *that meets the appropriations it makes* under the Act. If the City is supposedly violating the Act by making appropriations for retiree healthcare benefits (it is not), then that is a separate legal issue for which only injunctive or declaratory relief can be awarded.[13] Thus, the Court of Appeals properly found that "because the [City's Act 345] tax was authorized before the Headlee Amendment was ratified, plaintiffs cannot establish a violation of Const 1963, art 9, § 31." (*Id.* at 8, citing *Am Axle*, 461 Mich at 357; *Midwest Valve,* ____ Mich App ___, ____; NW2d___ , slip op at 4.)

III. THE COURT OF APPEALS CORRECTLY DETERMINED THAT ACT 345 AUTHORIZES THE CITY'S ALLEGED CONDUCT.

A. The Plain Statutory Language of Act 345 Authorizes the City to Establish and Fund a Broad Retirement System Offering Pensions and "Other Benefits," such as Retiree Health Benefits.

The Court of Appeals properly affirmed dismissal of Plaintiff's Complaint because Plaintiff's claims are based on an artificially narrow reading of the plain language of Act 345. (COA Op. at 6-8.) Although Plaintiff argues that "[u]nder Act 345 [MCL 38.559], a municipality may only impose taxes sufficient to fund the City's actual contributions to the Act 345 pension plan" (Compl. ¶3), Act 345 simply does not say this. The limiting terms "only," and "actual

[12] Plaintiff's interpretation of the word "meet" is irrelevant. (*Ruman* Lv. App. at 21.) All "meet" means is that the City must fulfill or satisfy a need, which, here, are the City's appropriations under the Act.

[13] *Michigan Association of Home Builders v City of Troy*, 504 Mich 204, 223-26; 934 NW2d 713 (2019) (prohibiting right to money damages when statute does not explicitly provide a private cause of action but allowing claim under the statute for declaratory or injunctive relief).

contributions" appear nowhere in MCL 38.559 or the Act as a whole. Instead, the plain language of Act 345 reveals the Michigan Legislature authorized the creation and maintenance of a retirement system – not a singular pension plan – for police and firefighter retirees. Nothing in the Act suggests that the "retirement benefits" available under the Act may not include police and fire retiree healthcare benefits, as Plaintiff claims. In fact, the terms "retirement system" and "retirement benefits" are nowhere defined in the Act. The Legislature could have clearly manifested an intent to limit the retirement system to the provision of a single pension plan, or to limit retirement benefits to pension, death and disability benefits. But it did not do this.[14] And no court has ever recognized Plaintiff's strained interpretation of the Act.[15] The Act establishes a floor - not a ceiling - on the type and amount of police and fire retirement benefits a municipality may fund using Act 345 dollars. And the Act makes clear that the municipality may appropriate amounts to provide other retirement benefits to its police and firefighter retirees.

Section 9 of Act 345 – the primary provision Plaintiff cites in support of his claim – outlines the appropriations that must be made under the Act:

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[14] The Act, for instance, contains several other definitions in Section 7. See MCL 38.557.

[15] *Shelby Twp Police & Fire Ret Bd v Charter Twp of Shelby,* 438 Mich 247; 475 NW2d 249 (1991) does not support Plaintiff's claims. (*Ruman* Lv. App. at 24-25.) In *Shelby Twp*, this Court held that Act 345 did not unconstitutionally delegate the township's taxing authorities. 438 Mich at 256. As the Court of Appeals noted, *Shelby Twp* involved a constitutional provision that is not at issue in this case. (COA Op. at 8.) Further, far from suggesting that Act 345 only funds a limited scope of benefits, this Court stated that Act 345's purpose is to provide "adequate funding for police and fire retirement systems," *id*. at 262, which is directly at odds with Plaintiff's claim that the Act caps the benefits it funds. *Shelby Twp* supports the conclusion that Section 9 of Act 345 is about maintaining system integrity and ensuring that municipalities understand that the duty to cover retiree pensions is not optional. Similarly, nothing in *Kinder Morgan Michigan, LLC v City of Jackson*, 277 Mich App 159; 744 NW2d 184 (2007) analyzed the scope of benefits and taxes authorized by Act 345. (*Ruman* Lv. App. at 19.) The case merely referred to Act 345 as a "pension statute" in passing, *Id.* at 161. The case had nothing to do with the issues here and instead addressed whether it was appropriate to levy Act 345 taxes against properties located in renaissance zones. *Id.* at 164-174.

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> For the purpose of creating and maintaining a fund for the payment of the pensions and other benefits payable as provided in this act, the municipality, subject to the provisions of this act, shall appropriate, at the end of such regular intervals as may be adopted, quarterly, semiannually, or annually, an amount sufficient to maintain actuarially determined reserves covering pensions payable or that might be payable on account of service performed and to be performed by active members, and pensions being paid to retired members and beneficiaries. The amount of the appropriation in a fiscal year shall not be less than 10% of the aggregate pay received during that fiscal year by members of the retirement system during that fiscal year by members of the retirement system unless, by actuarial determination, it is satisfactorily established that a lesser percentage is needed.

MCL 38.559(2).

This provision does not limit the type or amount of police and firefighter retirement benefits authorized under the Act. Rather, it establishes the minimum appropriations necessary to effectuate the Act's "purpose of creating and maintaining a fund for the payment of the pensions and *other benefits* payable as provided in this act." *Id.* (emphasis added). The first sentence provides that the municipality must - at the very least - maintain reserves to pay pensions, but it also acknowledges that the municipality must also maintain the fund for payment of "other benefits payable as provided in this act." The second sentence states the amount that "shall" be appropriated in a fiscal year "shall not be less than 10%" of the aggregated pay received, unless by actuarial determination less is needed. MCL 38.559(2). The point of this provision is to establish what amount a municipality must appropriate – at the very least ("not less than") – to comply with the Act. Indeed, the appropriation is not tied to the amount of the pension; it is tied to the amount of aggregate pay, suggesting that the City could appropriate 15% of aggregate pay, if necessary, but the only way to avoid appropriating less than 10% is by relying on an actuarial analysis. Again, the overall purpose of the Act is to protect police and fire retiree benefits, and

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this provision ensures that a municipality is reserving enough.[16] If the municipality chooses to reserve more to honor its benefit obligations to police and fire retirees, it is free to do so. The Act does not restrict what these "other benefits" are – much less limit "payable" benefits to pension, death, and disability benefits, as Plaintiff claims. The Court of Appeals correctly "reject[ed] plaintiffs attempt to exclude healthcare benefits from the 'other benefits payable' in MCL 38.559(2) by relying on a distorted interpretation" of the statute. (COA Op. at 7.)

Section 9 of Act 345 further provides that "[t]he right of a person to a pension, to the return of member contributions, to *any optional benefits*, or any other right accrued or accruing to a member or beneficiary under this act and the money belonging to the retirement system is subject to the public employee retirement benefit protection act." MCL 38.559(6)(emphasis added). Indeed, Section 9 refers to pensions and "other" or "optional benefits" in four separate places.[17] These "optional benefits" are not defined in Section 9 or elsewhere in the Act. The Act's reference to "optional benefits" illustrates that the "retirement system" referenced, and the underlying benefits authorized, are broader than pension, death, and disability payments. Nothing about this provision suggests that retiree healthcare benefits are *not* "other benefits" and/or "optional

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[16] Notably, the one word used throughout Section 9 that Plaintiff ignores is "sufficient." "Sufficient" means "enough" see https://www.merriam-webster.com/dictionary/sufficient, and thus, implies that the City's obligation is to ensure that its appropriations meet a "minimum" floor, rather than serve as a threshold "ceiling."

[17] See MCL 38.559(2)("For the purpose of creating and maintaining a fund for the payment of the pensions **and** other benefits payable as provided in this act . . ."); MCL 38.559(3)("If . . . accumulated funds . . . are insufficient to pay all pensions **and** other benefits due and payable in that year out of funds of the retirement system, then all pensions **and** other benefits payable shall be prorated . . ."); MCL 38.559(6) ("The right of a person to a pension, to the return of member contributions, to any optional benefits, **or** any other right accrued or accruing to a member of beneficiary . . . is subject to the public employee retirement benefit protection act.")(emphases added).

benefits" payable under the Act. And Plaintiff's argument that these "other" or "optional" benefits simply refer to disability and death benefits referenced in Section 6(2) is undermined by the plain language of that provision, which confirms that the benefits discussed in Section 6(2) are other types of "pensions" – not other types of "benefits."[18]

A reading of the whole of Act 345 also demonstrates that Section 9 sets a floor, not a ceiling, on the type and amount of retirement benefits authorized under the Act. The Legislature titled Act 345 the "Fire Fighters and Police Officers Retirement Act," (not the "Fire Fighters and Police Officers' Pension Act" or the "Fire Fighters and Police Officers' Pension, Death, and Disability Benefits Act.") And the preamble to the Act states that the purpose of the Act is to "establish, maintain and administer a system of pensions *and* retirements for the benefit of personnel of fire and police departments." Act 345 Preamble, emphasis added.

That Act 345 is characterized as a "retirement" statute to fund not only pensions, but an entire "system of pensions and retirements" is not an accident. The Act's provisions repeatedly show that the Act establishes a source of funding for a broad spectrum of retirement benefits. For instance, the "retirement board" created under the Act is directed not simply to oversee the business of a pension system, but to "[m]ake rules and regulations necessary to the proper conduct of the business of the [entire] retirement system" and retain a broad variety of services (including "legal, medical, actuarial, clerical, or other services") that "may be necessary for the conduct of the affairs of the retirement system." MCL 38.552(1),(2). These provisions clearly extend the Act's reach beyond "pensions" alone, and the inclusion of "other services" in the list of services "as may be

[18] See, e.g., MCL 38.556(2)(a)(referring to surviving spouse benefit as a "duty death pension"); MCL 38.556(2)(d)-(f)(referring to a "disability retirement pension").

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necessary" to conduct the retirement system's affairs illustrates the Legislature's intent that the retirement board have broad discretion to address the retirement system's needs.

The Act's emphasis on "pensions *and* retirements" is also significant because it confirms that Act 345 establishes "pensions" and "retirement benefits" as separate terms with different meanings. (COA Op. at 7 (noting that Act 345 does not treat the terms "pension benefits" and "retirement benefits" as equivalents).) In Section 6(1), the Act contains specific provisions governing "retirement benefits" that include, but are not limited to, pension benefits. For instance, MCL 38.556(1)(d), which discusses "vested retirement benefits that are not subject to forfeiture," refers separately to "whether a member is entitled to a pension," while at the same time referring more generally to "the benefits to which the member is entitled under this act." MCL 38.556(1)(d). If a "pension" were the only benefit to which a member is entitled, there would be no need for the Legislature to subsume "pension" under "retirement benefits that are not subject to forfeiture." Instead, this subsection could simply refer to "pensions" alone (but it does not). That the Legislature distinguishes pensions as one type of retirement benefit "to which members are entitled under this act" dovetails with the Act's stated intent of establishing not just a pension system, but a broader "system of pensions and retirements" for police and fire retirees. See Act 345, Preamble.[19]

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[19] Moreover, Section 6c(2) provides that persons who participated in a transitional public employment program - a different category of employee from those generally addressed throughout the rest of the Act - are not excluded "from the *accident, disability or other benefits* available to members of the retirement system under this act." MCL 38.556c(2)(emphasis added). If the Act affords these "transitional employees" with a wide range of benefits including "accident" and "other benefits" available under the Act's retirement system, it is not plausible that the Legislature intended for police and fire retirees to receive only pension, death, and disability benefits under Act 345.

The Court of Appeals correctly held that the Act allows the City to establish and maintain a retirement system that provides a full suite of retirements benefits – benefits that under the plain terms of the Act include pension, death, disability and other and/or optional benefits (including healthcare benefits).

B. The Court of Appeals Properly Consulted Dictionary Definitions When Construing Undefined Statutory Terms in Act 345.

While Plaintiff claims the Court of Appeals erred in consulting dictionary definitions to construe the meaning of the term "retirement system" in Act 345 (Pl's Lv. App. at ix, Question No. 11; *Ruman* Lv. App. at 13-15, 33), the Court's reliance on dictionary definitions to interpret the unambiguous language of Act 345 was appropriate under basic canons of statutory interpretation. As the Court of Appeals recognized, "[w]hen a term is not defined in a statute, courts may consult dictionary definitions to determine the plain and ordinary meaning of the term." (COA Op. at 9, citing *Midwest Valve, supra*.) This Court has repeatedly held that consultation of dictionary definitions is appropriate when interpreting the plain language of an undefined statutory term, exactly as the Court of Appeals did here. See, e.g., *Champine v Dep't of Transportation*, 509 Mich 447, 453; 983 NW2d 741, 744 (2022)(citations omitted)(noting that "[i]f a word in a statute is undefined, it must be given its 'plain and ordinary meaning[ ], and it is proper to consult a dictionary for definitions,'" and consulting dictionary for plain meaning of the undefined term

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"notice" in the GTLA, MCL 691.1404(2).[20] Because Act 345 does not explicitly define "retirement system," the Court of Appeals properly consulted dictionary definitions to construe the term.[21]

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[20] See also *Halloran,* 470 Mich at 578 (consulting dictionary definition to construe plain meaning of undefined term "however" in MCL 600.2169(1), governing medical malpractice expert witness qualifications); accord *In re Casey Est,* 306 Mich App 252, 260; 856 NW2d 556, 561 (2014)(citations omitted)(noting that "a dictionary definition is appropriately used to construe undefined statutory language according to common and approved usage," and consulting dictionary definition to construe plain meaning of term "if" in Michigan's Paternity Act, MCL 722.711 et seq.).

[21] Plaintiff's argument that the Court of Appeals clearly erred in consulting a dictionary to interpret the undefined term "retirement system" in Act 345 is based on dissenting opinions that do not support this proposition. See *Ruman* Lv. App. at 14. In *Jones v Olson*, 480 Mich 1169, 1176; 747 NW2d 250 (2008)(Weaver, J., dissenting), the dissent complained that this Court's decision in *Kreiner v Weaver*, 471 Mich 109, 130-131; 683 NW2d 611 (2004) improperly used a dictionary definition to determine what a particular word meant in a statute. Plaintiff does not mention that this Court overruled *Kreiner* in *McCormick v Carrier*, 487 Mich 180; 795 NW2d 517 (2010). In *McCormick*, this Court reiterated that "[w]hen reviewing a statute, all non-technical 'words and phrases shall be construed and understood according to the common and approved usage of the language,' MCL 8.3a, and**,** if a term is not defined in the statute, a court may consult a dictionary to aid it in this goal." 487 Mich at 192. This Court then spent thirteen pages consulting various dictionary definitions to construe the unambiguous statutory language of MCL 500.3135 (the statute at issue in *Kreiner*). *McCormick*, 487 Mich at 195-207.

Plaintiff also emphasizes that the dissenting opinion in *Rouch World, LLC v Dep't of Civil Rights*, 510 Mich 398, 436-37; 987 NW2d 501, 521 (Zahra, J., dissenting) advocates for the Court's interpretation of statutes according to "what the linguistic community's chosen words meant to that community at the time those words became law," and concludes that the Court of Appeals' finding that Act 345 permits municipalities to fund OPEB must be wrong because "there was no such thing as 'retiree health benefits' or 'OPEB' in 1937, when Act 345 was enacted . . ." (*Ruman* Lv. App. at 14.) But even if this dissent were binding, Plaintiff's argument here presents the same overly narrow reading of Act 345 that plagues his entire lawsuit. Act 345 broadly establishes a broad "retirement <u>system</u>" consisting of "pensions <u>and other benefits</u>" for police and fire retirees. MCL §§ 38.556c(2), 38.559(2) (emphasis added). As discussed above, the statutory language illustrates the Legislature's intent that municipalities have broad discretion to address the retirement system's needs as they arise. That the Legislature left the term "other benefits" undefined is a clear indication that the Legislature did not want to narrowly define the scope of retirement benefits the Act 345 retirement system may fund. Thus, it is irrelevant whether the specific terms "retiree health benefits" or "OPEB" existed when Act 345 was last revised because the broad statutory language permits funding for "other benefits," including but not limited to OPEB (which is undisputedly a type of retirement benefit).

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Moreover, the Court of Appeals did not interpret the term "retirement system" in Act 345 by reference to a dictionary definition alone. The Court of Appeals also performed a close analysis of the unambiguous statutory language by examining all relevant terms (including not only the term "retirement system" singled out in Plaintiff's Application, but, crucially, the terms "pension," "appropriations," and "other benefits"). (Op. at 3, 6-8.) The Court of Appeals examined these terms in the context in which they are used throughout the statute in relation to each other. *See id*. And, unlike Plaintiff, whose interpretation of Act 345 excises key terms like "other benefits," the Court of Appeals was mindful not to interpret the Act in a manner that rendered any term surplusage or nugatory. (Op. at 7, citing *South Dearborn*, 502 Mich at 361.)

Plaintiff's assertion that Act 202's "express definition of 'retirement system'" obviates the Court's need to refer to a dictionary (*Ruman* Lv. App at 35-39) is also inaccurate. Indeed, the definition of "retirement system" in Act 202 is tautological insofar as MCL 38.2803(p) defines "retirement system" as "a retirement system [. . .]." Thus, even if the Court of Appeals had consulted MCL 38.2803(p) when interpreting Act 345, the Court still would have needed to (properly) refer to a dictionary definition to parse the term. As such, the Court of Appeals' interpretation of "retirement system" in Act 345 is consistent with the plain language of MCL 38.2803(p) even though the Court of Appeals' opinion does not explicitly reference Act 202.

C. Nothing in Act 345 Prohibits the City from Establishing a Retirement System with Multiple Plans.

While Plaintiff admits that MCL 38.559 governs the City's appropriations under Act 345, it is no accident that Plaintiff ignores the plain language of this and other provisions in the Act that confirm the Act is not as limited as he claims. Instead, Plaintiff contends that the City has violated

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the Headlee Amendment through what Plaintiff claims are various procedural violations of the Act. Plaintiff asserts that the City's financial statements and other reporting documents establish that the City assessed an "illegal tax" under Headlee. (Pl's Lv. App. at 5-8.) Plaintiff claims that because "OPEB contributions are not deposited into the City's Police and Fire Pension Plan," the City's police and fire retiree healthcare taxes are unconstitutional under Headlee. (Pl's Lv. App. at x (Question No. 7), 7-8; *Ruman* Lv. App. at 27-28.) Plaintiff also claims that the Court of Appeals' analysis impermissibly "merged" the City's pension and retiree healthcare (i.e. OPEB) plans. (Pl's Lv. App. at vii (Question Nos. 5, 11); *Ruman* Lv. App. at 37-39.) And he claims that the City has violated Act 345 because the City's regulatory filings pursuant to Act 202 show that the City maintains separate pension and OPEB plans for police and fire retirees. (Pl's Lv. App. at ix (Question No. 5), xi (Question No. 11); *Ruman* Lv. App. at 37-39.)

The Court of Appeals properly found that the City's financial statements and reporting documents do not determine what the language of Act 345 permits. Instead, the Court correctly noted that Plaintiff's citation to documents regarding "the management and administration of the pension funds by defendant cities . . . do not entitle plaintiffs to appellate relief." (COA Op. at 8.) Because the language of Act 345 is unambiguous, "the statute must be enforced as written, no further judicial construction is permitted, and resort to extrinsic evidence is prohibited." (*Id.*, citing *Bailey v Antrim Co*, 341 Mich App at 420-21.) The Court of Appeals also correctly concluded that Plaintiff relied on a "distorted interpretation" of Act 345 to support his claim that the statute does not permit retiree healthcare funding, and explicitly held that it "matters not that the pension benefits and the healthcare benefits are administered separately; they are two components of the same retirement system, and each constitutes an aspect of the retirement benefits that are

authorized under Act 345." (COA Op. at 7, n.3.)[22] It is Plaintiff – not the Court of Appeals – who "disregarded principles of statutory interpretation" by claiming that the Court should look to extrinsic evidence outside the plain language of Act 345 to interpret the statute's meaning.[23]

Plaintiff's allegations regarding the City's financial records seek to detract attention from the actual statutory language of Act 345 and sow confusion where none exists. To be clear, the City does not have a singular pension plan. It maintains an Act 345 Fund that holds all amounts received by the City through Act 345 taxes to support its Act 345 system. (Pl's COA App'x, Ex. 5 at 2-3.) Plaintiff ignores the fact that the City remits monies from that Fund to two separate (not "merged") plans that support police and firefighter retiree benefits. In addition to its plan that funds pensions, the City also has a specific police and fire retiree healthcare plan, and similarly relies on actuarial calculations for this plan's funding. See, e.g., *id.* Ex. 2 at 3-47. But more importantly, nothing in Act 345 suggests that the City may not use separate plans to fund Act 345 retirement benefits. Nor does any provision of Act 345 suggest that all Act 345 funds must be paid from a pension plan. The only way Plaintiff's argument makes sense is if the Act limited Act 345 funding to "pension" funding – which it patently does not. Indeed, MCL 38.559 does not even contain the phrase "pension plan." Instead - as the Court of Appeals in this case and every

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[22] Thus - as the Court of Appeals found - Plaintiff's reliance on *Studier v Michigan Public School Employees' Retirement Board*, 472 Mich 642, 645, 654-55; 698 NW2d 350 (2005) (Ruman Lv. App. at 28, 40) is inapposite because the City does not use a pension plan to pay healthcare benefits. (COA Op. at 7-8 ("reject[ing] plaintiffs' reliance on *Studier*" because that case dealt with Const 1963, art 9, §24, a constitutional provision "not at issue in this appeal").)

[23] Plaintiff's claim that the City has violated Headlee because the City's police and fire OPEB benefits are allegedly paid to third-party insurers or healthcare providers (rather than directly to police and fire retirees) and, thus, are not "benefits payable" under Act 345 (see *Ruman* Lv. App. at 39-40) is another example of Plaintiff's attempt to use extrinsic evidence to "interpret" the statute's plain terms. Nowhere does the statute state that "other benefits" must be paid directly to retirees rather than through insurers or other third parties. Again, the statute's language is not as restrictive as Plaintiff claims.

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other court reviewing Plaintiff's erroneous legal theory has found - Act 345 authorizes taxation to fund a police and fire retirement system covering pensions and "other benefits payable" under the Act. (COA Op. at 6-8; MCL 38.559(2).) Plaintiff offers no legal authority to suggest that the City violates Act 345 by maintaining an Act 345 Fund and relying, in its discretion, on multiple plans to offer police and fire retirement benefits, including health benefits.[24]

IV. PLAINTIFF FAILS TO STATE A CLAIM BECAUSE ACT 345 BENEFITS ARE SUBJECT TO COLLECTIVE BARGAINING AND NOT LIMITED BY THE ACT'S PROVISIONS.

Plaintiff's assertion that Act 345 benefits are limited to pension, death and disability benefits directly conflicts with Section 6e, which requires that notwithstanding any other provision in Act 345, any matter related to the retirement system provided by the Act must be subject to collective bargaining under Act No. 336 of 1947, MCL 423.201 *et seq* (a/k/a the Public Employment Relations Act or "PERA"):

> *Notwithstanding any other provisions of this act, any matter relating to the retirement system provided by this act*, including, but not limited to, postretirement adjustment increases, applicable to current employees represented by a collective bargaining agent *is a mandatory subject of bargaining under the public employment relations act*, Act No. 336 of the Public Acts of 1947, being sections 423.201 to 423.216 of the Michigan Compiled Laws.

MCL 38.556e (emphasis added). By broadly subjecting "any matter relating to the retirement system" (including, by definition, the retirement benefits offered by the system) to collective bargaining, the Michigan Legislature has concluded that the benefits to be provided by an Act 345

[24] Even assuming that Plaintiff's allegations about the City's "violations" of Act 345 were true (they are not), Plaintiff still has failed to identify any provision of the Act justifying a class action Headlee Amendment claim seeking millions of dollars of "refunds" from the City based on these "violations." As the Court of Appeals recognized, Plaintiff is bound by his pleadings and "raised no cause of action pertaining to the administration and organization of Act 345. Rather, the complaint solely challenged as a Headlee Amendment violation the collection of taxes to pay for other benefits." (COA Op. at 8-9.)

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retirement system is a matter best addressed by the municipality and the relevant unions. The obligation to collectively bargain any matter related to the City's Act 345 system exists notwithstanding (i.e., irrespective of) any other provision in the Act. This means that the obligation to collectively bargain (and the results therefrom) supersede anything to the contrary in the Act itself.

Plaintiff totally ignores MCL 38.556e. But if Plaintiff's interpretation limiting Act 345 retirement benefits to pension, death, and disability benefits were correct, then Section 6e would be superfluous because there would be no room left to collectively bargain. Instead, benefits under the Act would be limited to pension, death, and disability benefits, and the collective bargaining parties would be precluded from negotiating any additional benefits (including but not limited to retiree healthcare benefits for police and fire department personnel). This would be contrary to Section 6e's collective bargaining requirement.

That communities like the City can bargain to provide benefits other than those expressly identified in Act 345 is consistent with this Court's understanding that the duty to bargain prevails over all other laws addressing the conditions of public employment. See *Int'l Ass'n of Fire Fighters v Warren*, 411 Mich 642; 311 NW2d 702 (1981). In *Int'l Ass'n of Fire Fighters*, this Court held that the collective bargaining requirement in PERA, MCL 423.215, specifically prevailed over other conflicting statutes, including the promotion system set forth in the Fire and Police Civil Service Act (Act 78). *Id.* at 662-63. This Court noted that no public employer is required to bargain away the provisions in Act 78, and the statute would control for those communities who adopt the Act 78 promotion system. <u>But</u> communities are free to adopt a different system through collective bargaining. *Id.* at 654, 663. The City's modification of its Act 345 retirement system is no different.

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Here, there is no question that the PERA duty to bargain supersedes the other provisions of Act 345 because it is expressly so stated in Section 6e of the Act. This statutory duty to bargain – which is consistent with the constitutional directive to provide for laws governing the resolution of disputes concerning public employees (see Const 1963, art 4 §48) – includes not only all matters under Act 345 but also all subjects that fall under the scope of bargaining under PERA, including pay, work shifts, pensions, grievance procedures, sick leave, seniority, retirement age and health insurance benefits. See *St Clair Intermediate School Dist v Intermediate Educ Ass'n*, 458 Mich 540, 551; 581 NW2d 707 (1998). Were the Court to adopt Plaintiff's construction of Act 345 along with his requested relief of disgorgement, it would impair benefits that were not only contractually bargained for between the City and the respective police and firefighter unions, but also legislatively permitted by the Act (and PERA).

V. PLAINTIFF'S CONSTRUCTION OF ACT 345 CONFLICTS WITH RELATED STATUTES ADDRESSING PUBLIC EMPLOYEE RETIREMENT BENEFITS.

Although this Court need not reach beyond the four corners of Act 345 to reject Plaintiff's interpretation of the Act, doing so would further undermine Plaintiff's position.

The Legislature is presumed to understand related laws and legislate in harmony with them. *People v Harrison,* 194 Mich at 369. This assumption is especially relevant when construing Act 345 because the Act refers to and incorporates other related statutory provisions. For example, Section 2a of Act 345 specifically requires compliance with the Protecting Local Government Retirement and Benefits Act ("Act 202," MCL 38.2801 *et seq.*):

> A retirement board under this act, a retirement system under this act, and a city, village, or municipality that is the custodian of funds of a retirement system under this act shall comply with any applicable requirements under the protecting local government retirement and benefits act.

MCL 38.552a. Unlike Act 345, Act 202 includes a comprehensive definitions section. This section makes clear that "retirement benefits" provided by a "retirement system" may include pension benefits, health benefits, or both:

> (m) "Retirement benefit" includes a retirement health benefit or retirement pension benefit, or both.
> (n) "Retirement health benefit" means an annuity, allowance, payment, or contribution to, for, or on behalf of a former employee or a dependent of a former employee to pay for any of the following components:
> (*i*) Expenses related to medical, drugs, dental, hearing, or vision care.
> (*ii*) Premiums for insurance covering medical, drugs, dental, hearing, or vision care.
> (*iii*) Expenses or premiums for life, disability, long-term care, or similar welfare benefits for a former employee.
> (o) "Retirement pension benefit" means an allowance, right, accrued right, or other pension benefit payable under a defined benefit pension plan to a participant in the plan or a beneficiary of the participant.
> (p) "Retirement system" means a retirement system, trust, plan, or reserve fund that a local unit of government establishes, maintains, or participates in and that, by its express terms or as a result of surrounding circumstances, provides retirement pension benefits or retirement health benefits, or both. […]

MCL 38.2803(m)-(p); see also CC Op. at 4-5. Act 202 implicitly acknowledges that communities have the option to offer "retirement pension benefits or retirement health benefits, or both" under a "retirement system." The scope of Act 202 is consistent with an interpretation that Act 345 (which repeatedly refers to the "retirement system") only establishes a floor of requirements and further permits the City, in its discretion, to provide police and fire retirees with additional retirement benefits (including health benefits). Where Act 345 directs municipalities and retirement systems to comply with Act 202 (see MCL 38.552a), and Act 202 includes a broad definition of "retirement benefits," the Legislature has signaled its intent that retirement systems organized under Act 345 may secure funds to protect the broad range of retirement benefits defined in Act 202. This understanding of the term "retirement system" in Act 202 is also consistent with the Court of Appeals' finding that a "retirement system" under Act 345 "involves a manner in

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which retirement benefits, such as 'pensions' and 'other benefits payable,' are funded and dispersed under Act 345." (COA Op. at 7.)

The Legislature's insistence on ensuring that health care benefits are included within the broader scope of available public retirement benefits is evident across related statutes throughout Chapter 38 of Michigan Compiled Laws ("Civil Service and Retirement"). For instance, the Public Employee Retirement Benefit Act ("Act 100," MCL 38.1681 *et seq.*) provides that "[t]he right of a member or retirant of a retirement system to a retirement benefit shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law and shall be unassignable." MCL 38.1683. Like Act 202, Act 100 contains an inclusive definition of "retirement benefit" at odds with Plaintiff's construction of the narrow scope of retirement benefits he claims Act 345 permits.[25] And the anti-assignment protections in MCL 38.1683 show that once a public employee's right to retirement benefits are established, they are unassailable, even in bankruptcy. Similarly, the Public Employee Retirement Benefits Forfeiture Act ("Act 350," MCL 38.2701 *et seq.*) allows for the forfeiture of public retirement benefits in certain situations (see MCL 38.2703), but the statute specifically <u>exempts</u> retiree health benefits from the other retirement benefits subject to forfeiture, evincing the Legislature's express intent to provide such benefits with heightened protection.[26] When read together, these statutes illustrate an

[25] "'Retirement benefit' means an annuity, a retirement allowance, an optional benefit, a postretirement benefit, a benefit received from a defined contribution plan, defined benefit plan, deferred compensation plan, disability plan, life insurance plan, all money, investments and income of the various funds created under a public employee retirement system, and any other right accruing to a member under a retirement system." MCL 38.1682(f).

[26] See MCL 38.2702(d)("'Retirement benefit' means an annuity, a retirement allowance, a pension, a benefit from employer contributions to a defined contribution plan, an optional benefit, a postretirement benefit, and any other right accrued or accruing to a member under a retirement system. Retirement benefit does not include health benefits provided to a retirant or his or her beneficiaries by a retirement system.").

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overarching legislative framework designed to ensure that public employees receive a comprehensive package of retirement benefits, including health benefits. It would be non-sensical that Act 345, which expressly establishes a retirement *system* to benefit and protect a community's fire and police department personnel, would exclude healthcare benefits when every other related public retirement benefit statute plainly includes them.

In his Application, Plaintiff claims that the Court of Appeals should have read Act 345 *in pari materia* with Act 202. (Pl's Lv. App. at ix (Question No. 9); *Ruman* Lv. App. at 34-39.) This new position directly contradicts Plaintiff's position below that "the Court Should Reject the City's Reliance Upon 'Related Public Employee Retirement Benefits Statutes'" including Act 202, and "the Court May Not Use Other Statutes [including Act 202] to 'Interpret' Act 345 Because the Tax Limitations of Act 345 Are Clear and Unambiguous."[27] Regardless, the Court of Appeals correctly found that it was not required to read Act 345 *in pari materia* with Act 202 to assess Plaintiff's Headlee claim because the language of Act 345 unambiguously permits the City to fund police and fire retiree healthcare benefits. (COA Op. at 8.) As set forth above, this language refers not only to a broad "retirement system" – a term Plaintiff's briefing all but ignored until now – but also to appropriations for "pensions and other benefits payable" under Act 345. (COA Op. at 6-7)(emphasis added). The Court of Appeals properly found that, taken together, this language demonstrates that funding under Act 345 is not limited to pension, death, and disability benefits, as Plaintiff claims. (See COA Op. at 6-8.) Because the language of Act 345 is unambiguous, no further judicial construction outside the four corners of Act 345 is permitted. (COA Op. at 8, citing *Bailey*, 341 Mich App at 420-421.)

[27] Ex. 18, Excerpt of Plaintiff's Brief in Opposition to the City's Motion for Summary Disposition Under MCR 2.116(C)(8), pp.19-20, Case No. 22-002395-CZ (filed October 21, 2022).

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But as noted above, while the Court is not required to read Act 345 *in pari materia* with Act 202, doing so contradicts Plaintiff's position that Act 345 only permits funding for pension, death and disability benefits because Act 202 defines "retirement system" as including "retirement pension benefits or retirement health benefits, or both." MCL 38.2803(p). Plaintiff suggests that Act 202 requires the Court to refer to the "express terms" of a given "retirement system" to determine what types of benefits that system can provide. (*Ruman* Lv. App. at 35-37.) Plaintiff then attempts uses this convoluted reading of Act 202 to argue that the alleged administrative structure of the City's Act 345 retirement system only allows it to fund pension and not retiree health benefits. (*Id*. at 5-9.) But this interpretation of Act 202 suffers from the same infirmities as Plaintiff's previous interpretations of Act 345: Plaintiff presents an artificially narrow reading of the statutory provision at odds with the plain language of Act 202. Recall that Plaintiff has repeatedly suggested that Act 345 "only" permitted the establishment of a lone pension plan for police and fire retirees. See, e.g., Compl ¶3 ("[u]nder Act 345 [MCL 38.559], a municipality may only impose taxes sufficient to fund the City's actual contributions to the Act 345 pension plan"); accord *Ruman* Lv. App. at 1, 2, 4, 5, 7, 9, 12-13, 20-22, 24, 26. However, that limiting term "only" appears nowhere in MCL 38.559 or Act 345 as a whole.

Plaintiff uses the same sleight of hand when he claims that MCL 38.2803(p) establishes that "a 'retirement system' **can** provide **both** pension and OPEB, but such systems also can provide **only** pension benefits or **only** OPEB." (*Ruman* Lv. App. at 35)(emphasis in original). Again, MCL 38.2803(p) simply does not contain the term "only;" it is a term that Plaintiff has inserted (and emphasized) despite no indication that the Legislature ever intended such a limitation. Notably, Plaintiff's interpretation of MCL 38.2803(p) necessarily concedes that a "retirement system" under Act 202 (and thus, according to Plaintiff, Act 345) may provide both retiree health

benefits and retiree pension benefits. That stance is diametrically opposed to Plaintiff's fundamental argument throughout this case that Act 345 simply does not permit funding for retiree health benefits.

Plaintiff's interpretation of MCL 38.2803(p) not only adds terms but also eliminates them. Plaintiff asserts that under MCL 38.2803(p), the "'express terms' of the system or fund that the unit of local government sets up determines the benefits actually provided by each 'retirement system.'" (*Ruman* Lv. App. at 35.) But Plaintiff ignores that MCL 38.2803(p) explicitly states that a "retirement system" need not provide retirement benefits according to "express terms," but rather may instead do so "as a result of surrounding circumstances." MCL 38.2803(p) (emphasis added). [28]

In short, Plaintiff's "*in pari materia*" argument fails not only because the Court correctly excluded Act 202 from its statutory analysis of Act 345, but also because Plaintiff misconstrues the plain language of Act 202.

VI. THE COURT OF APPEALS CORRECTLY FOUND THAT PLAINTIFF'S MISREADING OF LEGISLATIVE HISTORY DOES NOT SAVE HIS CLAIMS.

Plaintiff agrees that the language of Act 345 is unambiguous. See, e.g., *Ruman* Lv. App. at 23-24, 28. Thus, as the Court of Appeals held, Plaintiff's use of proposed legislative revisions

[28] Plaintiff's claim that MCL 38.571 ("Act 28") shows that "OPEB is not a 'retirement benefit' under Act 345" (*Ruman* Lv. App. at 42) is similarly flawed. Again, Plaintiff is referencing non-existent restrictions in the statutory scheme. Nothing in Act 28 suggests that it is newly authorizing funding for OPEB. Act 28 simply addresses what local governments may do with interest in a reserve fund for a public retirement system (i.e., the City may "use not more than ½ of the interest earned by any reserve fund in the system to contract for medical, hospital, or nursing care for any person receiving benefits of the system.") Act 28 does not limit municipalities' ability to use Act 345 taxes to fund this care.

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to interpret Act 345 is improper.[29] (COA Op. at 8.) Regardless, Plaintiff's assertion that the Legislature "rejected" the City's interpretation of Act 345 is false. The "legislative history" Plaintiff references – excerpts of never-enacted, proposed revisions from 2017 – reflect changes offered to effectuate Act 202. These were not changes that were proposed to suddenly make healthcare benefits available under Act 345 (something that was already permitted). Indeed, Plaintiff cannot draw from these 2017 revisions relating to Act 202 any reasonable inference about the legislative intent surrounding Section 9 of Act 345, which was adopted decades earlier.

Moreover, Plaintiff's interpretation of these proposed revisions from 2017 omits key context that undermines Plaintiff's position. The revisions Plaintiffs reference (see Plaintiff's Court of Appeals Appendix in *Ruman* ("*Ruman* COA App'x"), Exs. 15 (HB 5306) and 16 (SB 695)) were part of a larger package of bills introduced on November 30, 2017 by both the House and the Senate to establish the Protecting Local Government Retirement and Benefits Act (i.e., Act 202). See Ex. 19 (12/6/17 House Fiscal Agency Analysis of HB 5298 and companion bills HB 5299-5307, 5310-5313 as introduced ("HFAA")); Ex. 20 (12/04/17 Senate Fiscal Agency Analysis of SB 686 through 671 as introduced ("SFAA")).[30] At the time, more than 30,000 police and firefighters (and numerous police and fire unions and affiliate organizations) did not support the package (including the proposed revisions to Section 9 of Act 345) because the proposed bills (1) placed already existing health benefits provided under Act 345 and other retirement systems at

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[29] *See Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc,* 497 Mich 337, 355; 871 NW2d 136, 146 (2015)(where a statute is unambiguous, "the examination of legislative history 'of any form' is not proper.")

[30] The City does not rely on this history to interpret Act 345 but rather to provide context to Plaintiff's improper reliance on Act 202's legislative history to interpret Act 345.

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risk; and (2) did not provide local governments with enough flexibility as it related to funding system benefits:[31]

> Opponents of the plan . . . [have] professions that are inherently dangerous, with health risks following retirees beyond their working years. They argue that, in many cases, police and firefighters made concessions during their working years based on the assurance that their pension and health benefits were guaranteed after retirement. They expressed concern that the bill would codify a 2015 U.S. Supreme Court decision that, in order for collectively bargained retiree health care benefits to be vested for life, a plan must explicitly state as much [. . .] Critics argued that the plan presents a one-size-fits-all solution, which would subject all of the approximately 900 retirement systems to the same scrutiny, regardless of their funding levels or the steps they have taken independently to address underfunding.

See Ex. 19, HFAA at 16-18. Given this opposition, the idea that these proposed-but-never-adopted legislative revisions "establish" police and fire retiree healthcare benefits makes no sense. If these proposed revisions to Section 9 of Act 345 were, as Plaintiff claims, intended to confer authority to provide healthcare benefits under the Act, then the police and fire retirees would not have opposed the proposed bills as introduced. But they did.

Also, if Plaintiff's interpretation of these proposed revisions to Section 9 were accurate, then the reported fiscal impact would have included the massive increase in healthcare benefits that would suddenly be offered for the first time under Act 345. Instead, no such fiscal impact was noted. In fact, the revisions to Section 9 imposed no fiscal impact separate from what was already contemplated by SB 686. (Ex. 20, SFAA at 19.) The SB 686 fiscal impact was grounded in "mandatory minimum normal cost contributions for retiree health plans," which "[f]or local

[31] Both HB 5298 and SB 686 (the primarily bills supporting Act 202) initially contained several provisions dictating funding levels and, importantly, also contained language suggesting that collectively bargained police and fire retiree healthcare benefits might be subject to revocation. *See*, e.g., HB 5298 as introduced at 8-9, §4(c) (permitting local governments to change current or future retirement health benefits) (Ex. 21); SB 686 as introduced at 8-9, § 4c (same) (Ex. 22). These provisions were not enacted and are not part of Act 202 as passed. See MCL 38.2801 *et seq.*

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governments not already following at least the prescribed contribution levels," would result in "an increase in costs in the short run, with likely reductions in costs in the long run." *Id.* at 17 (emphasis added). The only logical reading of the revisions Plaintiff cites is that they sought, not to provide healthcare benefits for the first time under Act 345 but instead, to ensure adequate funding for already existing healthcare benefits – benefits that were long ago authorized by the plain language of Act 345.[32] See MCL 38.559(2) (authorizing appropriations for the purpose of creating and maintaining a fund for payment of "pensions and other benefits.").

CONCLUSION AND RELIEF REQUESTED

The Court of Appeals correctly concluded that the plain language of Act 345 reveals that the statute applies to more than just pension, disability, and death benefits. Instead, Act 345 allows the City to provide its police and fire retirees with an array of benefits, including healthcare benefits, to make appropriations for the provision of those benefits, and to impose taxes sufficient to meet those appropriations. There is no reason for this Court to review the Court of Appeals' straightforward interpretation of unambiguous statutory text. For the foregoing reasons, Defendant/Appellee City of St. Clair Shores respectfully requests that this Court deny Plaintiff/Appellant's Application for Leave to Appeal.

[32] The revisions to Section 9 mandated that healthcare benefits be included as part of the legislatively required "floor" of funding for Act 345 retirement systems. (*Ruman* COA App'x Exs. 15-16.) The reason the police and firefighters and related organizations opposed this measure was because it was "draconian," whereas the version of the bill as passed allowed local units flexibility in funding. See Ex. 23 (12/8/17 House Fiscal Agency Analysis of HB 5298 and companion bills HB 5300-5310 and 5313 as passed) at 9.

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Respectfully Submitted,

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Dated: December 5, 2023

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WORD COUNT CERTIFICATION

Pursuant to MCR 7.212(B)(3), I hereby certify that Defendant/Appellee City of St. Clair Shores' Answer to Plaintiff's Application for Leave to Appeal contains no more than 15,500 "countable words" as defined under MCR 7.212(B). The undersigned relies on the word count function of counsel's word processing system, as permitted under MCR 7.212(B)(3).

By: *<u>/s/ Sonal Hope Mithani</u>*
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CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2023, I presented the foregoing document to the Clerk of the Court for filing and uploading to the electronic court filing system which will send notification of such filing to all attorneys of record.

By: *<u>/s/ Sonal Hope Mithani</u>*
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