STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. KEN-25-53

MAINE STATE CHAMBER OF COMMERCE and
BATH IRON WORKS CORPORATION,

Plaintiffs-Appellants,

v.

STATE OF MAINE DEPARTMENT OF LABOR and
LAURA A. FORTMAN, in her official capacity as
Commissioner of the State of Maine Department of Labor,

Defendants-Appellees

On Questions Reported by the Superior Court, Kennebec County
Docket No. AUGSC-CV-2025-00007

BRIEF OF AMICI CURIAE THE CIANBRO COMPANIES, THE JACKSON LABORATORY, THE MAINE BANKERS ASSOCIATION, MAINE EMPLOYERS' MUTUAL INSURANCE COMPANY, THE MAINE INDEPENDENT COLLEGES ASSOCIATION, NORTHERN LIGHT HEALTH, AND SHERIDAN CORPORATION IN SUPPORT OF APPELLANTS

Gerald F. Petruccelli, Esq.
Scott D. Dolan, Esq.
Counsel for Amici Curiae
PETRUCCELLI, MARTIN & HADDOW, LLP
Two Monument Square, PO Box 17555
Portland, Maine 04112-8555
(207) 775-0200
gpetruccelli@pmhlegal.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES, RULES AND REGULATIONS

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

INTRODUCTION

This Amicus Curiae brief is submitted by the several Maine employers identified below in support of Plaintiffs-Appellants' challenge to the timing provisions of the Department of Labor ("DOL") rules that obligate employers to make nonrefundable payments into the State's Paid Family and Medical Leave ("PFML") program fund before the same rules make it even possible to exercise the statutory right to select an approved private alternative plan instead.

STATEMENT OF FACTS

The facts are set forth in the stipulated record, A. 39-242, and Appellants' Blue Brief.

STATEMENT OF ISSUES

The issues are set forth in the Superior Court's Order, A. 9, and Appellants' Blue Brief.

INTERESTS OF AMICI CURIAE

The individual and overlapping interests of these Amici are briefly and generally set forth in the following introductory paragraphs. They are employers of varying sizes in different enterprises throughout the state. They all have decided to exercise the right to opt out of participation in the State's plan and instead provide an approved private plan to accomplish the statutory objective. They are all, nevertheless, administratively required by provisions in the DOL rules to make substantial nonrefundable payments into the State plan because the DOL rules prevented them from opting out before the payments were required to be made. In alphabetical order, some further details about the interests of these Amici follow.

The Cianbro Companies ("Cianbro") are a 100% employee-owned fully diversified construction enterprise headquartered in Pittsfield, Maine. The company takes pride in safely and efficiently planning, managing, and constructing projects across the United States in both the public and private sectors. As a full-service contractor, Cianbro offers pre-construction, construction management, general contracting, and design-build services in multiple markets. From conceptual design, preconstruction and construction to start-up, commissioning, and turnkey operations, Cianbro is adept at completing projects on schedule and within budget. Cianbro manages and self-performs civil, structural, mechanical, electrical, instrumentation, telecommunications, thermal, and fabrication and coating. A/Z Corporation, Starcon International, and R. C. Stevens, also part of the Cianbro Companies, provide a range of services and capabilities to meet clients' needs. Cianbro employs a daily average of about 910 people and annually pays them approximately $101 million in wages, as that term is defined in the PFML. Cianbro will opt out of the State plan and use a fully insured private plan to provide benefits to its employees. The amount required under the DOL rules to be paid into the fund by Cianbro for the first quarter of 2025 is estimated to be at least $234,000, half remitted by Cianbro and half remitted by its employees, as permitted by statute.

The Jackson Laboratory ("JAX") is an independent, non-profit biomedical research institution with a National Cancer Institute-designated Cancer Center. JAX leverages a unique combination of research, education, and resources to achieve its bold mission: to discover precise genomic solutions for disease and empower the global biomedical community in the shared quest to improve human health. Established in Bar Harbor in 1929, JAX is Maine's 13th largest private employer and in 2024, spent $221.6 million on its Maine operations, including $192.8 million in compensation to 1,550 employees. JAX recognizes that its employees are its greatest asset and accordingly, offers generous employee benefits, including coverage for family leave. Unfortunately, JAX's currently existing support for its employees is negatively impacted by the DOL rules that require remittance of nonrefundable premiums before it is possible for JAX to opt out of the State plan. As a result, JAX must pay $1,270,630 in nonrefundable premium payments - fifty percent of which is borne by JAX employees, as permitted by the statute, even though JAX's employees will never benefit from the State PFML fund.

The Maine Bankers Association's ("MBA") was formed in 1893. Its mission is to provide advocacy, education, and resources to safeguard and advance the interests of its members. MBA's 34 members operate 438 offices in communities throughout the state. MBA members today employ over 8,000 people. Member assets exceed $44 billion. Maine's banking industry provides the fuel to power the state's economic engine. MBA members offer generous benefits to employees. Those that will offer substantially equivalent PFML benefits to employees through insurance plans that have been approved in advance by DOL will nevertheless, under the rules, never benefit from the fund because they will offer a private plan once their applications are processed by DOL. The amount paid into the fund for the first quarter of 2025, for which these MBA members will not be reimbursed under current rules, is estimated to be at least $964,000. Thus, support for their employees will be directly impacted by the state's PFML rules.

Maine Employers' Mutual Insurance Company ("MEMIC") is a private mutual insurer, based in Portland, serving as the guaranteed market for workers' compensation insurance in Maine. MEMIC is licensed throughout the country as a workers' compensation underwriter. The company employs more than 300 people in Maine with payroll at more than $30 million annually. In the first quarter of 2025, the company's required premium payment is $100,017, split evenly between employee and employer contributions. The company intends to purchase a private paid leave plan and has already received approval for its private insurance plan from DOL. Nevertheless, DOL compels MEMIC to pay over $100,000 into a fund from which its employees will receive nothing.

The Maine Independent Colleges Association ("MICA") represents eleven independent, non-profit colleges and universities operating in ten communities throughout Maine that serve over 32,630 students, more than 7,000 of whom are from Maine. The member institutions are Bates College, Bowdoin College, Colby College, College of the Atlantic, Husson College, Maine College of Art and Design, Roux Institute at Northeastern University, Saint Joseph's College of Maine, Thomas College, Unity Environmental University, and the University of New England. In the aggregate, the colleges have over 11,100 employees, including full-time, part-time, and student employees, with a total payroll of over $445 million. The majority of the MICA institutions have opted out of the State plan to use a private plan to provide PFML benefits to their employees.

Northern Light Health ("NLH") is a Maine non-profit integrated healthcare system providing care to the people of Maine from Portland to Presque Isle, and from Blue Hill to Greenville. NLH operates ten member hospitals, one home care and hospice organization, eight nursing homes, forty-five primary care practices, six emergency transport services, and an integrated physician organization. NLH employs more than 10,000 employees and annually pays them roughly $814 million in wages, as that term is defined in the PFML. NLH offers a generous benefits package to its employees.

NLH's support for its employees will be directly impacted by the rules. NLH will offer substantially equivalent PFML benefits to its employees via a private plan. NLH will be able to make these benefits available to employees through insurance plans that have been approved in advance by DOL. Nevertheless, under the rules, NLH must remit premiums into the fund until their applications are processed by DOL. For NLH, this means that it must pay about $2,035,000 in nonrefundable premiums (half remitted by the company and half, as allowed by statute, remitted by employees) into the fund, even though (1) its employees will never benefit from the fund because NLH will offer a private plan, and (2) the governing statute exempts employers like NLH from premium payments, 26 M.R.S. § 850-F(8).

Sheridan Corporation ("Sheridan") is one of the largest Maine-based construction companies. Sheridan employs more than 100 employees on projects throughout Maine, with an annual payroll of more than $7,750,000. Sheridan's focus is on commercial building construction in Maine. Sheridan values its employees and offers generous benefits including profit-sharing. Sheridan will offer substantially equivalent PFML benefits to its employees via a private insurance plan/newly formed Group Trust that is approved in advance by DOL. Sheridan believes their plan will be their most cost-effective means of providing a PFML program, and, thus, will preserve other employee benefits, including profit-sharing. Nevertheless, under the rules, Sheridan must remit premiums into the fund until applications are processed by DOL. For Sheridan, this means it must pay about $20,000 in nonrefundable premiums (half remitted by the company and half, as allowed by statute, remitted by employees) into the fund, even though its employees will never benefit from the fund.

In the aggregate, because of the chronological structure of the DOL rules, these Amici or the members of the Amici Associations will pay multiple millions of dollars in nonrefundable premium payments in the first quarter of 2025, much of which will be paid by employees, notwithstanding the legislative determination that employers that choose a private plan are *not* obligated to make premium payments to the State because their employees will not benefit from the State fund.

SUMMARY OF ARGUMENT

These Amici concur with the analysis and arguments set forth in the Appellants' Blue Brief. The judicial branch of Maine state government ultimately and exclusively has the duty and the power to determine authoritatively the meaning of the law, including statutes and rules. Anyone can express an opinion about the meaning of the law, but only the judges can determine and declare authoritatively what the law is. For the reasons advanced in Appellants' Blue Brief and in this brief below, the Law Court should determine that the Legislature's carefully balanced statutory funding plan necessarily precludes the materially different regulatory funding plan imposed by DOL. Appellants and Amici have an unconditional right to opt out instead of participating in the State's plan, not a right to opt out only as allowed by DOL on the condition of paying millions into the State's plan.

Emerging judicial reconsideration of the role of "deference" in judicial decision making about administrative rules and rulings has more clearly recently recognized the important difference between *concurring with* administrative *legal* interpretations (as distinguished from technical fact-finding or discretionary decisions) and *deferring to* dubious or erroneous administrative *legal* opinions. In this case on this record, only the Law Court is constitutionally empowered to determine and declare the meaning of the statutory law. Accordingly, the Law Court ought not to subordinate its analysis of this statutory law to the erroneous overreach of DOL.

ARGUMENT

I. Funding is Central to the New Paid Leave Program.

Resolution of the questions reported demands interpretation of the governing statute. *See Calnan v. Hurley*, 2024 ME 30, ¶ 10, 314 A.3d 267. The Appellants' Blue Brief fully addresses the proper interpretation of the statute and the customary and usual rules of construction used by courts to ascertain the meaning of legislative language. These Amici agree with Appellants, but submit this brief to emphasize that every interpretation of the text and structure of any statute should be made with the statute's objectives and methods in mind, that authoritative determination of the meaning of any statute is exclusively within the judicial power as a clear matter of Maine constitutional law, and that federal judicial opinions concerning deference to federal administrative legal rulings are persuasive authority, if and to the extent that they can be reconciled with Maine's Constitution. The Supreme Court's recent decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) ("*Loper Bright*") is such a decision as discussed more fully below.

From the early days of law school, lawyers learn methods and techniques to ascertain the meaning of constitutions, judicial opinions, statutes, regulations, contracts, trusts and wills, and other legal documents. Two important indicators of the plain meaning of any statutory text are the problem the statute was enacted to solve or prevent and the methods or means the Legislature chose for accomplishing the statutory goal. Interpreting legislation to facilitate or accomplish or accord with the statute's purpose or objective does not require judges to read the minds of legislators, individually or collectively, to ascertain their intentions. Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 HARV. L. REV. 417, 419 (1899) ("We do not inquire what the legislature meant; we ask only what the statute means."). The stated or evident reasons for enacting any statutory program are strong indicators of the meaning of the statutory text. *Dorsey v. N. Light Health*, 2022 ME 62, ¶ 11, 288 A.3d 386; *Dickau v. Vt. Mut. Ins. Co.*, 2014 ME 158, ¶¶ 19-20, 107 A.3d 621.

The problem to be solved by this legislation, 26 M.R.S. §§ 850-A to 850-R, is that some working people need to be away from their work at times for family or medical emergencies, including those of close family members. Without paid leave, many employees would be less able or unable to deal with their own important life or health events or provide crucial services or support to a close family member, unless they would do so at the expense of lost income and the risk of being replaced. The Legislature made a set of balanced policy choices concerning participation and funding that are embedded in the very structure of its statutory plan. The primary objective of the plan was to ensure that employees will have paid leave in designated circumstances. Equally important is the Legislature's decision to establish alternative methods of accomplishing the primary goal. The rules issued by DOL concerning the timing of employer (and employee) payments and the timing of employer opting out, 12-702 C.M.R. Ch. 1 § XIII(A)(2), (4), cannot be reconciled with the explicit statutory plan.

The plain language of § 850-F(8) negates an employer's obligation to pay into the State plan if the employer has chosen an approved private plan. The legislative policy decision obviously is that employers may elect to stay in and pay into the State plan *or* opt out and not pay into the State plan. Either of those legislated choices will accomplish the Legislature's primary goal. There is no provision in the statute for the (unattractive third) "choice" imposed by DOL to opt out *and* pay into the very same plan from which the employer opted out. Indeed, the statutory option to opt out instead of paying into the State plan is nullified by DOL. Opting out and paying in are *alternatives* in the statute. In the challenged rules, contrary to law, they have instead become *cumulative*. DOL timing rules resulting in payment with no coverage cannot be characterized as consistent with the enactment's text or structure or purpose. On the contrary, the challenged timing rules conflict with the law and hurt the employees whose interests the law was designed to protect and advance.

This statute consists of several integrated elements, all of which are essential to accomplishing the program's objectives and therefore mark the limits of DOL's rulemaking authority. None of the elements are subject to change by DOL rulemaking. In combination, the elements of the statute mean: (1) that Maine's working people will have *paid* leave from their employment without losing their employment in certain specified instances; (2) that the program is insurance to be funded either (a) by employers who use the State plan *paying* premiums as a percentage of payroll, *or* (b) by employers *paying* the cost of their chosen alternative plan approved by the State; (3) that employers under specified circumstances may require their employees to *pay* up to half of the required premium amounts; and (4) that employers have the right to opt out of the State's system *without paying* into the State fund if they provide an approved equivalent private plan, whether *purchased* from an approved insurer or *self-insured*. The italicized words illustrate the point that all the economics and methods of the program are central elements of a carefully balanced legislative policy choice about how employee leaves are to be funded. 26 M.R.S. §§850-E, 850-F; *see id*. § 850-H. The statute's specific funding choices are mutually exclusive and jointly exhaustive, neither needing nor allowing DOL revision.

The basic model is familiar. At its core, it is in the tradition of workers' compensation and unemployment insurance. The Legislature might have mandated only that every employer of whatever minimum number of employees must obtain an approved PFML insurance plan underwritten by a qualified provider or establish an approved actuarily sound self-insurance plan that provides the required benefits. Alternatively, the Legislature might have established only a PFML plan to be administered by the State and funded by payroll tax revenues or other tax revenues.

Instead, the legislative policy judgment was to establish a State-operated plan to be funded by premiums to be paid by employers electing to use it (and permitting employers to deduct up to half of those premium payments from wages otherwise due to their affected employees), and to authorize employers to opt out of the State system and elect instead an approved functionally equivalent private plan. 26 M.R.S.

§850-H. It is textually and structurally apparent that the legislative policy choice accommodates employers' elections to fund employees' leaves differently—outside the State system. The importance of that elemental right to choose to opt out—and correlatively not to pay into the State system — is well illustrated by the brief descriptions of the circumstances of these Amici described above.

The Plaintiffs-Appellants, these Amici, and many other employers will opt out or have opted out already, in significant part no doubt to optimize their ability to preserve other features of their existing benefit programs, such as paid time off and profit-sharing. Other than approval of the chosen alternative and a modest reimbursement of the State's cost of overseeing private plans, the statute imposes no condition, cost, or penalty for opting out. The challenged rules do. They nullify a statutory right and impose a financial obligation at odds with exercise of the statutory right.

The challenged DOL timing rules are fundamentally inconsistent with the statutory plan, i.e., contrary to law, and therefore beyond the authority of DOL. 5 M.R.S. § 11007(C)(1) (providing that an agency decision should be reversed if "[i]n violation of constitutional or statutory provisions."); *Nat'l Indus. Constructors v. Superintendent of Ins.*, 655 A.2d 342, 345 (Me. 1995) ("The plain meaning of a statute always controls over an inconsistent administrative interpretation."); *Cent. Me. Power Co. v. Me. Pub. Utils. Com.*, 436 A.2d 880, 885 (Me. 1981) ("[D]eference to the agency's construction must yield to the fundamental approach of determining the legislative intent, particularly as it is manifest in the language of the statute itself.”).

II. DOL is Without Authority to Make Rules Contrary to Law.

There is nothing in the statute authorizing DOL to promulgate rules compelling employers who opt out nevertheless to make nonrefundable payments, knowing that no employee of any employer making those payments will ever receive any benefits related to those payments. DOL has stated several times that the purpose of its rule is to provide fiscal soundness to the State’s plan. (*See* A. 163, ¶ 2 (DOL responds to commentors by writing: “the Department finds that the changes balance the interest of employers and the interest of establishing a fiscally sound Paid Family and Medical Leave Fund.”).) That is an explicit acknowledgement that DOL is overriding the Legislature’s different carefully balanced policy. DOL repeats that acknowledgment elsewhere in its written response to commenters during its rulemaking process. (A. 164; *see also* A. 165, ln. 1; A. 166.)

The financial balance the Legislature struck is not a detail. It is the whole program. The only action required to comply is to pay money, either to the State, or to a private insurer, or to some authorized reserves for self-insurance. Those payments by an employer, including up to half in turn paid by that employer’s employees, are for the purpose of providing paid leave to *those* employees. Directly contrary to the statute, the challenged DOL timing rules require an opting-out employer (or its employees) to pay *additional* money to the State to fund benefits for *other* employees.

The financial effects of the challenged DOL timing rules are different from the typical incidental expenditures for labor or materials or other means to achieve a legislative policy objective, such as improved consumer or worker safety. Here, compliance is the payment itself. There is no legal basis for DOL to materially alter the legislative determination of what payment constitutes compliance. The challenged DOL rules do exactly that, at great expense to many employers, for the benefit of workers they do not employ, and at the expense of the workers they do employ.

An administrative balance of competing considerations in implementing a statutory policy will generally stand if it is supported by substantial evidence and not an abuse of whatever discretion the agency has. But an agency rule striking a financial balance at odds with the opposite financial balance that the Legislature enacted in statutory law defies or violates that law. Here, the challenged DOL rules are antithetical to the legislative policy choices balancing all public and private interests to specify the only methods allowed for funding paid leave benefits. The challenged rules are unlawful and therefore must not be judicially approved.

The DOL rules delaying opt out and requiring substantial nonrefundable payments cannot be legally permissible unless the statute authorizes DOL to establish rules and processes that make it impossible to opt out until after nonrefundable payments unconnected to any potential benefit payment have been required to be made. *See Calnan*, 2024 ME 30, ¶ 9, 314 A.3d 267. No such words appear in the law. No fair reading of the statute consistent with the legislative objectives supports the idea that the Legislature delegated to DOL the authority to change the fundamental economics of the statute's carefully balanced plan.

The question then becomes whether such power is interstitially implied by the words that are in the law. *Id.* No proper interpretation leads to any such implication, and DOL does not inherently or generally have any such authority.

Agencies with specialized subject-matter expertise, generally, and often implicitly, have rulemaking authority to build out a general legislative framework or fill gaps in the broad general language of a statute. Generally, Maine's Constitution does not prohibit the Legislature from establishing an expert agency and leaving it to the agency to supplement, implement, and clarify the statutory plan to achieve the statute's objectives so long as the authorizing delegation "contains standards sufficient to guide administrative action." *Doane v. HHS*, 2021 ME 28, ¶ 17, 250 A.3d 1101 (quoting *Lewis v. State Dep't of Human Servs.*, 433 A.2d 743, 747 (Me. 1981)).

Hypothetically, if a statute prohibits "unhealthful" levels of particulate emissions, without further detail, an agency determination that a given level is "unhealthful" will properly be upheld if there is substantial record evidence to support it. That judgment involves assessing the frequency and severity of respiratory harms likely to be experienced by the public at large or by those with asthmatic conditions from industrial particulate emissions. It almost certainly will involve evidence about what emissions control technology is commercially available to control emissions. These are fit subjects for public health experts and engineers and well-suited to conventional administrative fact-finding processes. Rules that make a statutory requirement, authorization, or prohibition clearer, or illustrate more specifically and in more detail what the statute means concerning a matter within an agency's specialized subject matter expertise, are almost certainly valid. A rule that facilitates implementation of the statute's plan is presumptively valid because it swims in the same direction.

The rules before the Court are nothing like that. Any rule that involves no medical or scientific or other expertise, but only materially alters the legislatively balanced economic effects of a statute, increasing the economic burdens on some employers and their employees for the benefit of other employees of other employers, and the State itself, is not one of those rules. The challenged DOL rules burden an explicit statutory right. They fundamentally reject and obstruct the plan. The effects of DOL's timing rules cannot be reconciled with what is allowed or required by the statutory plan. They adversely affect the financial interests of the workers that the statue was designed and enacted to protect. Under the statute, up to half of the unlawful added cost may be required to be paid by employees who can never benefit from the money they will be compelled to pay under the challenged rules. For companies with profit-sharing programs, a reduction in profits further hits the very employees who are the intended beneficiaries of this plan. The challenged timing provisions of the DOL rules are contrary to statutory law and therefore invalid.

The harm done by the challenged timing rules is neither hypothetical nor insignificant. Employee profit-sharing plans will be less well funded, and wages everywhere may grow less rapidly because the State took the money. Cianbro is a 100% employee-owned company. JAX will have over a million dollars less to support its life-saving work of world-wide significance. The colleges may need to reprioritize financial aid, faculty salary and research budgets, and many other budgetary matters, including tuition. The hospitals are already pressed as Medicare reimbursements do not keep pace with costs. The money to fund the State program, with no benefit in return, will need to be diverted from some other potential use. It cannot come at the expense of good patient care. MEMIC is a mutual insurance company. An unlawful rule that raises its costs raises the policy holders' costs. MEMIC cannot reduce claim expenses to fund the payments because Maine's workers' compensation law and processes determine the claim expense. The Legislature presumably did not mean to generate the money for paid leave for some workers by undercompensating injured workers. Sheridan's profit-sharing program is obviously affected by any expense that reduces profit.

These points illustrate many reasons that DOL is wrong to think it has the power to fund the State program by charging extra to employers (and to their employees who pay half) who opt out, in conflict with the text, structure, and purpose of 26 M.R.S. § 850-F(8). The statute balanced all the stakeholders' interests materially differently. The statute does not create a right to opt out *and* authorize, instead, DOL to prevent exercise of the right, even temporarily. The statute does not authorize employers to provide an alternative plan *and* empower DOL to extract millions of dollars in "premiums" that buy no insurance. DOL has no authority to add burdensome conditions or costs.

III. The Scope of DOL's Rulemaking Authority is a Judicial Question.

A. <u>Only the Court Has Constitutional Power to Interpret a Statute to Determine the Legal Validity of a Rule.</u>

The question here is whether DOL has misinterpreted the legislative funding plan and wrongly usurped the authority to change the statutory plan. Whether a rule lies within or exceeds an agency's rulemaking power is an intrinsically legal question, requiring the Court to determine and declare the meaning of statutory law. 5 M.R.S. § 8058(1); *see Calnan*, 2024 ME 30, ¶ 9, 314 A.3d 267 (citing § 8058(1) and *Conservation L. Found., Inc. v. Dep't of Env't Prot.*, 2003 ME 62, ¶ 21, 823 A.2d 551). What a statute means is a question of law *exclusively* within the authority of the Court under Maine's separation of powers provisions. Me. Const. art. III, §§ 1-2; *see* Me. Const. art. IV-VI; *Dupuis v. Roman Cath. Bishop of Portland*, 2025 ME 6, ¶ 22, 331 A.3d 294 ("Because the separation of powers doctrine is made express in our Constitution, the doctrine is much more rigorous than that presented in construing the Constitution of the United States.") (internal quotations omitted); *State v. Athayde*, 2022 ME 41, ¶¶ 20-21, 277

A.3d 387 (recommitting to the primacy approach of first examining a claim under Maine Constitution and then "proceed[ing] to review the application of the federal Constitution only if the state constitution does not settle the issue."); *Proprietors of Kennebec Purchase v. Laboree*, 2 Me. 275, 294-95 (1823) (first establishing the Court's authority to decide whether a statute is constitutional). It is exclusively a judicial function to determine what a statute means. *Squires v. Augusta*, 155 Me. 151, 224, 153 A.2d 80, 117 (1959) ("[A] statute means what a majority of the court says it means."). In short, cases cannot be decided without determining and declaring what is prohibited, permitted, or required by the Constitution, statutes, or common law. That is the business of the courts. It's what they do; it's what they are there for.

In exercising the judicial power to determine statutory law, a court may give appropriate weight to any opinion, including a well-reasoned interpretation by affected agency administrators, about the meaning of a statute that both grants and limits their own rulemaking authority. The crucial point is that agency *legal* interpretations are entitled to judicial *consideration*. They are not entitled to judicial *deferenc*e. *See Guilford Transp. Indus. v. Pub. Utils. Comm'n*, 2000 ME 31, ¶ 10, 746 A.2d 910 ("[W]hen the legal issue decided by the agency is an issue in which the courts have particular competence, there is no reason for the court to defer to the agency."); *see also Loper Bright*, 603 U.S. 369, 391-92 (2024). Although *Guilford*, *supra*, relied in part on *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984) ("*Chevron*"), which has since been overruled by *Loper Bright*, that above-quoted statement from *Guilford* was in accord with the law of Maine even under *Chevron*. Of course, neither *Chevron* nor *Loper Bright* is binding precedent as to the Maine Constitution or Maine administrative law. The points are (1) that even under *Chevron*, the Law Court gave no deference to a legal interpretation by an agency and (2) that *Loper Bright,* overruling *Chevron,* is even more clearly in accord with Maine's constitutional arrangements concerning the separation of powers.

The Law Court's exclusive and final authority to decide legal questions is not because the task of legislative interpretation always lies outside the expertise of agencies, or even the expertise of law-trained analysts outside the agency. It is because the *power* to determine authoritatively and finally the meaning of a Maine statute lies precisely and *only* in the judicial branch of the government of Maine as a clear matter of Maine Constitutional law. Me. Const. art. III, §§ 1-2; *Dupuis,* 2025 ME 6, ¶ 22, 331 A.3d 294. The Supreme Court's decisions on matters of federal constitutional law are not binding precedent on issues of Maine constitutional law, but here *Loper Bright* is persuasive because, as shown in *Guilford*, it has always been the law of Maine that agency *legal* determinations are not binding on the Court and cannot stand when—as here—they are contrary to law.

B. <u>Under Maine's Constitution, Administrative Decisions About Law Get Consideration, but Not "Deference."</u>

It is vitally important to differentiate cases when a court is *persuaded to agree* with a given agency determination of what a statute means from cases when a court *defers* to it, thereby letting the executive branch decide the meaning of a law. In interpreting and applying the Maine Constitution, the Law Court should reaffirm its undoubted authority to say what Maine's law is while remaining open, as every court should, to being persuaded, even by what is called secondary authority. That may include opinions from other courts or from extra-judicial sources entitled to more or less respect, whether a law review article by an academic expert, or a book by a distinguished historian or economist, or a reasoned analysis by an agency demonstrating that its exercise of rulemaking authority is consistent with the enabling legislation and advances accomplishment of the statute's objectives.

Significantly here, there is no need to decide what weight to give to DOL's analysis of the legal issues because DOL made none. Moreover, what can be inferred from DOL's replies to comments is self-defeating. Therefore, resolution of the reported issues does not need a broad general standard or method for how the judicial branch should consider what weight to give to an agency's legal analysis of its own rulemaking authority. All that is needed here is a determination that this departure from this statutory plan is contrary to law.

As made clear in Appellants' Blue Brief, this rule, if permitted, would amount to an unconstitutional taking of substantial amounts of money. It is analytically useful to consider hypothetically what the outcome would be if the statute had enacted the words that are in the rule. For all the reasons advanced in the Appellants' Blue Brief, that unenacted hypothetical statute would violate constitutional prohibitions against the taking of private property without due process. When considering what weight to give to the opinion of an agency about the scope of its own rulemaking power, the weight to be given to the agency's view is at its lightest when upholding it would generate a grave constitutional question or indeed a clear violation of the Maine and United States Constitutions.

Although the case is not squarely on point, the wisdom of Justice Brandeis's concurring opinion in *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 341 (1936), remains helpful. The reported questions can be correctly answered without reaching the constitutional question because the rules are at war with the enabling statute. The *Ashwander* concurrence counsels that the Court should not uphold DOL's aggressively expansive view of its rulemaking authority only to confront its unconstitutionality.

The Law Court should reaffirm the authority of the judicial branch under Maine's separation of powers to determine what the law means while respectfully remaining open to well-reasoned and well-articulated rationales of administrators. In this instance, there is nothing in any of the words of the statute, or even the spaces between the lines, to say that the extraordinary rules under consideration here were explicitly or even implicitly authorized by the legislation. They are incompatible with the statutory plan. The statutory authorization to opt out and the correlative exemption from paying in are unconditional and unlimited. The chronological economic effect of this rule imposes an onerous expensive condition and limitation on the unconditional and unlimited statutory right to opt out by requiring very substantial payments before it is administratively possible to exercise the right to avoid them. The DOL rules require these Amici to pay, collectively, many millions in premium payments, much of which will be paid by Amici's employees, in direct conflict with the Legislature's balanced funding policy judgment and the plain language of the statute, 26 M.R.S.§ 850-F(8). That portion of the DOL rules cannot stand as written.

CONCLUSION

The Superior Court's Order reports three questions to the Law Court. For the reasons advanced in the Appellants' brief and this brief, the Law Court should determine and declare as a matter of law that the Appellants have indeed proven that the challenged rules conflict with the PFML Act. Presumably, that response would moot the second and third reported questions. A negative answer to the first question brings the second and third questions squarely into dispositive significance. Both the second question and third question, if reached, should be answered in the affirmative because compelling premium payments from parties who receive no benefit from making them, is an unconstitutional taking prohibited of the Constitutions of Maine and the United States.

Respectfully Submitted,

Dated: April 23, 2025

/s/ Gerald F. Petruccelli

Gerald F. Petruccelli, Esq. – Bar No. 1245
Scott D. Dolan, Esq. – Bar No. 6334
Counsel for Amici Curiae

Petruccelli, Martin & Haddow, LLP
P.O. Box 17555
Portland, Maine 04112-8555
207-775-0200
gpetruccelli@pmhlegal.com

CERTIFICATE OF SERVICE

I, Gerald F. Petruccelli, Esq., hereby certify that copies of this Brief of Amici Curiae in support of Appellant were served upon counsel at the addresses set forth below by email and first-class mail:

Joshua D. Dunlap, Esq.
Pierce Atwood LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
Attorney for Plaintiff-Appellants

jdunlap@pierceatwood.com

Nancy Macirowski, AAG
Office of Maine Attorney General
6 State House Station
Augusta, ME 04333-0006

nancy.macirowski@maine.gov

Dated: April 23, 2025

/s/ Gerald F. Petruccelli

Gerald F. Petruccelli, Esq., Bar No. 1245
Petruccelli, Martin & Haddow, LLP
PO Box 17555
Portland, Maine 04112-8555
(207) 775-0200
gpetruccelli@pmhlegal.com
Counsel for Amici Curiae