Syllabus

EX PARTE SYNETHS, GOVERNOR OF MAYFLOWER

APPLICATION FOR ADVISORY JUDGMENT

No. 6JD-02. Decided December 8, 2022.

Governor Syneths on December 5th, 2022, approached the Court with an inquiry, invoking our advisory judgment jurisdiction, mandating us to answer a question posed by him. The Governor asked whether he could be employed in any law enforcement agencies, "secondary" agencies, or private positions simultaneously as serving as Governor, without ultimately being barred by the Prohibitions of Office Clause, in our State Constitution.

Held: The Governor of the State of Mayflower is barred from occupying and position as a law enforcement officer, excluding his constitutional duties as the commander-in-chief, any "secondary" positions—referring to departments such as the Transit Authority—and any private position that is designated as an "office," or "position of profit," excluding positions in a political party, whether it be a state-level party, or a county-level party. Pp. 27–36.

(a) The Supreme Court of the State of Mayflower is constitutionally mandated to issue advisory judgments, upon being sent an "important question [...] by the Governor[.]" Art. XI, Sec. 9, Mayf. St. Const. P. 27.

(b) When interpreting our State Constitution, we are to interpret and construct it like a statute. To begin interpreting our Constitution, we must first "look [] to the language." See *Richardson* v. *United States*, 526 U. S. 813, 818. Once the "language provides a clear answer, it ends there as well." *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 254. We are to assume that the Framers used such language, so that it may "be understood in their ordinary and popular sense." *Amoco Production Co.* v. *Southern Ute Tribe*, 526 U. S. 865, 873 (citing *Burke* v. *Southern Pacific R. Co.*, 234 U. S. 669, 679). We are also to assume that the Framers did not waste words, and that every word has meaning. *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 339. P. 29.

(c) The Prohibitions of Office Clause mirrors a clause in our Federal Constitution. The Federal Constitution reads that Representatives and Senators may not "hold[] an Office of Trust or Profit under the United States." U. S. Const. art. II, §1, cl 2. In fact, our Prohibitions of Office Clause mirrors three other States' clauses: Alaska, Hawaii, and New Jersey. Pp. 29–30.

(d) The term "office," is defined as "[a]n employment on be-half of the government in any station or public trust, not merely transient, occasional, or incidental." Black's Law Dictionary 976 (5th ed. 1979). The Office of the Governor is included as both a position of office, and a position of profit. Pp. 30–31.

(e) Positions of profit are defined as any rank, or status, that provides its occupant with the "[a]ccession of good[s]; valuable results; useful consequences; avail; gain; as, an office of profit, as well as meaning the excess of returns over expenditures or the excess of income over expenditure." Black's Law Dictionary 1090 (5th ed. 1979); see also *United States* v. *Mintzes*, 304 F. Supp. 1305 (D. Md). P. 31.

(f) Our Constitution refers to string "political subdivisions," many times, and under the consistent-usage canon, we acknowledge and apply the definition put forward by the Framers; regardless of any departure of context, the meaning still remains firm as it is a special phrase defined by the Framers. See Art. III., Mayf. St. Const. P. 32.

(g) Serving as a law enforcement officer, whether it be a position serving the state at-large, or one of the county departments, is regardless barred from the Governor, under the Prohibitions of Office clause. Law enforcement officers do indeed serve as state actors of justice, and they are provided with a salary, deeming it to be both a position of "office," and one of "profit." Pp. 33–34.

(1) The Governor may perform any duties bestowed to him by our State Constitution, pursuant to his lawful duties as the "commander-in-chief of the National Guard of the State." See Art. V, Sec. 7, Mayf. St. Const. P. 34.

(h) The Governor may also not possess employment in a "secondary" agency precisely because he is granted compensation for his work, thus, deeming it as a "position of profit," and thereby unattainable by the Governor under the Prohibitions of Office Clause. Pp. 34–35.

(i) Generally speaking, as for any other position uttered by the Governor, the Court adopts a uniform metric that will determine whether a position is truly a "position of profit." So long as the position is not: (a) a position of officer, or (b) a position of profit—one that provides the employee with a salary—only then may the Governor occupy that position. This does not include political parties, as they are granted an exemption from the Prohibitions of Office Clause. See Art. V, Sec. 2, Mayf. St. Const. Pp. 35–36.

Turntable5000, J., delivered the opinion of a unanimous Court.

JUSTICE TURNTABLE5000 delivered the opinion of the Court.

Governor Syneths approached this Court on the 5th of December 2022, regarding an advisory question that was submitted to us. The inquiry revolved around the Prohibitions of Office Clause in the Mayflower State Constitution. The Governor inquired as to its constraints, and whether it limits him from a plethora of job opportunities. We hold that the Governor may not be employed in any law enforcement agencies,[1] any secondary agencies, or any private organizations, unless the private organization avoids any categorization that labels it as an "office or position of Profit." Art. V, Sec. 2, Mayf. St. Const.

I

In December 2022, the Governor submitted an application for advisory judgment, invoking this Court's advisory jurisdiction. We are mandated to "issue [our] opinion upon important questions when required by the Governor." Art. XI, Sec. 9, of the Mayflower State Constitution. The Governor inquired as to whether he is prohibited "from being employed in a law enforcement agency, a secondary agency [...], any private organization[s], or anything else[,]" Governor's Submission of an Advisory Judgment Question, under the Prohibition of Office Clause of our State Constitution.

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[1] This shall not include any of the lawful duties prescribed to the Governor from our State Constitution, so long as these duties pertain to his lawful status as the "commander-in-chief of the National Guard of the State." Art. V, Sec. 7, Mayf. St. Const. This will be expounded in a more thorough nature at Part II, Sec. B, §1-2, infra, at 7.

Our Constitution reads that "[t]he Governor shall not hold any other office or position of profit under the State, or its political subdivisions, excluding positions within a political party." Art. V, Sec. 2, Mayf. St. Const. Under this clause, we are to determine whether the Governor is barred from serving in any other sphere of employment, including the various ones that he named himself. We now opine that the Governor is indeed barred from the positions that he has named, with some exceptions and leeway that may be granted at the behest of our State Legislature.

II

The Prohibitions of Office Clause is one that serves to support the separation of power in our State. In some jurisdictions, the separation of powers is not as highly regarded as it is in our Federal Constitution; after all, "the concept of separation of powers embodied in the United States Constitution is not mandatory in state governments." *Sweezy* v. *New Hampshire*, 354 U. S. 234, 255 (1957) (citing *Dreyer* v. *Illinois*, 187 U. S. 71). This does not excuse the notion entirely however, as other inconsistencies of law may still be noted, and corrected. *Sweezy*, *supra* (holding that a separation facilitated by the State of New Hampshire constituted a denial of due process of law). However, our State entirely respects the tripartite allocation of power, under the *trias politica* doctrine, as evidenced by the structure of our government. We must first analyze the constrictions bestowed upon the Governor by interpreting and setting a consistent definition for an "office or position of profit," Art. V, Sec. 2, Mayf. St. Const, only then can we apply these positions and determine whether it complements the definition set.

A

When interpreting our State Constitution, we hold that they are to be interpreted, and constructed like statutes. Just like when we interpret a statute, "we look first to the language." See *Richardson* v. *United States*, 526 U. S. 813, 818 (1999). The commencement of any statutory construction requires that we "begin[] with the language of the statute." *Hughes Aircraft Co.* v. *Jacobson*, 525 U. S. 432, 438 (1999) (citing *Estate of Cowart* v. *Nicklos Drilling Co.*, 505 U. S. 469, 475 (1992) (internal quotations omitted). When "[a]nd where statutory language provides a clear answer, it ends there as well." *Ibid.*; see also *Connecticut Nat. Bank* v. *Germain*, 503 U. S. 249, 254 (1992). The language utilized in the Constitution is certainly practical, as such, we are to consider the verbiage "to be understood in their ordinary and popular sense." *Amoco Production Co.* v. *Southern Ute Tribe*, 526 U. S. 865, 873 (1999) (citing *Burke* v. *Southern Pacific R. Co.*, 234 U. S. 669, 679 (1914)). In any case, absent any steadfast definition of a singular phrase, we are also to consider that the Framers "kn[ew] and adopt[ed] the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind." See *Morissette* v. *United States*, 342 U. S. 246, 263 (1952). After all, it is certainly no secret that the Framers intended for the Prohibitions of Office Clause to mirror our Federal Constitution's clause that bars Senators, and Representatives from "holding an Office of Trust or Profit under the United States." See U. S. Const. art. II, §1, cl 2. In fact, our Prohibitions of Of-

fice Clause is shared by three other states: Alaska, Hawaii, and New Jersey.

Our State Constitution bars the Governor from "hold[ing] any other office or position of profit under the State, or its political subdivisions, excluding positions within a political party." Art. V, Sec. 2, Mayf. St. Const. We are to give meaning to every word utilized in this provision. See *Reiter* v. *Sonotone* Corp., 442 U. S. 330, 339 (1979) (citing *United States* v. *Menasche*, 348 U. S. 528, 538-539 (1955)). However, we must first preliminarily establish through the reading of the context, see *Holloway* v. *United States*, 526 U. S. 1, 7 (1999) (citation omitted), that the word "or" is constructed as a "disjunctive particle," as it separates the word "office," from "position of profit." We will first construct the meaning of the word, "office."

1

Our State Constitution refers to the word "office," a plethoric number of times—forty-six times to be exact. As we are reading these provisions like a statute, it is foundational that we view "identical words used in different parts of the same [document]" and assume that they "have the same meaning." *Taniguchi* v. *Kan Pacific Saipan, Ltd.*, 566 U. S. 560 (2012) (citing *Gustafson* v. *Alloyd Co.*, 513 U. S. 561, 570 (1995). We have engaged in this tenet of statutory construction differently than we approached the construction in *In re Alex_Artemis*, 6 M. S. C. 5 (2022), precisely because of the consistent-usage canon, as well as the fact that the context remained virtually unphased regardless of any departure from section to section. We read the word "office," to be defined as "[a]n employment on behalf of the government in any station or public trust,

not merely transient, occasional, or incidental." Black's Law Dictionary 976 (5th ed. 1979). The Prohibitions of Office Clause includes the words "any other," which directly highlights that the position of "governor" is indeed both an "office," and a "position of profit." Armed with this, our statutory construction continues as the consistent use of the word "office," establishes this uniform meaning throughout the Constitution.

2

Next, we consider what positions are categorized as a "position of profit." The word "position," when placed into the context of its placement in the Constitution, is read as a "social or official rank or status." Merriam-Webster, Position (2022). However, the word position is symbiotically affected, when brought into contact with the word "profit." The word "profit," is defined as the "[a]ccession of good; valuable results; useful consequences; avail; gain; as, an office of profit, as well as meaning the excess of returns over expenditures or the excess of income over expenditure." Black's Law Dictionary 1090 (5th ed. 1979); see also *United States* v. *Mintzes*, 304 F. Supp. 1305 (D. Md. 1969). With this symbiotic relationship, both the words "position," and "profit," simultaneously modify each other, essentially unifying the two together. Our adoption of this definition for the words "position of profit," is not alone. By attaining any sort of compensation for the work done as a result of occupying that "position," automatically merits itself as a "profitable" position.[2]

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[2] *Cheshire* v. *McKenney*, 182 Conn. 253, 261 n.8 (Conn. 1980) ("Th[e] term, [profit,] reasonably construed, would include any position for which

3

Lastly, to understand the full potential impact of the Prohibitions of Office Clause, we must turn our attention to the reference of "political subdivisions." Our State Constitution establishes a definition to these words: "The state shall be divided by law into political subdivisions called counties." See Art. III, Mayf. St. Const. It is patently clear that the Framers intended to define this phrase, so that it may be consistently applied throughout the rest of the Constitution. It is applied right next to the mentioning of our State, meaning that the Prohibitions of Office Clause is also applied to county positions. Our analysis ends here, so that we may proceed to consider and apply the definition of the Prohibitions of Office Clause in its entirety; through this, we may visualize how each employment opportunity that the Governor included in his question, interacts with the clause.

B

With the knowledge we have imparted from our statutory analysis, we can begin to answer the question presented to us by the Governor. The Governor inquired whether he is prohibited "from being employed in a law enforcement agency, a secondary agency [...], any private organization[s], or anything else[.]" Governor's Submission of an Advisory Judgment Question, *supra*. We will answer each particular question separately.

1

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compensation, including a salary, is received. See *Begich* v. *Jefferson*, 441 P. 2d 27 (Alaska 1968); Webster, Third New International Dictionary for definition of "profit.")

First, we must consider whether the Governor can be employed in a law enforcement agency. Law enforcement department heads serve at the pleasure of our Governor. Art. V, Sec. 11, Mayf. St. Const. The Governor also "set[s] the budget for each principal department." *Ibid*. Immediately, it is clear that there are severe ethical concerns, and potential conflicts of interest, with the Governor simultaneously serving as a law enforcement officer. However, the question presented to us is limited to whether the Prohibitions of Office Clause bars the Governor from being employed in a law enforcement capacity. Therefore, because the "issue is not presented before us in this case, [...] we decline to address it." *Ridgeway Parks Services* v. *Steking*, 1 Rid. ___, ___ n. 1 (2022) (comparing *Intel Corp. Investment Policy Comm.* v. *Sulyma*, 140 S. Ct. 768, 775 n. 2 (2020)).

We must first acknowledge that the restriction levied as a result of the Prohibitions of Office Clause applies to both state-level law enforcement agencies, and county-level law enforcement agencies. When an individual is inducted into a law enforcement agency, they are issued salary from whichever entity employs them. That automatically grants the employee "valuable results," and they receive monetary gain. This compensation levied to them as a result of their work automatically designates any law enforcement position as a position of profit. The application of "office," applies here too as indisputable that employment in a law enforcement agency, establishes that member as an actor of the government: bestowed and entrusted with the duty to enforce the law. The Governor may not serve as a law enforcement officer. This includes the May-

flower State Police, and law enforcement agencies that are located within the county, i.e., the Lander Police Department, Plymouth Police Department, and the New Haven County Sheriff's Office. However, the Governor is constitutionally designated as the "commander-in-chief of the National Guard of the State." See Art. V, Sec. 7, Mayf. St. Const. The Governor is constitutionally permitted to occupy this position, as it is inextricably intertwined with his position as the commander-in-chief.

We hold that the Governor cannot serve as a law enforcement officer simultaneously while he is in office.

2

Next, we must consider whether the Governor can serve in "secondary agency." These agencies refer to a plethora of agencies: (1) Mayflower Department of Justice, (2) Mayflower Law Enforcement Training Institute, (3) Mayflower Public Broadcasting System, (4) New Haven County Transit Authority, (5) New Haven County Fire Department, (6) Mayflower Department of Parks and Wildlife, (7) Department of State, and (8) Mayflower National Guard.

We have already established that the Governor is constitutionally permitted to retain his position as the commander-in-chief of the Mayflower State Guard. As for the other positions, however, it is indisputable that profit is garnered, and monetary benefits are levied upon the employee. Reapplying our consistent definition of "profit," garners us the exact same result that we perceive here. The employee is entitled to a salary upon their induction to every single one of these "secondary" agencies. The monetary gain that accumulates as a result of these positions immediately bars

the Governor from serving in all of these, with a previously mentioned exception granted to the Mayflower National Guard.

3

Next, we turn to look at whether or not the Governor can entertain any position in a "private organization, or anything else[.]" Governor's Submission of an Advisory Judgment Question, *supra*. The Court has decided to combine these two sections of the question into one, for their complementary nature.

Few private organizations in our state pay their employees through a systemic salary-based dispersion system. If the Governor does not receive any "profit," from his work in any of these private organizations, he may work for them. He may occupy these positions, however, if the position levies him any sort of "profit," he may not be able to "work" here. These private organizations are not considered as "offices," as per our Constitution, however, they may be designated as "positions of profit." So long as there is no profit gained as a result of working at a private establishment, the Governor shall be free to work there.

As for the "anything else," that the Governor mentioned, the Court recommends the exact metric used above. If the position is not—(1) a position of Office, or (2) a position that garners the employee any profit—only then can the Governor truly be employed there. However, there remains an exception to this rule: "[P]ositions within a political party." Art. V, Sec. 2, Mayf. St. Const. This applies to both county-level political parties, and state-registered political parties.

III

For the abovementioned reasons, this Court finds that the Governor cannot be employed in any law enforcement agencies, with an exception to any of his constitutional du ties that are granted to him pursuant to his lawful authority as the commander-in-chief, any "secondary" agencies, or other places of employment that constitute themselves as a position of "office," or as a "position of profit."

It is so ordered.