STATE OF MICHIGAN
IN THE SUPREME COURT

JOSEPH RUMAN, DAVID J. PETERS, and CYNTHIA A. PETERS, individually and as representatives of a class of similarly-situated persons and entities,

Plaintiffs/Appellants,

v.

CITY OF WARREN, MICHIGAN, a municipal corporation,

Defendant/Appellee.

and

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

Plaintiff/Appellant,

v.

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

Defendant/Appellee.

Supreme Court Case No. 166329
Court of Appeals Case No. 364537
Consolidated with S.Ct. Case No. 166333

Macomb County Circuit Court
Case No. 22-2396-CZ

Supreme Court Case No.166333
Court of Appeals Case No. 364536
Consolidated with S.Ct. Case 166329

Macomb County Circuit Court
Case No. 22-2395-CZ

PLAINTIFFS/APPELLANTS' CONSOLIDATED SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR APPLICATIONS FOR LEAVE TO APPEAL THE COURT OF APPEALS' PUBLISHED OPINION

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PLAINTIFFS/APPELLANTS' CONSOLIDATED SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR APPLICATIONS FOR LEAVE TO APPEAL THE COURT OF APPEALS' PUBLISHED OPINION

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

STATEMENT OF QUESTIONS PRESENTED

The Michigan Fire Fighters and Police Officers Retirement Act, MCL 38.551 *et seq.* ("Act 345") authorizes municipalities to establish police and fire pension plans and to impose taxes to fund their obligations under those plans. Defendant City of Warren ("Warren") and Defendant City of St. Clair Shores ("SCS") (collectively, the "Cities") impose taxes under Act 345 which fund their pension obligations **and** their obligations to provide Other Post-Employment Benefits ("OPEB"), basically health insurance, to retired police and firefighters. Plaintiffs agree that Act 345 municipalities can impose taxes to fund their pension obligations, but contend that those municipalities cannot impose taxes to fund OPEB without voter approval, which the Cities here did not obtain. The Cities can only potentially impose Act 345 taxes to fund OPEB if (1) OPEB is an Act 345 "benefit," and (2) OPEB is actually provided and funded by the Cities' Act 345 "retirement systems."

On May 23, 2024, this Court entered an Order providing for oral argument on Plaintiffs' Applications in these consolidated cases and instructing the parties to respond to three questions in Supplemental Briefs. The questions raised by the Court, and Plaintiffs' consolidated response to those questions appear below:

Question 1: Does Act 345 authorize municipalities to fund health insurance and other benefits to their retired police and firefighters?

Answer: No, but even if an Act 345 "retirement system" could potentially provide such benefits, these Cities' Police and Fire Retirement Systems do not, in fact, provide such benefits.

Question 2: Does Act 28 of 1966 (MCL 38.571 and MCL 38.572) provide pre-Headlee Amendment authorization for a municipality to increase retirement benefits to retired police and firefighters, including healthcare benefits?

Answer: Yes, but that authorization is irrelevant to this case because (1) the authorization of a benefit under Act 28 is not an authorization to impose Act 345 taxes to pay for that benefit, and (2) the Cities here do not finance OPEB in the manner authorized by Act 28.

Question 3: Should the phrase "retirement system" in MCL 38.552(1) be interpreted by reference to the definition of "retirement system" in MCL 38.2803 of the Protecting Local Government Retirement and Benefits Act, MCL 38.2801 et seq (the "PLGRBA")?

Answer: Yes, because the PLGRBA defines "retirement system" as the system which "by its express terms" provides "retirement pension benefits or retirement health benefits, or both." The PLGRBA thus looks to how a municipality itself organizes and formally structures its "retirement system." The PLGRBA definition of "retirement system" requires this Court to find that the Cities' Act 345 "retirement systems" consists solely of the actual "Police and Fire Retirement Systems" created and maintained by the Cities, and do not include their separate OPEB Plans.

ARGUMENT

I. INTRODUCTION

At the outset of this Supplemental Brief, we offer the following:

The Michigan Constitution, Michigan statutes, the common law, and even some local laws impose limitations on the authority of local governments to force their citizens to finance their activities and obligations. Some of those obligations – e.g., municipal agreements to provide lifetime health insurance to employees who retire as early as age 43 (after 25 years of service) but, on average, live to age 79 – have turned out to be imprudent. The costs of an agreement to provide lifetime health insurance to hundreds of retired employees who are expected to live another 36 years after they retire are staggering. The problem is that these municipalities seek to unlawfully visit these costs upon their taxpayers by exceeding the limits of a statute that authorizes property taxes to fund the retirees' pension expenses.

These Applications challenges a creative method of municipal finance that relies upon illegal taxes that have been imposed in violation of the Headlee Amendment to the Michigan Constitution. These "Act 345" cases allege that two municipalities (Warren and St. Clair Shores) have exceeded their authority to tax real property by imposing taxes which fund not only pensions for retired police and firefighters (which are clearly authorized by Act 345), but also Other Post-Employment Benefits ("OPEB"), basically lifetime health insurance for those same retirees (which clearly are not authorized by Act 345). Collectively, tens of millions of taxpayer dollars are at stake.

These consolidated cases present the same core legal issue: what are the constitutional and statutory limits on the ability of cash-strapped municipalities to raise money from equally cash-strapped citizen/taxpayers?

One would think that the outcome of these cases would be informed by the lower Courts' consideration of the divergent interests of both sides. But the Court of Appeals' Opinion in this case

reflects only great sympathy for the cash-strapped municipalities—protecting these municipalities by ignoring controlling constitutional and legal principles—and at the same time is utterly bereft of **any** concern for the equally cash-strapped citizen/taxpayers. It may or may not be a laudable goal to reward a municipal employee who retires as early as age 43 with a life expectancy of 79 years with lifetime health insurance, but the Michigan Constitution requires that the undertaking of that obligation must take into consideration the costs that must be paid by the City's taxpayers. That is exactly why the Headlee Amendment requires these municipalities to ask for permission from their citizens to impose additional taxes for this kind of excess, which is virtually unheard of in the private sector. Here, it is undisputed that the City's voters did not approve the so-called "Excess Taxes," which fund the City's OPEB obligations to retired police and firefighters.

The relevant and material facts are either undisputed or indisputable. These consolidated cases therefore present two dispositive questions of law based upon the undisputed facts, as identified and discussed above and put here simply:

1. Did the Court of Appeals err as a matter of law when it cobbled together a random definition of "retirement system" that is untethered from the actual language used by Act 345 and the Protecting Local Government Employees Retirement Benefits Act, MCL 38.2801 et seq. (the "PLGRBA"); and
2. Did the Court of Appeals err as a matter of law when it held that OPEB is a "benefit" provided for by the municipality's Act 345 "retirement system"—a holding which again contravenes the express language of that statute?

Act 345 imposes a strict limitation on the taxing power of municipalities with Act 345 retirement systems: The municipalities can tax only to "meet the appropriations" made to the "retirement system" to fund the "benefits" provided by the system. MCL 38.559(2). The Court of Appeals' Opinion effectively acknowledges that the City can only fund OPEB with Act 345 taxes if

OPEB is an obligation of the City's Act 345 "retirement system." *See* Court of Appeals August 17, 2023 Opinion at p. 7, attached as Exhibit A to both *Ruman's* and *Bate's* respective Applications for Leave to Appeal, ("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**") (emphasis added); *Id.* at p. 6 ("MCL 38.559(2) requires defendant cities to set aside tax dollars so it can fully pay benefits owed **under the retirement system**") (emphasis added).

This limitation appears in MCL 38.559(2), which mandates that "[a]ll deductions and appropriations shall be payable to the treasurer of the municipality and he or she **shall pay the** deductions and **appropriations into the retirement system**," and authorizes property taxes only to generate the amount required to "meet the appropriations" made by the City "under this act." *Id.* (emphasis added). The COA was therefore required to define the term "retirement system." Opinion at p. 6-7.

The COA Opinion further acknowledges that a municipality can use Act 345 taxes to fund OPEB only if OPEB is an Act 345 "benefit" being provided by the municipality's "retirement system." Therefore, the COA was further required to determine if OPEB was such a "benefit." Accordingly, the COA could only reach its conclusion by interpreting two terms used in Act 345 as follows:

1. That the term "retirement system" as a matter of law could **only** be interpreted to mean "the manner in which retirement benefits, such as 'pensions' and 'other benefits payable,' are funded and disbursed under Act 345," COA Opinion at p. 7, and could **not** mean the actual "Police and Fire Retirement Systems" formally established by the Cities; and
2. The term "other benefits payable" as a matter of law could **only** be interpreted to include OPEB (*Id.* at p. 7).

In its Opinion, the COA ultimately held that Cities were "permitted under Act 345 to appropriate tax dollars to fund healthcare benefits [i.e., "OPEB"] for retired firefighters and police officers who are members of the retirement system and entitled to those benefits." Opinion at p. 8. The COA's decision reflects a gross distortion of the actual provisions of Act 345 and does not even

remotely comport with well-established principles of statutory interpretation.

After first concluding that the term "retirement system" was "not defined in Act 345" the COA used **only** dictionary definitions to divine the meaning of "retirement system." Opinion at p. 6. Worse, the COA did not rely upon a dictionary definition of the collective term "retirement system." Instead, the COA merely took one of several dictionary definitions of the word "retirement" and one of several dictionary definitions of the word "system" to cobble together a unitary definition of "retirement system." That determination was completely untethered to Act 345's actual use of that term, which makes clear that "retirement system" could only consist of the actual entity established by the Cities to provide Act 345 benefits. Nonetheless, the Court ultimately concluded that the term "retirement system" could **only** be interpreted to mean "the **manner** in which retirement benefits, such as 'pensions' and 'other benefits payable,' are funded and disbursed under Act 345," Opinion at p. 7 (emphasis added), and could **not** mean the actual "Police and Fire Retirement Systems" formally established by the Cities.

Next, the Court went on to find that OPEB constitutes an "other benefit payable" under Act 345 and therefore the Cities can use Act 345 property taxes to fund OPEB. The Court held that even though Act 345 does not mention health care or health insurance, and the enumerated "benefits" are limited to "pensions," "disability" and "death benefits," OPEB is a "benefit" that can be provided by an Act 345 "retirement system" because MCL 38.559(2) refers to "other benefits payable" that are in addition to "pension" benefits. The Court concluded that, because "other" benefits can include OPEB, those "benefits" can be financed with Act 345 taxes as long as the municipality sets aside monies somewhere – i.e., appropriates cash – for those "benefits."

The COA's Opinion is based on two fundamental errors: (1) its conclusion that the Cities' Act 345 "retirement systems" provide OPEB to the members of those systems, and (2) its conclusion that OPEB necessarily constituted an "other benefit payable" under the Act. As a result of these errors,

the COA has allowed Michigan municipalities to self-define retirement "benefits" in a way that is completely untethered from the actual provisions of Act 345 and the "retirement system" structures they themselves have created. Because Act 345 gives municipalities with Act 345 "retirement systems" the ability to impose property taxes required to meet the appropriations to those systems, the COA has conferred absolutely unlimited taxing authority on municipalities with Act 345 retirement systems.

On May 23, 2024, this Court entered an Order providing for oral argument on Plaintiff's Applications and asked the parties to address three issues in Supplemental Briefs. In Sections II through IV of the Argument below, we identify each issue and address each in turn.

II. OPEB IS NOT AN ACT 345 "BENEFIT"

The Court's May 23, 2024 Order first asked the parties to address "whether Act 345 authorize municipalities to fund health insurance and other benefits to their retired police and firefighters." For the reasons discussed below, the answer is: "no, but even if an Act 345 'retirement system' could potentially provide such benefits, these Cities' Police and Fire Retirement Systems do not, in fact, provide such benefits."

A. THE TAXING AUTHORITY UNDER ACT 345 EXTENDS ONLY TO FUNDING "BENEFITS" UNDER ACT 345.

If OPEB is not an Act 345 "benefit," the Excess Taxes are unlawful because Act 345 taxes can only be imposed to finance the benefits authorized by Act 345.

Act 345 taxing authority is defined by the clear and unambiguous terms of MCL 38.559(2), which provides:

> (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 appropriations to be made by the municipality in any fiscal year shall be sufficient to pay all pensions due and payable in that fiscal year to all 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 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. [Emphasis added.]

The penultimate sentence of that provision authorizes **only** those taxes "required" to "meet[1] the appropriations" the Cities make to their Police and Fire Pension Plans. In order for OPEB expenses to be part of the Cities' "appropriations," those expenses, since they are not "pension" expenses, must be "other benefits payable" under MCL 38.559(2). The Michigan courts have held that an "appropriation" is "[t]he act by which the legislative department of government designates a particular fund, or sets apart a specified portion of the public revenue or of the money in the public treasury, to be applied to some general object of government expenditures, or to some individual purchase or expense." *County Road Assn v. Board of State Canvassers*, 89 Mich. App. 299, 304, 279 N.W.2d 334 (1979) (quoting Black's Law Dictionary (4th Ed) p. 131). Collectively, then, the phrase "meet the appropriations" requires the taxes to be **equivalent to** – i.e., no less than and no more than – the amounts that the Cities have designated as contributions to their Police and Fire Pension Plans.

In sum, OPEB cannot properly be part of an Act 345 Retirement System's "appropriations" unless OPEB is a "benefit" under Act 345. Perhaps that is what led the Court to pose this first

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[1] The Court can take judicial notice that the word "meet" has a particular meaning akin to "equal," because "meet" often appears in the phrase "meet or exceed." *See, e.g., Schmaltz v. Troy Metal Concepts, Inc.*, 469 Mich. 467, 473-74; 673 N.W.2d 95 (2003) ("If the resulting benefit rate indicated on the tables does not meet or exceed two-thirds of the applicable state average weekly wage, the second step is to add in the value of the worker's fringe benefits . . ."); *Durant v. State*, 251 Mich. App. 297, 310; 650 N.W.2d 380, 386 (2002) ("What matters is whether the total appropriation meets or exceeds the minimum funding levels imposed by Proposal A and the Headlee Amendment."). If "meet" meant "equal to or greater than," there would be no need for this Court or the COA to use the phrase "meet or exceed," because "meet" would convey that meaning without the word "exceed."

question. For the reasons discussed below, OPEB is not an Act 345 "benefit."

B. Act 345 Clearly And Unambiguously Precludes An Act 345 Retirement System From Providing OPEB And Funding That Obligation Through Act 345 Taxes.

Initially, this Court's goal with respect to statutory interpretation is to determine and give effect to the intent of the Legislature. *Bonner v Brighton*, 495 Mich 209, 222; 848 NW2d 380 (2014). "When the words used in a statute or an ordinance are clear and unambiguous, they express the intent of the legislative body and must be enforced as written." *Sau-Tuk Indus, Inc v Allegan Co*, 316 Mich App 122, 137; 892 NW2d 33 (2016). This Court "must assign every word or phrase its plain and ordinary meaning unless the Legislature has provided specific definitions or has used technical terms that have acquired a peculiar and appropriate meaning in the law." *Mayor of Cadillac v Blackburn*, 306 Mich App 512, 516; 857 NW2d 529 (2014).

In assessing whether OPEB is among the type of "benefits" authorized by Act 345, there are only two possibilities: either (1) Act 345 is clear and unambiguous regarding whether OPEB is an Act 345 "benefit," or (2) Act 345 is ambiguous on that point. For the reasons discussed below, under the clear and unambiguous terms of Act 345, OPEB is not an Act 345 benefit.

1. Act 345 Benefits Are Limited To Those Specifically Enumerated In The Act, But OPEB Is Not Even Mentioned In The Act.

Act 345 does not expressly authorize an Act 345 pension plan to provide OPEB to members of the plan. *See* MCL 38.556. Indeed, the words "health care" or "health insurance" appear nowhere in Act 345. The "pensions and other benefits payable as provided in this act" consist solely of pensions (MCL 38.556(1)), disability (MCL 38.556(2)) and death benefit (*id.*) payments.

MCL 38.556 makes this clear. Under MCL 38.556(1), the "[a]ge and service retirement benefits payable under this act are as follows …" And under MCL 38.556(2), the "[d]isability and service connected death benefits payable under this act are as follows …" No other **types** of "benefits" are mentioned anywhere in Act 345.

Given these enumerations, the Legislature's failure to expressly include health benefits within the scope of Act 345 should be deemed intentional. Indeed, the doctrine of *expressio unis est exclusio alterius* provides that "an express mention of one thing generally implies the exclusion of other similar things that were not mentioned." *Houghton Lake Area Tourism & Convention Bureau v. Wood*, 255 Mich. App. 127, 151, 662 N.W.2d 758 (2003). "The maxim *expressio unius est exclusio alterius* …has force only when the items expressed are members of an associated group or series, justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Michigan Ambulatory Surgical Ctr. V. Farm Bureau Gen. Ins. Co. of Mich.,* 334 Mich. App. 622, 632, 965 N.W.2d 650 (2020) (quotation marks and citations omitted). Here, the enumerated benefits "expressed" in Act 345 – pension, disability and death benefits – clearly are "members of an associated group or series," justifying the inference that OPEB was excluded by deliberate choice." Thus, OPEB is not an Act 345 "benefit" and a municipality's "appropriations" under Act 345 – *i.e.*, the amounts that can be paid through the taxes authorized by Act 345 – necessarily do not include amounts to fund OPEB.

The Court of Appeals concluded that, because Act 345 refers to both "pension benefits" and "retirement benefits," "they are not equivalents" and the term "'retirement benefits' is broader than 'pension benefits.'" Opinion at p. 7. But this is wrong for at least two reasons. First, MCL 38.559(1) defines the scope of the "age and service retirement benefits" to consist of classic "pension" benefits based upon length of service and other factors. Thus, "pension benefits" are synonymous with "retirement benefits."

Second, again, the only "other benefits payable" identified in the Act are the "disability and death" benefits payable to members and/or their relatives. Neither disability benefits nor death benefits are a true "pension" benefit. That is why the statute defines them separately from the "age and service retirement benefits" – *i.e.*, the pension benefits. MCL 38.559(1).

Finally, there is a very good reason that the Legislature did not include health insurance

benefits in Act 345 – **they simply did not exist when the statute was originally enacted in 1937 or when the taxing authority provision was last amended in 1951**. In this regard, former Justice Weaver recognized that OPEB **did not exist** when the Constitution was adopted in the early 1960s:

> The pension and retirement systems in place at the time of the 1961 Constitutional Convention consisted solely of monies paid in the form of a monthly stipend to a retired employee based on years of service. To the electorate, the juxtaposition could not have been more clear: financial benefits of each pension plan and retirement system would be prefunded. However, it would not have been anticipated that these systems included health benefits because health benefits simply did not exist, nor were they expressly included within the scope of accrued financial benefits. [*Musselman v. Governor*, 450 Mich. 574, 579-80; 545 N.W.2d 346 (1996) (Weaver, J. concurring).]

If OPEB did not exist in 1961, it most certainly was not a "benefit" included in Act 345 in 1937 or 1951. And, OPEB "would not have been anticipated" by each of these cities' voters when they approved the Act 345 retirement systems that they were extending the Cities' taxing authority—simply, voters could not anticipate or approve funding for a "benefit" that did not exist at the time.

2. OPEB Is Not An Act 345 "Other Benefit" Because It Is Not "Payable" To Members or Beneficiaries Of The Retirement System

Not only is OPEB not mentioned in Act 345, but various provisions of the Act make clear that the OPEB provided by the Cities – direct payments to health insurers – is not an Act 345 "benefit."

The COA's Opinion acknowledges that "other benefits" must be "payable," but it ignores the fact that OPEB benefits are not "payable" to retired police and firefighters. This is a dispositive error.

At least three provisions of Act 345 require that "benefits" be "payable."

1. MCL 38.552(7) provides that the pension board shall "[d]isburse the pensions and other benefits **payable** under this act." [emphasis added]

2. MCL 38.559(2) requiring a municipality to appropriate amounts "[f]or the purpose of creating and maintaining a fund for the payment of the pensions and other benefits **payable** as provided in this act." [emphasis added].

3. MCL 38.556d authorizes "postretirement adjustments increasing retirement benefits," but makes clear that any such benefits must be "payable." *Id.* ("The retirement benefit

> **payable** after making an adjustment pursuant to the benefit program adopted shall be the new retirement benefit payable until the next adjustment, if any, is made"). [Emphasis added.]

Given that "benefits" must be "payable," the question becomes "payable" to whom? Significantly, the OPEB benefits the Cities provide to retired police and firefighters are not paid to the retirees but rather are paid to third-party insurers or health care providers, or are self-funded. *See* Warren App. Ex. 11 (Appx. p. 160, noting that the purpose of the valuation is to "compute liabilities associated with benefits likely to be paid **on behalf** of" participants (emphasis added); Appx. p. 162, showing payments made **on behalf** of participants).[2] Indeed, Warren's ordinances prohibit its OPEB Plan from making payments to members of the OPEB Plan. *See* City Ordinance Sec. 25-403(c) (Warren App. Ex. 12 Appx. p. 181) (providing that "[n]o one participating in the plan shall be entitled to receive any part of the contributions made by the city or payments required to be made by the trust in lieu of benefits provided under the plan"). The SCS OPEB Plan is self-funded. *See* SCS App. Ex. 4 at p. 3-47; Appx. p. 60("The Plan provides healthcare and prescription drug benefits for retirees and their dependents. Benefits are provided through a self-insurance plan, and the full cost of benefits is covered by the plan"). Thus, if "benefits" must be "payable" to retirees, then OPEB simply cannot be a "benefit" under Act 345.

The term "benefit payable" can only be interpreted to mean benefits payable to members or beneficiaries of the Police and Fire Pension Plan. Among other reasons, by requiring the pension board to "disburse the pensions and other benefits payable under this act," the word "payable" in

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[2] Citations herein to "Warren App. Ex." refer to the Appendix on Appeal that Plaintiffs in the *Ruman* case filed in support of their Brief on Appeal. Citations herein to "SCS App. Ex." refer to the Appendix on Appeal that Plaintiffs in the *Bate* case filed in support of their Brief on Appeal. Each of the documentary exhibits in the two Appendices (except for two of the Circuit Court's orders) were submitted to the Circuit Court in connection with the parties' dispositive motion practice in these consolidated cases, and again to the COA for purposes of appeal. Therefore, they are properly part of the record on appeal.

Citations to "Exhibit" refer to exhibits provided in support of this Supplemental Brief.

MCL 38.552(7) modifies both "pensions" and "other benefits." Because pensions are obviously paid to members or beneficiaries, the other benefits must similarly be paid to members or beneficiaries.

Finally, while the COA disregarded this Court's Opinion in *Studier v. Michigan Public Schools Employees Retirement Bd.*, 472 Mich. 642, 654-655, 698 N.W.2d 350 (2005), that decision also confirms that OPEB cannot be an "other benefit" because it not "payable" to members and beneficiaries of the retirement system. In *Studier*, the Court found that OPEB was not covered by a provision of the Michigan Constitution (Const. 1963 Art. 9, § 24) guaranteeing the payment of "accrued, financial benefits" because "health care benefits" are not "monetary payments" but rather are "**benefits of a nonmonetary nature.**" The Court held:

> Moreover, health care benefits do not qualify as 'financial" benefits. At the time Const. 1963, art 9, Sec. 24 was ratified, the term "financial" was commonly defined as "pertaining to monetary receipts and expenditures; pertaining or relating to money matters; pecuniary," Random House, supra, p 453, or "relating to finance or financiers," Webster's, supra, p 851, and "finance" was commonly defined as "pecuniary resources, as of…an individual; revenues," Random House, supra; accord Webster's, supra. "Pecuniary," in turn, was commonly defined as "consisting of or given or extracted in money," or "of or pertaining to money." Random House, supra, p. 892; accord Webster's, supra, p 1663. **Accordingly, the ratifiers of our Constitution would have commonly understood "financial" benefits to include only those benefits that consist of monetary payments, and not benefits of a nonmonetary nature such as health care benefits.** [472 Mich. at 655 (emphasis added).]

If the term "financial benefits" did not include OPEB in *Studier*, then it is logical conclusion that "benefits payable" as used in Act 345 also does not include OPEB. "Financial benefits" did not include OPEB in *Studier* because they were not "monetary payments" to participants. "Benefits payable" should not include OPEB under Act 345 because OPEB expenses also are not "monetary payments" to participants. In other words, because OPEB is a benefit of "nonmonetary nature," the Court should conclude that it does not represent a "benefit payable" under Act 345.

3. The Legislature's Enactment Of "Act 28" In 1966 Confirms That OPEB Is Not An Act 345 "Benefit"

Finally, in 1966, the Legislature enacted MCL 38.571 et seq. ("Act 28"). Act 28 provides limited authorization for a police and fire retirement system (and other retirement systems) to fund "medical, hospital or nursing care" for retirees. MCL 38.571 provides:

> Subject to the protecting local government and retirement benefits act, the board of trustees with the approval of the governing body of the county, city, village, or township of any police and firemen retirement system, municipal employees retirement system, or county retirement system **may use not more than 1/2 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**. As used in this section, "reserve fund" means the money contributed by the city, village, township, or county. [emphasis added].[3]

Rules of statutory construction should have compelled the COA to conclude that the Legislature's later inclusion of Police and Fire Retirement Systems within the scope of Act 28 means that OPEB is not a "benefit" under Act 345. "It is a well-established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another." *IBM v. Dep't of Treasury*, 496 Mich. 642, 652, 852 N.W.2d 865 (2014) (quoting *Rathbun v. Michigan*, 284 Mich. 521, 544, 280 N.W.35 (1938)). Importantly, in construing two statutes that are *in pari materia*, "**later statutes should be construed as supplementary or complementary to those preceding them**." *Rathbun*, *supra*, 284 Mich. at 544 (emphasis added).

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[3] The other provision of Act 28, MCL 38.572, provides:

> The amount of interest used according to the provisions of this act shall be included as interest and other earnings on the money of the retirement system in the computation of any city, village, township, or county liability for regular interest. These supplemental benefits shall not be considered an increase in the rate of retirement allowances to be paid. They shall be on a year-to-year basis and shall not create a liability for their continuance

Clearly, Act 345 (enacted in 1937) and Act 28 (enacted in 1966) are two statutes addressing the same general subject matter – *i.e.,* the provision of retiree benefits by police and fire retirement systems. Like Act 345, Act 28 authorizes a police and fire retirement system to provide and fund a benefit for retired police and firefighters. Unlike Act 345, however, Act 28 deals specifically with OPEB and authorizes police and fire retirement systems – including the Cities' here – to 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 must be construed as "supplementary" to Act 345. *Rathbun*, 284 Mich. at 544. If, as the Cities argue and the COA concluded, Act 345 already authorized a Police and Fire Retirement System to provide OPEB without limitation and fund that expense with Act 345 taxes, it would have been completely unnecessary for the Michigan Legislature in 1966 to specifically authorize such systems to provide OPEB in Act 28. Clearly, the Legislature understood that OPEB was not authorized under Act 345 so, when it enacted Act 28, it provided additional, albeit limited, authority for a Police and Fire Retirement System to provide and finance OPEB without using tax revenues. The COA's interpretation of Act 345 improperly reads Act 28 out of the Michigan statutes.

C. At Best For The Cities, Act 345 Is Ambiguous As To Whether OPEB Is A "Benefit" Under Act 345, But That Ambiguity Must Be Resolved In Favor Of The Plaintiff Taxpayers.

Because MCL 38.559(2) does not explicitly authorize an Act 345 pension plan to provide OPEB, much less fund its OPEB obligations through Act 345 taxes, the best the Cities can hope for is that the Court deems the statute ambiguous on these points. But if that is the case, principles of statutory construction compel the Court to conclude that Act 345 "benefits" do not include OPEB.

1. Taxing Statutes Must Be Construed In Favor Of The Taxpayers

As an initial matter, this Court resolves ambiguities in tax statutes in the taxpayer's favor. *Michigan Bell Telephone Co. v. Dep't of Treasury*, 445 Mich. 470, 477, 518 N.W.2d 808 (1994), cert den 513

U.S. 1016 (1994). "The authority to impose a tax must be expressly authorized by law; it will not be inferred." *Id.* Moreover, "[t]ax laws generally will not be extended in scope by implication or forced construction." *Sharper Image Corp v. Dep't of Treasury*, 216 Mich. App. 698, 702; 550 N.W.2d 596 (1996). Because OPEB can only be deemed a "benefit" under Act 345 through "implication or forced construction," the Court should conclude that OPEB is not an Act 345 benefit.

2. The Michigan Legislature's 2017 Rejection Of An Amendment To Act 345 Which Specifically Added OPEB As An Act 345 Benefit Further Confirms That OPEB Is Not An Act 345 Benefit.

Further, if the Court concludes that Act 345 is ambiguous concerning whether OPEB is an Act 345 "benefit," the Court may consider extrinsic evidence of the Legislature's intent, such as legislative history. The Court "has recognized the benefit of using legislative history when a statute is ambiguous and construction of [the] ambiguous provision becomes necessary." *In re Certified Question from the United States Court of Appeals for the Sixth Circuit*, 468 Mich. 109, 115 n.5, 659 N.W.2d 597 (2003).

Here is the Cities' problem: to the extent that the Court consults interpretive aids like legislative history to discern whether a municipality can provide OPEB through an Act 345 pension plan and fund its OPEB with the taxes authorized by MCL 38.559(2), the best indication of the Legislature's intent in this regard is provided by the Legislature's rejection of two bills introduced in 2017 which would have authorized an Act 345 pension plan to provide OPEB and to fund its OPEB obligations with Act 345 taxes. The Legislature's rejection of this proposed authorization confirms that the Legislature did not intend to extend the limited Act 345 taxing authority to include OPEB obligations.

Notably, both the House and the Senate bills contained the exact language which would have authorized Act 345 pension plans to fund OPEB with Act 345 taxes. The proposed revised language of MCL 38.559(2) was as follows:

> (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~~ **BECAUSE** of service performed or to be performed by active members, and pensions being paid to retired members and beneficiaries. The appropriations to be made by the municipality in any fiscal year ~~shall~~ MUST be sufficient to pay all pensions due and payable in that fiscal year to all retired members and beneficiaries **AND SUFFICIENT TO PAY THE NORMAL COSTS OF ANY RETIREMENT HEALTH BENEFITS PROVIDED BY THE RETIREMENT SYSTEM TO ITS MEMBERS, RETIRED MEMBERS, AND BENEFICIARIES IN THE AMOUNT REQUIRED UNDER SECTION 4(1)(E) OF THE PROTECTING LOCAL GOVERNMENT RETIREMENT AND BENEFITS ACT OR TO MAKE THE OTHER PAYMENTS REQUIRED FOR THE RETIREMENT SYSTEM IN A CORRECTIVE ACTION PLAN UNDER THE PROTECTING LOCAL GOVERNMENT AND RETIREMENT BENEFITS ACT**. The amount of the appropriation in a fiscal year shall **MUST** 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~~ **MUST** be payable to the treasurer of the municipality and he or she shall pay the deductions and 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 the municipalities under this act ~~shall~~ **MUST** be in addition to any tax limitation imposed ~~upon~~ **ON** 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. **A TAX LEVIED UNDER THIS SUBSECTION MUST BE USED ONLY BY THE MUNICIPALITY LEVYING THE TAX FOR PURPOSES AUTHORIZED UNDER THIS SUBSECTION AND MUST NOT BE ATTRIBUTED OR TRANSMITTED TO OR RETAINED OR CAPTURED BY ANY OTHER GOVERNMENTAL ENTITY FOR ANY OTHER PURPOSE**. [House Bill No. 5306 (November 30, 2017) (Warren App. Ex. 15, Appx. pp. 196-200); Senate Bill 695 (November 30, 2017) (Warren App. Ex. 16 Appx. pp. 202-206) (emphasis in original).]

Ultimately, however, the Legislature rejected the proposed changes to MCL 38.559(2), which included the expanded tax authorization, which would have become part of the Protecting Local Government Employees Retirement and Benefits Act (the "PLGRBA"). *See* Warren App. Ex. 17 Appx. p. 208.[4]

[4] The only part of the original bills that became law was the addition of Section 2a (MCL 38.552a) to Act 345 which merely provides that "[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." *Id.*

Where a statute is unclear or unambiguous, the Michigan courts have recognized that this type of "legislative history" – *i.e.,* the Legislature's rejection of language in a statute that would have supported a party's proposed interpretation of the statute – unquestionably resolves the ambiguity in favor of the opposing party. For example, in *People v. Petrella*, 424 Mich. 221, 380 N.W.2d 11 (1985), the Court rejected an argument that a statute required the prosecution to establish that defendant inflicted "serious personal injury" or "extreme mental anguish," because the words "serious" and "extreme" were in earlier versions of the bill that became the statute but were removed by the Legislature before enacting the statute. The Court observed:

> The legislative intent of the present statute is apparent from its legislative history. The original Senate Bill (SB 1207) used the terms "serious personal injury" and "extreme mental anguish." The initial House substitute for SB 1207 eliminated the adjective "serious" from personal injury and changed "extreme mental anguish" to "severe mental anguish." Later, the word "severe" was struck from the bill and an amendment to reinsert this term was defeated. Therefore, the clear legislative intent was that any personal injury or any mental anguish suffice. This is noted in *People v. Gorney, supra*, 207, fn. 5. *People v. Adamowski*, 340 Mich. 422, 429, 65 N.W.2d 753 (1954), holds that courts should not, without clear and cogent reason, give a statute a construction the Legislature plainly refused to give. [424 Mich 221, 243 n 1.]

The decision the *Petrella* Court relied upon, *People v. Adamowski*, 340 Mich. 422, 429, 65 N.W.2d 753 (1954), applied this principle more emphatically as follows:

> **When the legislature affirmatively rejected the statutory language which would have supported the State's present view, it thereby made its intention crystal clear.** We should not, without a clear and cogent reason to the contrary, give a statute a construction which the legislature itself plainly refused to give. This Court said in Wayne County v. Auditor General, 250 Mich. 227, 235, in construing an act for the distribution of highway funds, that:
> "The legislative history of the 1927 act reveals the fact that while it was pending in the legislature, a proposed amendment was rejected which, if embodied in the act, would have rendered it subject to plaintiff's interpretation and not to that of the defendant. * * * Surely this gives rise to the inference that the legislature did not intend the act should be subject to the interpretation now urged by plaintiff." [*Adamowski*, 340 Mich. at 429 (emphasis added)].

This legislative history is devastating to the Cities' core defense. Simply, if Act 345 already authorized an Act 345 pension plan to provide OPEB and fund its OPEB liabilities through Act 345 taxes, there would have been no need to amend MCL 38.559(2) to provide that authorization. Because

both the Senate and House proposed bills that would have authorized municipalities to use Act 345 tax dollars to fund OPEB, it is clear that both the Senate and House believed that the version of Act 345 that existed in 2017 (and still exists today) did not include OPEB as a "benefit" and prohibited the use of Act 345 tax dollars to fund OPEB. Because the Legislature "affirmatively rejected the statutory language which would have supported" the Cities' current interpretation, the Court may not give MCL 38.559(2) "a construction which the legislature itself plainly refused to give." *Adamowski*, 340 Mich. at 429.

In sum, the Court of Appeals erred when it concluded that the term "benefit" in Act 345 could only be interpreted to include OPEB. To the contrary, principles of statutory construction require the Court to conclude that OPEB is not an Act 345 "benefit" and therefore it cannot be funded with Act 345 taxes. At worse, for Plaintiffs, Act 345 is ambiguous as to whether OPEB is a "benefit," but if that is the case, all extrinsic evidence of the Legislature's intent resolves that ambiguity conclusively in favor of the Plaintiff taxpayers.

D. EVEN IF OPEB COULD BE AN ACT 345 "BENEFIT," IT CANNOT BE A "BENEFIT" PROVIDED BY THESE CITIES' ACT 345 RETIREMENT SYSTEMS.

Finally, for the reasons discussed in Section IV below, even if OPEB potentially were a "benefit" under Act 345, that still would not authorize an Act 345 tax to fund OPEB in this case, since the Cities' Police and Fire Retirement Systems do not actually provide OPEB.

III. ACT 28 DOES NOT CONSTITUTE PRE-HEADLEE AUTHORIZATION FOR THE EXCESS TAXES UNDER THE UNDISPUTED FACTS OF THIS CASE.

In its May 23, 2024 Order, the Court instructed the parties to address whether Act 28 "provides pre-Headlee Amendment authorization for a municipality to increase retirement benefits to retired police and firefighters, including healthcare benefits." For the reasons discussed below, the answer to the Court's question is "yes, but that authorization is irrelevant to this case because (1) the authorization of a benefit under Act 28 is not an authorization to impose Act 345 taxes to pay for that

benefit, and (2) the Cities here do not finance OPEB in the manner authorized by Act 28." These Cities do not fund OPEB through the mechanism dictated by Act 28 and the Act 28 authority does not include the power to tax, which is the method these Cities use to fund OPEB.

Again, Act 28 provides a very specific mechanism for funding OPEB. In this regard, MCL 38.571 provides:

> Subject to the protecting local government and retirement benefits act, the board of trustees with the approval of the governing body of the county, city, village, or township of any police and firemen retirement system, municipal employees' retirement system, or county retirement system **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**. As used in this section, "reserve fund" means the money contributed by the city, village, township, or county. [Emphasis added.]

MCL 38.571 does not even apply here, much less authorize the Excess Taxes, for at least **four** independently-dispositive reasons:

(1) Act 28 benefits cannot be "other benefits" under Act 345 because Act 345 benefits must be "payable" to members or beneficiaries of the Police and Fire Pension Plans but Act 28 benefits are not so payable;

(2) The health care benefits authorized by Act 28 must be funded **solely** from the interest earned on the municipality's pension contributions—but here, the health care benefits are financed by Excess Taxes that are deposited into the Cities' separate OPEB Plans;

(3) The health care benefits authorized by MCL 38.571 must be provided by the Cities' Police and Fire Pension Fund themselves, but here, the health care benefits are provided by separate OPEB Plans; and

(4) Even if the Cities were providing OPEB pursuant to the procedure required by Act 28, Act 345 does not authorize taxes to fund OPEB provided under the separate Act 28, because OPEB contributions do not constitute "appropriations" of the Police and Fire Pension Funds under Act 345, which are the only amounts that can be funded by Act 345 taxes.

Each of these reasons is discussed in more detail below.

A. ACT 28 BENEFITS CANNOT BE DEEMED "OTHER BENEFITS" UNDER ACT 345.

First, as discussed above, Section II.C, Act 345 OPEB benefits are not "payable" to retired police and firefighters. Act 28 OPEB benefits also are not "payable" to retired police and firefighters. Accordingly, Act 28 OPEB benefits cannot be deemed Act 345 benefits that can be funded through

Act 345 taxes.

B. Act 28 Does Not Authorize The Excess Taxes Because The Cities Do Not In Fact Fund OPEB For Retired Police and Fire Fighters With "Interest" Earned By Their Pension Funds.

Second, the Cities cannot even potentially rely upon Act 28 unless they actually fund OPEB with "interest earned" by their Pension Fund. But it is undisputed that the Cities do not use Pension Fund interest or investment earnings to fund OPEB but instead use the Excess Taxes.

C. The Cities' Police and Fire Pension Plans Do Not Provide OPEB

Third, Act 28 requires that the OPEB authorized by Act 28 be provided by the Pension Board. This is made clear by the express language of MCL 38.571, which provides that "**the board of trustees** with the approval of the governing body of the county, city, village, or township **of any police and firemen retirement system**, …**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."** [Emphasis added.] It is undisputed that the "Board of Trustees" of each Cities' Police and Fire Pension Plans do not "contract" for "medical, hospital, or nursing care" for retired police and fire fighters. It is also undisputed that the Cities' Police and Fire Pension Plans do not in fact provide OPEB for retired police and fire fighters. *See* discussion in Section IV below.

D. The City's OPEB Contributions Are Not "Appropriations" Deposited Into the Police and Fire Pension Fund, Which Are The Only Obligations That Can Be Financed With Act 345 Taxes.

Fourth, even if the Cities' Police and Fire Pension Funds could and did provide OPEB under Act 28, that does not mean that the Cities can fund OPEB through Act 345 taxes because of the actual limits on a municipality's Act 345 taxing authority. Again, MCL 38.559 provides that Act 345 taxes are limited to the amounts necessary to finance a municipality's "appropriations" to the Pension Plan under Act 345. *See* MCL 38.559(2) (providing that only 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") (emphasis added). Appropriations for OPEB under Act 28 simply do not constitute "appropriations" under Act 345. Accordingly, the City is not authorized to fund OPEB through Act 345 taxes.

Further, all "appropriations" of the Cities' Police and Fire Pension Plans must be "be payable to the treasurer of the municipality and he or she shall **pay the** deductions and **appropriations into the retirement system**." [emphasis added]. Accordingly, any funds not deposited into the Pension Funds cannot be "appropriations" and therefore cannot be funded through Act 345 taxes.[5]

IV. THE TERM "RETIREMENT SYSTEM" IN ACT 345 MUST BE INTERPRETED BY REFERENCE TO THE EXPRESS DEFINITION OF "RETIREMENT SYSTEM" SET FORTH IN THE "PROTECTING LOCAL GOVERNMENT EMPLOYEES RETIREMENT BENEFITS ACT," MCL 38.2801 ET SEQ.

Finally, in its May 23, 2024 Order, the Court asked the parties: "should the phrase 'retirement system' in MCL 38.552(1) be interpreted by reference to the definition of 'retirement system' in MCL

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[5] Finally, even if the City could use ½ of the "interest" earned by the Police and Fire Pension Plan to fund OPEB under the authority of MCL 38.571 (and actually did so), the amount that the City could utilize would be strictly limited to interest earned, as opposed to all investment earnings. "Interest" has been defined as "the compensation allowed by law, or fixed by the parties, for the use or forbearance of money, or as damages for its detention." *Marion v City of Detroit*, 284 Mich 476, 484; 280 NW 26 (1938) (quotation marks and citation omitted). Additionally, in *Balch v Detroit Trust Co*, 312 Mich 146, 152; 20 NW2d 138 (1945), this Court stated that "interest" "is paid for the use of money…or given for the delay in the payment of money."

Dictionaries define "interest" similarly to Michigan caselaw. *Merriam-Webster's Collegiate Dictionary* (11th ed) defines "interest" as "a charge for borrowed money generally a percentage of the amount borrowed." *Random House Webster's College Dictionary* (1997) defines "interest" as "a sum paid or charged for the use of money or for borrowing money," or "such a sum expressed as a percentage of the amount borrowed to be paid over a given period…" Thus, interest is compensation for the use of another's money.

In *Town & Country Dodge, Inc v Dep't of Treasury*, 420 Mich. 226; 362 N.W.2d 618 (1984), the Court held that, where a statute does not define "interest," the Legislature intended that the word be construed according to its ordinary and primarily understood meaning, and therefore defined "interest" as: "[c]ompensation allowed by law or fixed by the respective parties for the use or forbearance of money, 'a charge for the loan or forbearance of money,' or a sum paid for the use of money, or for the delay in payment of money." *Id.* at 242 [citations omitted.]

Given this definition, the only "interest" the Cities' Police and Fire Pension Plans receive is "compensation for the use or forbearance of money." The Cities' actual interest earnings are currently unknown.

38.2803 of the Protecting Local Government Retirement and Benefits Act, MCL 38.2801 *et seq* (the 'PLGRBA')"? The answer to this question is "yes, because the PLGRBA defines "retirement system" as the system which "by its express terms" provides "retirement pension benefits or retirement health benefits, or both." The PLGRBA thus looks to how a municipality itself organizes and formally structures its "retirement systems." The PLGRBA definition of "retirement system" requires this Court to find that the Cities' Act 345 "retirement systems" consists solely of the actual "Police and Fire Retirement Systems" created and maintained by the Cities, and not their separate OPEB Plans. For the reasons discussed below, the PLGRBA definition of "retirement system" controls, but even if the PLGRBA did not exist, the Court must interpret the term "retirement system" to mean the actual Police and Fire Retirement Systems created and maintained by the Cities, which does not include its separate OPEB Plan. Either way, the same result obtains.

A. THE CITIES' "RETIREMENT SYSTEMS" UNDER THE PLGRBA CONSIST SOLELY OF THEIR ACTUAL "POLICE AND FIRE RETIREMENT SYSTEMS," AND DO NOT INCLUDE THEIR SEPARATE OPEB PLANS.

First, the COA could only rule in favor of the City if the term "retirement system" **must** be construed to include more than its actual Act 345 Retirement Systems. But at best for the City, the term "retirement system" is ambiguous. There are two possible interpretations: (1) "retirement system" is limited to the actual Act 345 Retirement Systems formed and maintained by the cities, or (2) "retirement system" means something broader and more amorphous – the "manner" by which a municipality collectively provides "benefits" to retired police and firefighters. Remarkably, the COA simply picked option (2), improperly concluding that option (2) is the **only** possible interpretation of the term "retirement system." The COA did this in the face of the clear and unambiguous language of Act 345 which clearly pointed to option (1) and the provisions of the PLGRBA.

If a statute specifically defines a term, the statutory definition is controlling. *People v. Williams*, 298 Mich. App. 121, 126, 825 N.W.2d 671 (2012). Here, the COA's broad definition of an Act 345

"retirement system" was a patent error because there ***was*** a statutory definition that the Court should have applied instead of using dictionary definitions. Indeed, the Opinion ignores the statutory definition of "retirement system" in the PLGRBA, which the Legislature expressly incorporated into Act 345. *See* MCL 38.552a ("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" PLGRBA).

Unlike Act 345, the PLGRBA has an express definition of "retirement system." In this regard, MCL 38.2803 (p) provides in pertinent part:

> (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**. … [emphasis added][6]

MCL 38.2803 (p) makes clear three important characteristics of a "retirement system:" (1) subject to other laws, a "retirement system" **can** provide **both** pension and OPEB, or such systems also **can** provide **only** pension benefits or **only** OPEB, (2) a municipality can have more than one "retirement system," and (3) the "express terms" of the system or fund that the local unit of government sets up determines the benefits actually provided by each "retirement system." The COA's broad definition of an Act 345 "retirement system" directly contradicts the statutory definition

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[6] MCL 38.2803 contains the following additional relevant definitions:

> (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.

in the PLGRBA.

Why is this a dispositive error? Because Act 345 and the PLGRBA are *in pari materia*, and therefore well-established principles of statutory interpretation required the Court to apply the definition of "retirement system" set forth in the PLGRBA in interpreting the term "retirement system" in Act 345. These governing principles were summarized as follows by the Court in *Rochester Community Schools Bd. of Ed. V. State Bd. of Ed.*, 104 Mich. App. 569, 578-579, 305 N.W.2d 1981):

> First, it is a general rule of construction that lawmakers are presumed to know of and legislate in harmony with existing laws. Secondly, and relatedly, the rule *in pari materia* requires that two or more statutes affecting a person or subject should be read together and each given effect if such can be done without repugnancy, absurdity or unreasonableness. [*Id.*, citing *People v. Harrison*, 194 Mich. 363, 370-371, 160 N.W. 623 (1916).]

"It is a well-established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, as together constituting one law, although they were enacted at different times, and contain no reference to one another." *IBM v. Dep't of Treasury*, 496 Mich. 642, 652, 852 N.W.2d 865 (2014) (*quoting Rathbun v. Michigan*, 284 Mich. 521, 544, 280 N.W.35 (1938)).

The PLGRBA was enacted in 2017, about eight decades after Act 345 was enacted in 1937. "[T]he Legislature is presumed to be aware of, and thus to have considered the effect on, all existing statutes when enacting new laws." *Walen v. Dep't of Corrections*, 443 Mich. 240, 505 N.W.2d 519 (1993). As a result, in construing two statutes that are *in pari materia*, "**later statutes should be construed as supplementary or complementary to those preceding them**." *Rathbun v. Michigan*, *supra*, 284 Mich. at 544 (emphasis added).

Moreover, when two statutes are *in pari materia*, it is proper to apply an express definition of a term in one of the statutes to the same term in the other statute that does not expressly define the term. *See, e.g., People v. Anderson*, 330 Mich. App. 189, 199 n. 6, 949 N.W.2d 825 (2019). In *Anderson*, for example, the COA concluded that MCL 750.492a of the Penal Code, which criminalizes

intentionally modifying medical records, was *in pari materia* with the Medical Records Access Act (MRAA), MCL 333.26261 et seq., and as a result, it was appropriate to apply the MRAA definition of "medical record" to MCL 750.492a despite the fact that MCL 333.26263 of the MRAA qualifies its definitions with the language "[a]s used in this act." *Id.*

Applying these principles to the undisputed facts of this case reveals the COA's dispositive error. First, there is no question that Act 345 and the PLGRBA are *in pari materia*. Both statutes specifically deal with the retirement benefits of municipal employees. Act 345 specifically references the PLGRBA and requires Act 345 retirement systems to comply with all of the requirements of the PLGRBA. *See* MCL 38.552a. "The doctrine of *in pari materia* is 'especially true where one Act makes a cross-reference to another Act.'" *Kalamazoo Pub. Schools v. Kalamazoo Educ. Ass'n*, 2023 Mich. App. LEXIS 5657 at *7 (August 10, 2023) (Exhibit A hereto) (quoting *Will Co. v. Village of Rockdale*, 226 Ill. App. 3d 634, 636, 589 N.E.2d 1017 (Ill. App. 1992)). Moreover, "the guiding principle for whether statutes are *in pari materia* is whether it is natural and reasonable to think that the understanding of members of the Legislature would be influenced by the other statute." *Trinova Corp. v. Dep't of Treasury*, 433 Mich. 141, 166 n. 28, 445 N.W.2d 428 (1989).

Second, in Section III(A), *supra*, Plaintiffs showed that at the time the Legislature enacted the PLGRBA in 2017, it considered but rejected significant amendments to Act 345 which would have authorized Act 345 retirement systems to provide OPEB and fund those expenses with property taxes. Accordingly, there is no question that it is "natural and reasonable to think that the understanding of members of the Legislature" concerning the PLGRBA "would be influenced by" Act 345.

Given that the PLGRBA definition of "retirement system" controls, the COA's definition in the Opinion simply cannot stand. Again, the PLGRBA definition of "retirement system" recognizes that a municipality can have more than one type of "retirement system" and the "express terms" used by the municipality must be consulted to determine the types of "retirement systems" the municipality

has created. *See* MCL 38.2803(p).

It was undisputed that the Cities do not have unitary "retirement systems" for police and firefighters. They both have two such "retirement systems" – one for "pension benefits" (the Police and Fire Retirement Systems under Act 345) and one for "health care benefits" (the OPEB Plans).

By their "express terms," then, the Cities' Police and Fire Retirement System provide only pension, disability and death benefits, and by their "express terms," the OPEB Plans provide only health insurance benefits. *See, e.g.*, Warren App. Ex. 5 at p. 55, Appx. p. 86 (the City's financial statements representing that the "Police and Fire Retirement System" is "a single-employer defined benefit pension plan" that provides only "retirement, disability and death benefits"); Warren App. Ex. 10 at p. 8, Appx. p. 141 (2021 financial statements representing that the OPEB Plan "provides health care and vision benefits for retirees and their dependents. Benefits are provided partially through a third-party insurer and partially through the City's self-insurance plan, and the full cost of the benefits is covered by the Plan and Trust."); SCS App. Ex. 4 at p. 3-38 , Appx. p. 51 (stating that the SCS Police and Fire Pension Plan provides only "retirement, disability, and death benefits"); *Id.* at p. 3-47 , Appx. p. 60 (stating that the "Police & Fire Retiree Health Care Trust Board administers the Retiree Health Care Trust plan—a single employer defined benefits plan used to provide post-employment health care benefits for all eligible police and fire retirees of the City. …The Plan provides healthcare and prescription drug benefits for retirees and their dependents").

B. The Cities' Regulatory Filings Confirm That Their Police and Fire Retirement Systems "By [Their] Express Terms" Are Separate From Their OPEB Plans.

Moreover, other provisions of the PLGRBA, combined with the Cities' filings under that Act, prove beyond doubt that the Cities' Police and Fire Retirement Systems (a/k/a the Police and Fire Pension Plans) do not provide OPEB and therefore cannot be single "retirement systems" that provide "both" pensions and OPEB under MCL 38.2803(p).

The Cities' statutory obligations in this regard are set forth in MCL 38.2804(1)(b), which provides in pertinent part:

> (b) The local unit of government shall electronically submit a **summary retiree health care report** in a form prescribed by the department of treasury on an annual basis to the governing body of the local unit of government and the department of treasury no later than 6 months after the end of the local unit of government's fiscal year.

MCL 38.2804(2) makes clear that any municipal "retirement system" that provides OPEB must submit this required report:

> (2) As used in this section, "summary retiree health care report" means a report that includes all of the following **for each retirement system of the local unit of government that provides retirement health benefits**:
> (a) The name of the retirement system. … [*Id.* (emphasis added).]

Again, Act 345 compels the Cities to "comply with any applicable requirements" under the PLGRBA. MCL 38.552a. The Cities fully comply with their reporting obligations under the PLGRBA. According to the Warren and SCS filings, the only "retirement system of the [City] that provides retirement health benefits" is the City's Police & Fire Retirement Health Benefits Plan and Trust – *i.e.*, the OPEB Plan. All of the financial and other required information relating to the City of Warren's OPEB obligations, including OPEB for retired police and firefighters, is contained in the OPEB Plan's report. *See* Exhibit C to City's Answer (Warren App. Ex. 4, Appx. p. 67). The same is true of SCS. *See* SCS App. Exs. 14 and 15, Appx. pp. 204-208.

If the Cities' Police and Fire Pension Plans were a "retirement system[s] of the [Cities] that provide[] retirement health benefits," the Cities would be required by the PLGRBA to file "summary retiree health care reports" for their Police and Fire Pension Plans, but there are no such reports. Instead, under the same Act, the Cities submit separate reports for their "Police and Fire Retirement Systems," which we know is synonymous with the Police and Fire Pension Plans. See Exhibit C to Warren App. Ex. 4, Appx. p. 67 and SCS App. Ex. 15, Appx. p. 207.Those reports provide financial and other required information only about the pensions, disability and death benefits provided by the

Cities' Police and Fire Pension Plans. *Id.*

Further, the PLGRBA makes a distinction between "retirement pension systems" and "retirement health systems," because there are different minimum funding requirements for each type of system. In this regard, MCL 38.2805 provides in pertinent part as follows:

> (4) The state treasurer shall determine that a local unit of government is in underfunded status if any of the following apply:
>
> (a) The actuarial accrued liability of a **retirement health system** of the local unit of government is less than 40% funded, according to the most recent annual report, and, if the local unit of government is a city, village, township, or county, the annual required contribution for all of the retirement health systems of the local unit of government is greater than 12% of the local unit of government's annual general fund operating revenues, based on the most recent fiscal year.
>
> (b) The actuarial accrued liability of a **retirement pension system** of the local unit of government is less than 60% funded, according to the most recent annual report, and, if the local unit of government is a city, village, township, or county, the annual required contribution for all of the retirement pension systems of the local unit of government is greater than 10% of the local unit of government's annual general fund operating revenues, based on the most recent fiscal year.

In sum, the Cities' Police and Fire Pension Plans and its OPEB Plans as a matter of both fact and law are separate "retirement systems," as defined by the PLGRBA. Accordingly, the COA erred by failing to apply the general definition of "retirement system" in the PLGRBA. Had the Court done so, the Court would have been required to conclude that Act 345 precludes the Cities from imposing property taxes to pay for OPEB because OPEB is not provided by the Cities' Act 345 "retirement systems."

C. ONCE THE COURT CONCLUDES THAT THE CITIES' POLICE AND FIRE RETIREMENT SYSTEMS ARE SEPARATE FROM THEIR OPEB PLANS, THE EXCESS TAXES MUST BE DEEMED UNLAWFUL.

1. The Excess Taxes Are Not Within The Cities' Act 345 Taxing Authority Because They Are Not Used To Meet The Cities' "Appropriations" Under Act 345.

Once it is understood that the Cities' Police and Fire Retirement Systems as a matter of law do not actually provide OPEB to retired police and firefighters, the illegality of the Excess Taxes is

confirmed.

Again, this case turns on whether the provisions of Act 345 limit the taxes authorized by the Act to those sufficient to "meet the appropriations" made to the Cities' Police and Fire Pension Plans. "The judiciary's objective when interpreting a statute is to discern and give effect to the intent of the Legislature. First, the court examines the most reliable evidence of the Legislature's intent, the language of the statute itself." *Book-Gilbert v. Greenleaf*, 302 Mich. App. 538, 541, 840 N.W.2d 743 (2013) (citation omitted). When doing so, courts are to "giv[e] each and every word its plain and ordinary meaning unless otherwise defined." *Id.* "If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted." *Whitman v. City of Burton*, 493 Mich. 303, 311, 831 N.W.2d 223 (2013).

Here are the reasons the Excess Taxes are prohibited by the clear and unambiguous provisions of Act 345:

First and foremost, the only tax authorized by Act 345 is a tax that generates the "amount required … to meet **appropriations**" under the Act. MCL 38.559(2) (emphasis added). The Cities both admit that the Act 345 taxes may not "exceed [the] authorized contribution." *See* Warren App. Ex 7, Appx. p. 124. *See also* SCS App. Ex. 16, Appx. p. 211

Second, the municipality's "appropriations" to the Act 345 pension plan must be **only** for "the payment of the pensions and other benefits payable as provided in this act" and the appropriations must be paid "into the retirement system." MCL 38.559(2). The Excess Taxes are **not** paid into the Cities' Police and Fire Pension Plans, a critical fact which we further address below.

Third, Act 345 requires a board of an Act 345 pension plan to "[c]ertify to the governing body of the city, village, or municipality the amount to be contributed by the city, village, or municipality as provided in this act" (MCL 38.552(4)) and to "[d]isburse the pensions and other benefits payable under this act." MCL 38.552(8). The board of the Cities' Police and Fire Pension Plans do not certify

OPEB contributions or disburse the OPEB contributions.

Fourth, Act 345 specifically sets forth the methodology a retirement board must apply in order to determine the necessary "appropriations." Indeed, this Court has held that the "Legislature has established a standard for arriving at an appropriate sum to be paid to the retirement board" to fund a municipality's obligations under Act 345. *Shelby Township Police & Fire Retirement Bd. v. Shelby Township,* 438 Mich. 247, 256, 475 N.W.2d 249 (1991).

In *Shelby Township*, the Court held:

> The provisions [of Act 345] mandate that the board hire an actuary and then certify to the municipality an amount that covers current service costs as well as unfunded accrued liabilities. The express provisions of MCL 38.552(2), (4); MSA 5.3375(2)(2), (4), read in conjunction with MCL 38.559(2); MSA 5.3375(9)(2), clearly establish the authority and describe the methodology necessary for the board to make an actuarial determination of the funds needed to maintain the retirement system. [438 Mich. at 257-258.]

The *Shelby Township* Court ultimately summarized the obligations of an Act 345 pension board to satisfy its funding obligations as follows:

> We conclude that MCL 38.559(2); MSA 5.3375(9)(2) mandates the township to annually contribute to the retirement system **an actuarially determined amount**, which will ensure that funds are available to cover pensions earned by active members for services to be performed (in the current year) earned by active members for services already performed, and actual pensions to be paid to retirees. [438 Mich. at p. 264 (emphasis added).]

Fifth, consistent with MCL 38.552 and MCL 38.559, the boards of the Cities' Police and Fire Pension Plan has retained actuaries who determine the annual amounts the City must contribute to the Pension Plan in order to meet its obligations under Act 345. In its recent financial statements, the City of Warren stated:

> Article 9, Section 24 of the State of Michigan Constitution requires that financial benefits arising on account of employee service rendered in each year to be funded during that year. Accordingly, the pension board retains an independent actuary to determine the annual contribution. The actuarially determined rate is the estimated amount necessary to finance the costs of benefits earned by plan members during the year with an additional amount to finance any unfunded accrued liability. … [Warren App. Ex. 5 at p. 56, Appx. p. 87.]

The retained actuaries "crunch the numbers" and calculate the amounts the City is required to

contribute to "finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability."

Sixth, the Cities contribute to their Police and Fire Pension Plans the **exact amount** of the appropriations its actuaries determine are required under Act 345. *See* Warren App. Ex. 5 at p. 82, Appx. p. 103 (showing annual actual contributions equal to the "actuarially determined contribution" since 2020); *id* at p. 56, Appx. p. 87("For the year ended June 30, 2021, the City contributed $11,884,923, which equals the actuarial determined calculation"). *See also* SCS App. Ex. 4 at p. 4-9, Appx. p. 70 (SCS 2021 financial statements confirming SCS contributions to it Police and Fire Pension Plan were equal to the actuarially determined calculation between 2014 and 2021).

Seventh, the City did not impose taxes solely to "meet the appropriations" it actually made to the Police and Fire Pension Plan. Instead, the City imposed taxes which generated millions of dollars more than the amounts required to meet those "appropriations."

The revenues generated by the Excess Taxes are not used to "meet the appropriations" required by Act 345 and therefore the Excess Taxes are not authorized by Act 345. Moreover, because the Excess Tax revenues were used by the Cities for expenses unrelated to the Police and Fire Pension Plans, the Excess Tax revenues did not become assets of their Police and Fire Pension Plans, as required by Act 345. *See* MCL 38.559 (requiring that "[a]ll deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations **into the retirement system**") (emphasis added).

2. The Excess Taxes Are Not Authorized By Act 345 Even If The City Is Using The Revenues To Fund Its OPEB Obligation

While it does not matter what activities and expenses of the City are funded by the Excess Taxes, the Cities claim that they have used the Excess Taxes to partially fund their obligation to provide OPEB to retired police and fire employees. *See* Warren Answer (App. Ex. 4), Appx. pp. 41-

43, 45-46 at paras. 2, 5, 11, 17-18, 36-37. Even if this is the case, however, the Excess Taxes are still illegal.

First, as discussed extensively in Section II above, OPEB simply is not an Act 345 "benefit." The "pensions and other benefits payable as provided in this act" consist solely of pensions (MCL 38.556(1)), disability (MCL 38.556(2)) and death benefit (*id.*) payments. Thus, a municipality's "appropriations" under Act 345 – *i.e.*, the amounts that can be paid through the taxes authorized by Act 345 -- necessarily do not include amounts to fund OPEB.

Second, as described in Section III.A, above, the Cities' actual Act 345 pension plans, the Police and Fire Pension Plans, do not **in fact** provide OPEB and therefore none of the Cities' "contributions" to their Police and Fire Pension Plans actually fund – or could even potentially fund – OPEB.

Third, the OPEB Benefits provided by the separate OPEB Plans cannot be deemed benefits provided by the Cities' Police and Fire Pension Plans because Act 345 mandates that all benefits provided by an Act 345 pension plan must be paid out of the Plan itself. In this regard, MCL 38.559(5) provides:

> (5) All pensions allowed and payable to retired members and beneficiaries under this act **shall become obligations of and be payable from the funds of the retirement system**. [emphasis added].

The City of Warren's OPEB obligations are paid in the first instance by the City's General Fund, which is then reimbursed by the OPEB Plan. *See* Warren App. Ex. 10 at p. 8, Appx. p. 141 (the "City processes the payments to the insurance company for medical benefits, and, as of December 31, 2021, the Plan and Trust reported benefits payable due to the City of $4,764,570"). Significantly, the City of Warren's Ordinances require the City's contributions to the OPEB Plan (which include the Excess Taxes) be deposited into the OPEB Plan and used exclusively to provide the OPEB benefits under the OPEB Plan. *See* City Ordinance Sec. 25-401(1) (requiring the City to pay to the

OPEB Plan "an amount consistent with actuarial valuations and calculations), and Ordinance Section 25-403(a) (requiring that "[a]ll income, profits, contributions, forfeitures, recoveries and any and all monies, securities and properties of any kind at any time received or held by the board of trustees, shall become part of the trust when received, and shall be held for the use and purposes of the trust"). Warren App. Ex. 12, Appx. p. 181. In SCS, it is the City Council, not the Pension Board, that controls the benefits of the OPEB Plan, and the amounts necessary to fund the benefits are deposited into the OPEB Plan. *See* SCS App. Ex. 4 at p. 3-47, Appx. p. 60. Therefore, the OPEB benefits in both Cities are not "payable from the funds of the retirement system," as required by MCL 38.559(5).

Finally, MCL 38.559(2) requires that "[a]ll deductions and appropriations shall be payable to the treasurer of the municipality and he or she shall pay the deductions and appropriations **into the retirement system**" (emphasis added). Because the Excess Taxes which fund OPEB are not deposited into the Cities' Police and Fire Pension Plans, they obviously cannot be part of the "appropriations" of the Police and Fire Pension Plans. And since Act 345 authorizes taxes only to cover "appropriations," the Excess Taxes are not authorized by Act 345.

CONCLUSION

The Court should grant Plaintiffs' Applications for Leave to Appeal and, after consideration of the appeal, reverse the COA's Opinion. In the alternative, in lieu of granting Leave to Appeal, the Court should enter an order peremptorily reversing the COA Opinion. In either event, the Court should remand this matter to the Circuit Court and instruct the Circuit Court to grant Plaintiffs' Motions for Partial Summary Disposition in both *Ruman* and *Bate* and conduct further proceedings consistent with this Court's ruling.

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STATEMENT OF WORD COUNT

Pursuant to MCR 7.212(B)(3), Plaintiff's counsel states that Plaintiff's Consolidated Supplemental Brief in Support of their Applications for Leave to Appeal contains 12,273 "countable words" as defined under MCR 7.212(B). Counsel relies on the word count function of its word processing system, as permitted under MCR 7.212(B)(3).

/s/ Jamie Warrow
Jamie Warrow

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2024, I served the foregoing document on all counsel of record using the Court's electronic filing system.

/s/ Jamie Warrow
Jamie Warrow

4868-6033-8127, v. 1