Order

Michigan Supreme Court
Lansing, Michigan

September 18, 2024

Elizabeth T. Clement,
Chief Justice

165325 (117)(118)

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

MOTHERING JUSTICE, MICHIGAN ONE FAIR WAGE, MICHIGAN TIME TO CARE, RESTAURANT OPPORTUNITIES CENTER OF MICHIGAN, JAMES HAWK, and TIA MARIE SANDERS,
Plaintiffs-Appellants/
Cross-Appellees,

v

SC: 165325
COA: 362271
Ct of Claims: 21-000095-MM

ATTORNEY GENERAL,
Defendant-Appellee/
Cross-Appellant,

and

STATE OF MICHIGAN,
Defendant-Appellee.

_____/

Before the Court are joint motions for clarification and immediate consideration filed by defendants, the Attorney General and the state of Michigan. The motion for immediate consideration is GRANTED. The motion for clarification is resolved as follows.

First, footnote 23 on page 33 of the Court's majority opinion is clerically corrected to state the following:

> The publication date for this opinion is July 31, 2024. Thus, the Wage Act and the Earned Sick Time Act will go into effect on February 21, 2025. The schedule for the general minimum hourly wage rate and tip credit (the amount of tips that can be used to offset the general hourly minimum wage rate for tipped workers) is therefore as follows:
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> February 21, 2025 (originally 2019): The minimum hourly wage rate will be $10.00 plus the state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation. The tipped workers' minimum hourly wage rate must be at least 48% of the general minimum wage rate, and the tip credit can be used to satisfy the balance owed to such workers.
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> February 21, 2026 (originally 2020): The minimum hourly wage rate will be $10.65 plus the state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation. The tipped workers' minimum

> hourly wage rate must be at least 60% of the general minimum wage rate, and the tip credit can be used to satisfy the balance owed to such workers.
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> February 21, 2027 (originally 2021): The minimum hourly wage rate will be $11.35 plus the state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation. The tipped workers' minimum hourly wage rate must be at least 70% of the general minimum wage rate, and the tip credit can be used to satisfy the balance owed to such workers.
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> February 21, 2028 (originally 2022): The minimum hourly wage rate will be $12.00 plus the state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation. The tipped workers' minimum hourly wage rate must be at least 80% of the general minimum wage rate, and the tip credit can be used to satisfy the balance owed to such workers.
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> February 21, 2029 (originally 2023 and after): The state treasurer shall calculate the inflation-adjusted minimum wage rate as set forth in 2018 PA 337, § 4(2). The tipped workers' minimum wage rate must be at least 90% of the general minimum wage rate, and the tip credit can be used to satisfy the balance owed to such workers.
>
> On February 21, 2030 (originally 2024 and after), tipped employees must be paid 100% the general minimum wage rate without any tip credit permitted to offset the minimum wage rate for tipped workers.

Second, defendants ask for clarity regarding the dates set forth in footnote 23. Defendants write that the Wage Act:

> provides that rates would be effective on January 1 of each year, except for the first year. Treasury requests clarification if minimum wage increases beginning with year 2026 go into effect on January 1 under Section 4, or whether they go into effect on February 21 as stated in footnote 23. Absent clarification, Treasury intends to implement this provision in accordance with the Wage Act, i.e., on January 1 for 2026. [Defendants' Joint Motion for Clarification (August 21, 2024), ¶ 30.]

The dates set forth in our opinion are correct. The Wage Act provided for four predetermined changes to the general minimum hourly wage rate, and it called for those changes to take effect on January 1 of their respective years. Thus, each change was to occur exactly one year after the previous change. Footnote 23 in our opinion sets forth a schedule that is likewise divided by one-year increments. Because the Wage Act does not go into effect until February 21, 2025, however, the Court replaced January 1 with February 21.

Finally, defendants ask whether they correctly interpret the Court's remedy with respect to inflation. Defendants interpret the opinion as requiring that they "bring the

statutory minimum wages in Section 4(1) current to July 31, 2024, through an inflationary catch-up beginning January 1, 2019." *Id*. at ¶ 6; see also *id*. at ¶ ¶ 14-18. Defendants are correct.

The confusion seems to arise from a possible misinterpretation of footnote 22. The sentence preceding footnote 22 provides that "the state treasurer *must use this opinion's publication date* to calculate the inflation-adjusted rates for the minimum hourly wage prescriptions provided in the Wage Act." *Mothering Justice v Attorney General*, ___ Mich ___, ___ (2024) (emphasis added). Footnote 22 then provides that:

> the state treasurer shall follow the procedures set forth in 2018 PA 337, § 4(2). In other words, *the state treasurer shall publish* those amounts "by November *1 of the year it is calculated* and shall be effective beginning" 205 days after this opinion's publication. 2018 PA 337, § 4(2). [*Id*. at ___ n 22 (emphasis added).]

As the words emphasized above make clear, footnote 22 concerns only the procedure for publication of the rates. In summary, the state treasurer shall bring the statutory minimum wages in § 4(1) of the Wage Act current to July 31, 2024 through an inflationary catch-up beginning January 1, 2019. By November 1, 2024, moreover, the state treasurer shall publish those amounts.

WELCH, J. (*concurring*).

After publication of the Court's opinion in this case, an outside legal publication reached out to the Court Clerk noting that footnote 23 appeared to be miswritten. As the opinion's author, I agreed. Although footnote 5 accurately set forth the percentage of the general minimum wage that had to be paid by employers without use of the tip credit, footnote 23 was drafted incorrectly. The Court therefore began preparing a corrective order.

Before the Court issued that corrective order, defendants filed the instant motion for clarification. In their motion, defendants pointed out the same footnote 23 clerical errors to which the outside publication had alerted us and asked whether their interpretation of the Court's opinion was correct. As the Court explains in its order, footnote 23 included clerical errors, and defendants' interpretation of our opinion is largely correct.

Through their motion, defendants ask whether they have correctly interpreted the Court's remedy with respect to inflation adjustments to the minimum wage. Defendants stated that they assume that the opinion requires that they "bring the statutory minimum

wages in Section 4(1) current to July 31, 2024, through an inflationary catch-up beginning January 1, 2019."[1] As the Court explains in its order, defendants' interpretation is correct.

The dissent uses defendants' motion to attack the opinion's clarity. On that front, I note simply that Justice ZAHRA's original dissent suggests that he understood the Court's opinion. In that dissent, Justice ZAHRA noted:

> The inflation charge is apparently calculated from 2019, i.e., the year of the first increase in the minimum wage without an inflation adjustment, to the date of the decision. That would amount to around a $2.50 bonus. This inflation bonus is not calculated with a starting point of 2022 . . . nor is it adjusted year to year based on the most recent 12-month period . . . . [*Mothering Justice v Attorney General*, ___ Mich ___, ___ (July 31, 2024) (Docket No. 165325) (ZAHRA, J., dissenting); slip op at 17-18 (quotation marks and citations omitted).]

Although Justice ZAHRA disagreed with our remedy, he apparently understood how the remedy worked. Thus, at the end of the day, it seems that both Justice ZAHRA and defendants interpreted the opinion correctly.

As to the dissent's attack on our clerical correction, I feel it's important to outline the Court's robust internal review processes. As an initial matter, as the author of the opinion, I own the mistake. As a secondary matter, our internal process includes multiple drafts and reviews by both the majority and dissenting Justices. Mistakes are found and corrected via input from other offices as part of our back-and-forth process on a regular basis. No Justice—either in the majority or dissent—caught the error in footnote 23. Nor did our Reporter's Office catch the error. Although it is rare for a mistake to get past so many levels of review, this one indeed did get by our Court. For that, I apologize. Like courts across the country, this Court has a long history of issuing post-release orders to fix clerical errors; this is standard practice.

The dissent to this order also uses our clerical correction and defendants' request for clarification to again outline the reasons it disagrees with the majority. Although there were strong arguments presented by both parties in this case, we have decided the case on the merits, and the opinion outlines in detail both the majority's and dissents' views.

This footnote correction changes nothing of substance in the opinion. And defendants properly understood the calculation required to determine the minimum wage rates. To the extent that the dissent to this order attacks the clerical error in footnote 23, I

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[1] Defendants offered other calculation options but noted that this is the interpretation that they assumed the Court intended.

note that the error was missed by the entire Court, including Justice ZAHRA. We should always own our mistakes and fix them promptly, and I hope that members of this Court continue to do so moving forward. And to the extent that the dissent uses defendants' request for clarity to attack the opinion's substance, I respectfully note that the time to relitigate the opinion's merits has passed.

ZAHRA, J. (*dissenting*).

Before the Court is a joint motion filed by the Attorney General upon the request of the Department of Treasury and the Department of Labor and Economic Development to clarify this Court's remedy decree in *Mothering Justice v Attorney General*.[2] In response, the Court again enters amendments to employment-law statutes and attempts to clarify the uncertainty surrounding its opinion. For the reasons stated in my dissent in the initial opinion, I dissent from the entry of the additional revisions to statutory law.[3] A majority of this Court has no authority to rewrite unambiguous statutory provisions in pursuit of its subjective understanding of "equity."[4] Such power is vested with the Legislature, not the judicial branch, and no case available to the Court in Michigan or any other jurisdiction in this nation has adopted or condoned the extraordinary remedial actions taken in this case by the Court, both in the initial opinion and in the instant order.

This past July, a majority of this Court took the uncharted path of reviving initiative petitions, abrogating unambiguous statutory provisions, and drafting new statutory language that the majority declared "equitable." For the first time in the history of this state, the Michigan Supreme Court removed clear and unambiguous text from statutes and invoked judicial power to rewrite vast portions of those statutes. It did so in an extraordinarily complex area of law pertaining to employment relations and tipped services, without any oversight or vote of approval from the elected Legislature or the voters themselves. Citing *Brown v Bd of Ed of Topeka*, 349 US 294 (1955), as its primary support, a totally inapplicable case from the Jim Crow era, a majority of this Court charged forward with a grossly inflated view of its own powers and abilities.[5] As a result, the Court usurped legislative power it had no constitutional authority to wield and, as explained in the dissenting opinion, enacted into the employment-law statutes of the state "an internally

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[2] *Mothering Justice v Attorney General*, ___ Mich ___ (July 31, 2024) (Docket No. 165325).

[3] See *id*. at ___ (ZAHRA, J., dissenting).

[4] *Id.* (purportedly relying on "equitable principles" to craft its remedy) (opinion of the Court).

[5] *Id*. at ___ (opinion of the Court); slip op at 30.

inconsistent and deeply confusing formula to set the rates of wages and tipped-labor distinctions going forward in this state for years."[6]

At the root of the present uncertainty in employment law is that a majority of this Court rewrote statutes to allegedly conform with the "purpose" of the initiative petitions,[7] but the statutory provisions actually enacted by the majority expressly and repeatedly conflicted with the initiative petitions themselves. For instance, the majority sought to enact express wage steps starting in 2024 and add an inflation adjustment that, deciphering the opinion's cryptic language, appeared to start in 2019 and continued to 2024. But the initiative petitions had wage steps starting in 2019 and ending in 2022, and those wage steps included no inflation adjustment. Under the initiative petitions, the minimum wage increased by inflation *starting in 2022* based on the amount of inflation *in the prior year*. Therefore, increases continued after 2022 by calculating inflation year-to-year. Unlike the amendments enacted by the Court, the initiative petitions did not have a free-wheeling inflation calculation added atop the express wage steps based on a select cross section of years. In concocting this remedy, the majority opinion failed to explain in any substantive or detailed manner how the novel inflation adjustment was actually calculated.[8] The only guidance provided by the majority was: (1) a passing and nondescriptive comment that $10.00 in the year the wage steps began under the initiative, 2019, "is not the same as $10.00 in 2024,"[9] without any details as to how this was relevant or tied to the manner by which the inflation adjustment is calculated; (2) a statement that the date of the opinion was the "endpoint for [the inflation adjustment] calculation,"[10] without any added explanation as to what the starting point of the calculation was or what the formula to

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[6] *Id*. at ___ (ZAHRA, J., dissenting); slip op at 18.

[7] *Id*. at ___ (opinion of the Court); slip op at 32; *id*. at ___ (opinion of the Court); slip op at 30 (weighing employers' needs against "the people's rights to the initiative"); see also *id*. at ___ n 19 (opinion of the Court); slip op at 30 n 19.

[8] As explained in the dissent, to impose an inflation adjustment "[t]he majority purportedly relies on the fact that the statute [adopted through initiative] considered inflation in setting minimum wages beginning in 2022 . . . ." *Id*. at ___ (ZAHRA, J., dissenting); slip op at 18. Yet "the majority considers inflation only between 2019 and today as opposed to annually from 2022 onward [as stated in the initiative], superimposes this selective adjustment period onto provisions that expressly do not consider inflation, declines to follow similar unambiguous dates for raises in the minimum wage or elimination of tipped-wage distinctions, and then begins the inflation adjustment anew in 2029, a year not even mentioned in the initiative." *Id*. at ___ (ZAHRA, J., dissenting); slip op at 18.

[9] *Id*. at ___ (opinion of the Court); slip op at 33.

[10] *Id*. at ___ n 23 (opinion of the Court); slip op at 33 n 23.

calculate the adjustment actually was; and (3) an assertion that to determine the specific inflation adjustment, the Department of Treasury "shall follow the procedures set forth" in the original initiative petitions,[11] which thoroughly conflicted with the standards established under the opinion.

After issuing its opinion, the Court received a timely request to immediately clarify its holding. The motion is as notable as it is unsurprising. The Departments of Treasury and Labor and Economic Opportunity are experts in the application of employment statutes and financial regulation, and the Attorney General's office employs some of most respected and well-versed governmental attorneys in the state. Yet they clearly do not have a confident grasp of this Court's opinion, concluding instead that it is necessary to request urgent assistance from the Court to accurately understand and apply the opinion. In fact, the Departments are so sure that portions of the Court's opinion are incorrectly drafted, they assert that they will enforce provisions of the initiative petitions despite express statements in the Court's opinion that are in conflict.[12]

In response, the majority concludes that material portions of the minimum-wage step increases were miswritten. The Court again amends the language of statutes to provide an explanation of how the tipped-wage offset must be calculated and adds into the statutes an entirely new step increase in the tipped-wage offset for the year 2029. As a result, the gradual elimination of tipped-wage offsets is changed from 80% in 2028 to 100% elimination in 2029 under the Court's original opinion. The elimination of tipped-wage offsets now progresses from 80% in 2028 to 90% in 2029 and 100% elimination in 2030. This is an entirely new standard that shifts the manner of calculating tipped-wage offsets over the course of years. The altered statutory provisions materially affect the livelihood and economic viability of jobs and businesses throughout the state. It is not a mere "clerical" change, as the Court unconvincingly attempts to describe it.[13]

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[11] *Id*. at ___ n 22 (opinion of the Court); slip op at 33 n 22.

[12] Joint Motion of the Attorney General and State of Michigan for Clarification (August 21, 2024) at 11 ("Absent clarification, Treasury intends to implement this provision in accordance with the Wage Act, i.e., on January 1 for 2026," not in February 2026 as expressly stated in the opinion); *id*. at 11-12 ("Absent clarification, [the Department of Labor and Economic Opportunity] will assume the Court intended to include the 90% graduated increase for tipped wages and will implement 2018 PA 337, Section 4d(2) (i.e., applying the 90% graduated increase for tipped wages starting in 2029) as written," notwithstanding the express wage steps stated in the Court's opinion to the contrary).

[13] In her concurrence, Justice WELCH writes off the motion for clarification as clerical error relating to footnotes 5 and 23 that should have been corrected by the Court in its ordinary course of issuing opinions. Putting aside the fact that these amendments change

In the motion for clarification, the Departments of Treasury and Labor and Economic Opportunity also offered a best guess, along with other possible alternatives, for how the Court's inflation adjustment is calculated. Notably, in an attempt to decipher this Court's opinion, amici the Michigan Restaurant and Lodging Association and the Michigan Manufacturers Association suggest two methods for calculating the inflation adjustment that are completely different from the Departments' best guess.[14]

This Court agrees with the best guess of the Departments and rejects the several other alternative methods proposed by the Departments and amici.[15] But like the Court's

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substantive minimum-wage levels underlying employment relations throughout the state, this position ignores the fact that clarification is sought not just about the calculations in these footnotes, but also about how to properly calculate the inflation adjustment. While Justice WELCH quotes my original dissent to suggest that the inflation adjustment was readily calculable under the language of her opinion, the method endorsed in the majority's order appears inconsistent with language used in the original opinion, which referred to a specific inflation adjustment being *added to*, not multiplied by, each minimum hourly wage for the years 2025 through 2028. See note 16 of this statement. And the minimum-wage steps established in the majority opinion extend years beyond the end of the inflationary period used to calculate the adjustment, running from 2019 to 2024. Multiplying the total inflation *rate* between 2019 to 2024 to express wage steps running from 2025 to 2028, rather than adding the aggregate *amount* of inflation that occurred between 2019 to 2024, is by no means a given or intuitive. My dissent, like the movants' motion, was a guess at what the majority was attempting to legislate. I explained how "[t]he inflation charge is *apparently* calculated . . . ." *Mothering Justice*, ___ Mich at ___ (ZAHRA, J., dissenting); slip op at 17 (emphasis added); *id*. at ___ (ZAHRA, J., dissenting); slip op at 8 (stating what the minimum wage "likely" approximated). The fact that the movants seeking clarification of the majority opinion must cite my dissenting opinion to support their "best guess" at the remedial requirements of the majority opinion speaks volumes as to the clarity (or lack thereof) of the Court's original majority opinion. Joint Motion of the Attorney General and State of Michigan for Clarification (August 21, 2024) at 7, citing *Mothering Justice*, ___ Mich at ___ (ZAHRA, J., dissenting); slip op at 8.

[14] See Response of the Michigan Restaurant and Lodging Association as Amicus Curiae to the Joint Motion for Clarification (September 3, 2024); Response of the Michigan Manufacturers Association as Amicus Curiae to the Joint Motion for Clarification (September 4, 2024).

[15] Joint Motion of the Attorney General and State of Michigan for Clarification (August 21, 2024) at 7 (stating that the Departments "believe that the Court intended the inflation catch-up in Option 1 as the 'appropriate' remedy that this Court judicially fashioned" and citing the dissenting opinion for an explanation of the majority's method of calculation); *id.*

original opinion, the Court's order fails to provide any detailed explanation of how the calculation is performed. The Court's order simply repeats a sentence in the Departments' brief and states that the adjustment must " 'bring the statutory minimum wages in Section 4(1) current to July 31, 2024, through an inflationary catch-up beginning January 1, 2019.' " That summary language lacks any attendant detail on how the formula specifically applied in terms of numbers and dates, or variables and formulas.

Thankfully, the Departments' briefing included further details. Using those explanations provided by the Departments, the adjustment is apparently calculated by using the amount of inflation that occurred between 2019 and 2024 and multiplying that percentage increase in prices by the express step increases from 2024 to 2028 that the Court unilaterally enacts through its opinion. Notably, the method does not *add* the aggregate amount of inflation that occurred between 2019 and 2024 to each step increase of the minimum wage, which would amount to around $2.50 between 2019 and 2024 using the $10.00 wage starting in 2019. Instead, the method suggested by the Department and endorsed by the majority *multiplies* each step increase by the inflation rate that occurred between 2019 and 2024, despite the steps extending years into the future, past the inflationary period of consideration between 2019 and 2024.

This method, endorsed in the majority's order, appears inconsistent with language used in the original opinion, which referred to a specific inflation adjustment being *added to*, not multiplied by, each minimum hourly wage for the years 2025 through 2028.[16] It is a significant difference in calculation that is not in any way explained in the majority opinion or in the instant order. In terms of end results, the change would amount to an increase in the 2030 minimum wage from around $15.40 to around $16.00, assuming 3% future inflation; the Court condones the higher minimum-wage figure.

Curiously, the majority attributes the confusion resulting in the instant motion for clarification to a "misinterpretation" of the "clear" language in the majority opinion. The Court merely restates the imprecise and unclear language from the majority opinion, as if the confusing provisions speak for themselves. And Justice WELCH cites the dissent from the original opinion as a source of clarity, as if the dissent is expected to lay out the standard

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("While Treasury believes Option 1 is the proper methodology to be used in implementing the Court's intended remedy, ambiguities in the opinion provide for other possible methodologies.").

[16] See *Mothering Justice*, ___ Mich at ___ n 23 (opinion of the Court); slip op at 33-34 n 23 (repeatedly stating that "[t]he minimum hourly wage will be [an amount] *plus the* state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation") (emphasis added); see also note 13 of this statement.

of law with which parties must attempt compliance.[17] Implicit if not explicit in this Court's order is that the present uncertainty is not due to this Court's actions or drafting but instead from the inability of the Department of Treasury, the Department of Labor and Economic Opportunity, and the Attorney General's Office to effectively comprehend this Court's directives. The fact that the top financial and legal experts in the Michigan government, in line with express statements from the dissenting justices in the original opinion, openly stated that the Court's opinion lacks clarity on major issues of statewide significance, on its own, proves that this post hoc attempt to double down on the "clear" language of the original majority opinion lacks merit. The substantial lack of certainty is placed in even greater relief by the party and amici arguments now before the Court. At least three completely different methods to interpret the Court's opinion and inflation adjustment are offered as the correct reading, along with several other potential alternatives.[18] The experts in the relevant governmental departments are not at fault for the confusion and uncertainty resulting from this Court's opinion. It is the fault of the majority and, specifically, its unprecedented decision to exercise legislative power and rewrite entire swaths of employment-law statutes.

By again judicially amending applicable statutory law through the modifications in the instant order, a majority of this Court continues to improperly usurp the power constitutionally assigned to the legislative branch. It is a stunning and unprecedented power grab found nowhere in our state Constitution. And the fact that after extensive review, consideration, and analysis, this Court failed to properly draft the correct provisions on tipped-wage credits is case in point that the Court is far outside its area of competence. The judiciary simply has no authority or expertise to write the statutory policy of the state.[19]

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[17] See *Hamed v Wayne Co*, 490 Mich 1, 32 n 82 (2011) (stating that a "dissenting opinion . . . is not binding precedent"); *People v Armstrong*, 207 Mich App 211, 214 (1994) ("It is axiomatic that the Michigan Supreme Court must decide cases by concurrence of a majority of the justices voting."); see also *Students for Fair Admissions, Inc v President & Fellows of Harvard College*, 600 US 181, 230 (2023) (explaining that dissents are commonly considered "not the best source of legal advice on how to comply with the majority opinion").

[18] See Joint Motion of the Attorney General and State of Michigan for Clarification (August 21, 2024); Response of the Michigan Restaurant and Lodging Association as Amicus Curiae to the Joint Motion for Clarification (September 3, 2024); Response of the Michigan Manufacturers Association as Amicus Curiae to the Joint Motion for Clarification (September 4, 2024).

[19] *Johnson v Recca*, 492 Mich 169, 187 (2012) (explaining that the power to amend or replace statutory language is "reserved solely to the Legislature"); see also *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 762 (2002) (explaining that the Michigan Supreme

That is only exacerbated when the rewrite implicates the very complex and delicate area of employment policy, enshrining as law new and highly convoluted formulas, dates, and calculations. It is not surprising that the Court in the process incorrectly drafted statutory amendments and is now required to judicially rewrite provisions of the state's minimum-wage statutes yet again.

In addition, it does not go without notice that while making its unprecedented foray into the legislative field, and notwithstanding the significant time and energy dedicated by the Court in this case, the Court inadvertently placed into effect provisions with fundamental errors and inconsistencies that required immediate attention. This is the exact reason why the drafters of the Michigan Constitution bestowed on the Legislature the legislative flexibility to make intra-session amendments to adopted initiatives.[20] As this Court has now learned, even the smallest phrasing difference in provisions can pose significant issues for the effectiveness and proper functionality of a statutory system. In some instances, small word placements can create fundamental internal conflicts in the statutory framework, if not render the system totally inoperable. Errors often go unnoticed and unintended, both at the drafting and adoption stages. Therefore, the Michigan Constitution established a large and bicameral body specialized in the drafting of statutes,

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Court is "not entitled to usurp the prerogatives of the Legislature by altering the words of a statute to mean something other than what they plainly mean"); *Empire Iron Mining Partnership v Orhanen*, 455 Mich 410, 421 (1997) ("We will not judicially legislate by adding language to the statute."); *In re Certified Questions from US Dist Court*, 506 Mich 332, 356 (2020) (explaining that "rewrit[ing]" the unambiguous language of a statute conflicts with the constitutional delegation of the determination of laws "by the Legislature"); *Attorney General ex rel Connolly v Reading*, 268 Mich 224, 230 (1934) (explaining that "[w]e do not rewrite statutes" but instead apply standard principles of statutory construction); see also *Ayotte v Planned Parenthood of Northern New England*, 546 US 320, 329 (2006) (reasoning that the judiciary's "constitutional mandate and institutional competence are limited," thus restraining the Court from " 'rewrit[ing]' " laws and performing "quintessentially legislative work") (citation omitted; alteration by the *Ayotte* Court); *Murphy v Nat'l Collegiate Athletic Ass'n*, 584 US 453, 481-482 (2018) (" '[W]e cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole.' "), quoting *R Retirement Bd v Alton R Co*, 295 US 330, 362 (1935).

[20] See *Mothering Justice*, ___ Mich at ___ n 12 (CLEMENT, C.J., dissenting); slip op at 21 n 12 (citing a recent example of a minimum-wage initiative that would have served to eliminate the minimum wage for thousands of workers as a result of a small drafting change on the placement of the number "2").

i.e., the Legislature.[21] The Legislature has the benefit of the Legislative Services Bureau, with staff members specialized in research and bill drafting,[22] and each chamber has its own fiscal agency that prepares reports containing summaries of bills and the estimated financial effect of the bills on state and local government.[23] And in most cases, the Legislature's drafting decisions are subject to a gubernatorial veto.[24] Here, the Court wielded unbridled legislative authority that has never been given to it and, in so doing, demonstrated the wisdom and significance of the structure of power actually established under the Michigan Constitution.

Justice WELCH places blame for this error in part on the dissenting justices and in part on the Court's independent staff at the Reporter's Office.[25] It seems everyone is at fault for the problems arising from the majority's opinion. Yet the majority—not the dissent and not the Reporter's Office—wrote the opinion of the Court. And the majority—not the dissent and not the Reporter's Office—embraced a novel remedy that had never been used or condoned in the history of the state. Over the repeated warnings and objections of the dissent, the majority chose to "brazenly exercis[e] legislative power,"

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[21] Const 1963, art 4, § 1 ("[T]he legislative power of the State of Michigan is vested in a senate and a house of representatives."); Const 1963, art 4, § 22 ("All legislation shall be by bill and may originate in either house."); Const 1963, art 4, § 26 ("No bill shall become a law without the concurrence of a majority of the members elected to and serving in each house."); see also note 19 of this statement; *People v Hartwick*, 498 Mich 192, 199 n 3 (2015) ("In sum, the Legislature has a staff of experienced attorneys who work with the various legislators to develop and revise any manner of laws. After a bill is drafted and supported, the chambers of the Legislature may refer it to conference committees for additional review by legislators and the public. . . . This extensive drafting process works to clarify language, limit confusion and mistakes, and in a general sense, ensure that enacted laws have a modicum of readability and consistency.").

[22] See MCL 4.1105.

[23] See MCL 4.1502; MCL 4.1602.

[24] Const 1963, art 4, § 33 ("If [the Governor] approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law.").

[25] See *ante* at 4 (WELCH, J., concurring) ("No Justice—either in the majority or dissent—caught the error in footnote 23. Nor did our Reporter's Office catch the error."); *id*. at 5 ("I note that the error was missed by the entire Court, including Justice ZAHRA.").

"wholesale discard[] the language" of the relevant statutes, and "replace[] [this language] with its own highly convoluted formula . . . ."[26] It was not the responsibility of the dissent or independent court staff to tell the majority how to wield its novel and "raw judicial power" or how to rewrite statutory language in a manner *the majority prefers*.[27] The majority opinion chose to usurp constitutional power expressly delegated to the legislative branch to create an unprecedented and, in my view, unlawful remedy. The dissent fiercely objected to it.

Courts are human institutions, and it is important and commendable to acknowledge when mistakes are made. But the judiciary simply has no historical practice, competence, or constitutional authority to draft the statutory law of this state. By this Court subverting the established constitutional process for writing legislation, it significantly increased the likelihood that drafting errors would occur—and occur in a manner that materially alters the social and economic relations of the state. Judges make mistakes. However, judicial error is far less likely to occur when the judiciary exercises humility and restraint to refrain from creating unprecedented remedies that the judicial branch is not trained to craft and has no authority to provide.

For the same reasons I dissented in the original opinion in this case, I dissent from this Court's continued rewriting of statutory language through this order. This Court has no legal or constitutional authority to write the statutory law of this state. Inasmuch as the motion for clarification exclusively addresses the legislative remedy provisions fabricated by this Court, I would vacate in full the legislation crafted and declared effective by this Court. The Legislature—not this Court—should enact whatever legislation it deems appropriate in response to the constitutional error of adopting a citizen's initiative petition and amending that initiative petition in the same legislative session as decreed by the majority in its original opinion.[28]

VIVIANO, J., joins the statement of ZAHRA, J.

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[26] *Mothering Justice*, ___ Mich at ___ (ZAHRA, J., dissenting); slip op at 17, 22.

[27] *Id.* at ___ (ZAHRA, J., dissenting); slip op at 22.

[28] See *Mothering Justice*, ___ Mich at ___ (ZAHRA, J., dissenting) (discussing the remedy of revival and the authority of the Legislature to enact additional changes to the law as it sees fit).