

No.. 26- 386

ORIGINAL

In The

Supreme Court of the United States

MARLIN DAVID LOWERY *pro se*

Petitioner,

v

CHEBOYGAN AREA PUBLIC SCHOOLS *et al.*,

&

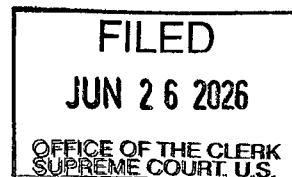
MICHIGAN UNEMPLOYMENT INSURANCE AGENCY *et al.*

Respondents,

On Petition For a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Marlin D. Lowery *pro se*
Petitioner
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Questions Presented

1. Whether Michigan's introduction of public law MCL SEC.421.27(i)(2) was a dismantling of Federal Public Law 91-373 AUG.10, 1970 (effective JAN. 1, 1972) and it's integrity, concerning federal unemployment intent.
2. Whether Michigan's introduction of public law MCL SEC.421.27(i)(5) was a correction erred in SEC.421;27(i)(2) removing the use of an "assurance of reemployment notice" (effective April I, 1984) to deny UI benefits 27(i)(2) was sending school employees back to 1936 exclusion of UI benefits.
- 3, Whether defendants violated Supreme Court ruling in *Reed vd. Reed* 404 U.S. 71(1971) that the Equal Protection Clause of the 14th Amendment to the United States Constitution prohibited different treatment based on sex.

PARTIES FOR THE PROCEEDING

Petitioner is Marlin D. Lowery, Appellant before the Sixth Circuit.

Respondents are the Appellees before the Sixth Circuit being Cheboygan, MI Area Public Schools; Spencer Byrd, Cheboygan, MI School Superintendant, Marlene Alexander, Cheboygan, MI Human Resource Director; LEO Unemployment Insurance Agency; Julia Dale, Director; Kimberly Berry, UIA Deputy Director; Teresa Burns; Unidentified Employees 1-3; State of Michigan; Michigan Department of Labor and Economic Opportunity, (LEO); Unemployment Insurance Agency, (UIA).

RELATED CASES

Marlin D. Lowery v. Cheboygan Area Public Schools et. al. and Michigan Unemployment Agency et. al. No. 23-9007, State of Michigan 53rd District Circuit of Cheboygan County March 25, 2024.

Marlin D. Lowery v. Cheboygan Area Pulic Sshools et. al. and Michigan Unemployment Insurance Agency et. al No. 243-cv-11604, United States District Court Eastern District of Michigan Sothern Division February 26, 2025.

Marlin D. Lowery v. Cheboygan Area Public Schools et. al. and Michiga Unemployment Insurance Agency et. al. No. 25-1514, United States Court of Appeals for The Sixth Circuit April 1, 2026.

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v.

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JURISDICTION

The Sixth Circuit issued its Judgement and Order April 1, 2026

Petition for rehearing filed on April 15, 2026 on time.

Final order of denial of rehearing Filed June 24, 2026

Mandate Filed July 06, 2026.

This court has jurisdiction under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner filed for Federal/State unemployment benefits in Michigan; Employer and MI Unemployment Insurance Agency denied benefits citing MCL § 421.27(i)(2)(1974) (agency's/regulatory interpretation) and excluded the petitioner/claimant from unemployment benefits. Petitioner/claimant asserted under the Federal Security Amendments of 1970 Public Law No. 91-373—AUG. 10, 1970 effective JAN. 1, 1972, which extended unemployment coverage to certain school employees and that the UIA's reliance on the 1974 state provision is foreclosed by federal supremacy and later state enactments (MCL § 421.27(i)(5) effective April 1, 1984) that render the 1974 denial theory moot or inapplicable.

Relevant Law:

Supremacy Clause, U.S. Constitutional Art. VI, cl. 2: valid federal statutes preempt conflicting state laws and state administrative actions. Public Law No. 91-373, 84 Stat. (effective Jan. 1, 1972)(Employment Security Amendments of 1970) expanded federal unemployment insurance coverage and conditioned federal funding on states providing coverage to certain categories of school employees; states administering UI programs must conform to federal requirements to retain federal funds.

Michigan Employment Security Act, MCL ch. 421, including MCL § 421.27 and subsections at issue (1974 language relied upon UIA and 1984 amendment/subsection 27(i)(5) as exhibits). States must treat employees as covered for unemployment benefits when they are unemployed between successive academic terms or during school approved breaks to include school employees in specific categories.

Legal Argument:

Federal Law (P.L. 91-373) controls and requires states to provide unemployment coverage to the classes of school employees specified by the statute; where state law or agency interpretation conflicts with those federal coverage requirements, the state law/interpretation is preempted under the Supremacy Clause. Preemptive principle: when congress clearly intends to occupy an area or state law conflicts with federal requirements making compliance with both impossible, state law yields. The UIA's reliance on MCL § 421.27(i)(2) denying benefits is conflicting application because F.P.L. 91-373 expanded coverage to include school employees in specified categories; therefore the UIA's denial frustrates federal objectives and cannot stand.

EVEN IF THE 1974 LANGUAGE could be read to restrict coverage, subsequent state statutory language—MCL § 421.27(i)(5) (effective April 1, 1984)—removed or modified the earlier bases for denial (or otherwise renders the 1974 provision moot). The agency may not rely on an obsolete or superseded statutory formulation to deny benefits; administrative decisions must apply current controlling statute and remain consistent with federal requirements.

Chronology: (a) federal law 1970/1971 eff. Jan. 1 1972; (b) Michigan statute 1974 (UIA reliance); (c) Michigan amendment/section 27(i)(5) effective April 1. 1984 (mooting the earlier ground); (d) present denials. The agency applied the wrong statutory standards especially when it was applied with **gender discrimination** applied from the get go in 2021, allowing females benefits and not males.

Administrative-law principle require UIA to construe consistently with federal obligations and seek federal conformity; an interpretation that narrows federal guaranteed coverage is unreasonable and invalid. (Administrative-law standards; deference limits where state interpretation conflicts with federal law or where statutory text has been superseded).

STATEMENT OF THE CASE

I. LEGAL BACKGROUND

Federal Public Law 91-373—AUG. 10, 1970 was an effort by federal legislature to amend federal/state unemployment to extend unemployment benefits started in 1936 (that school employees were excluded from being recipients of benefits.

91-373 was legislatures effort to include school employees after a 46 years wait to finally become eligible for benefits in line with other employees of the state and being aloud benefits during shutdown/layoffs by employers to relieve the burden of hardship of lost wages, earmarked for non-professional workers.

Some legislatures and school administration found it hard to accept. (The law did continue restrictions on Institutes of Higher Education.) yet the legislatures federal and state came up with a scheme called "reasonable assurance to return to work" to allow schools to eliminate unemployment liability making FPL 91-373 "not worth the paper it's written on".

MI legislatures keen to unemployment as a partnership of Federal/State and support school employees receiving UI benefits school to overcome hardships similar to seasonal employees dealing with shutdowns and lost wages.

The federal legislature awarded unemployment benefits to school employees in FPL 91-373 effective January 1, 1972.

The State of Michigan legislatures introduced MCL SEC.21;27(i)(5) to curb the abuse of UI benefits denial of school employees their federal/state benefits with legislatures "reasonable assurance to return to work" notice to employees to avoid unemployment contribution and erred by special interest legislatures duplicating exclusions for all employees.

II. Factual Background and Procedural History

2021 I (claimant/petitioner) employed as a male school bus driver for Cheboygan Public Schools and at the summer shutdown and filed for unemployment benefits June 13, 2021. I received my eligibility and started receiving my UI benefits.

Our female bus driver Laura had already been receiving summer UI benefits right along with out a hitch.

July 2, 2021 I received a determination Cheboygan Schools my employer denied my claim, they had given me a notice "of reasonable assurance to return to work at the start of the next academic year.

At new academic year if we received UI benefits in summer the school reduced our hourly rate to recover enough in with-holdings to recoup their Unemployment contribution expense and our hourly rate would be increased back to standard rate.

I protested to UIA and argued Federal Public Law 91-373 and MI Compiled Law SEC.21;27(i)(5) along with the contract and gender discrimination happening. Instead the UIA unidentified agent started collections process (for the school) without consideration of the protest.

2022 I (claimant/petitioner) employed as a male school bus driver for Cheboygan Public Schools and at summer shutdown and I filed for unemployment benefits June 9, 2022. I received my eligibility and started receiving my UI benefits.

I followed the same steps as 2021 and everything was repeated and the unidentified agent continued her collection activity

The unidentified UIA agent would not allow an appeal to move forward and continued collection activity even though a judge order freeze/pause on collection activity against all claimants and effective March 1, 2020 thru September 29, 2025.

The case name was *Saunders v. Michigan Unemployment Insurance Agency* and ended up with \$ 55 million settlement for plaintiffs.

The unidentified UIA agent didn't allow me to go to Hearings and Appeals until 2023 after I made written demand to UIA to start appeal before the Administrative Law Judge Sanoma, finally April 13, 2023.

Finally March 25, 2025 in Michigan 53rd District Circuit Court the Judge at the start stated that school bus drivers have never been able to receive unemployment (yet in the brief attention was made that Laura Mayer female had been receiving UI benefits) said plaintiff (myself) just had a lot of issues with Human Resources.

The Judge accepted defendants counsel's statement that Federal Law was inapplicable to the state case and denied everything in my claim.

The case moved on to Federal Court being that the Federal Government are partners with the State of Michigan when it comes to unemployment.

As "Petitioner" (5 years of claims) a lot of "overturned stones" have shown efforts of dismantling F.P.L. 91-373 to deny benefits arbitrarily for financial gain and discrimination of an employer.

PUBLIC ACT 1936**“Michigan Unemployment Compensation Act”**

Signed by: Orville E. Atwood
Secretary of State
December 29, 1936

The State of Michigan Agreed To Maintain an Unemployment Agency in the State (as other states) Federal guidelines and in compliance with with Federal Law. The State would be reimbursed thru grants for administration financial cost and expenses of agency operations.

School Employees Were *Exempt* from receiving unemployment benefits.

36 years later school employees became eligible January 1, 1972
Under Federal Public Law

(verbatim)

Public Law 91-373

August 10, 1970

AN ACT

To extend and improve the Federal-State unemployment compensation program.

Be it enacted by the Senate and House of Representation of the United States of America in Congress assembled, That this Act may be cited as the “Employment Security Amendments of 1970”.

TITLE I---UNEMPLOYMENT COMPENSATION pg 696-698
AMENDMENTS
PART A---COVERAGE

PUBLIC LAW 91-373—AUG 10, 1970

SEC. 101. DEFINITION OF EMPLOYER.

(a) Section 3306 (a) of the Internal Revenue Code of 1954 is amended to read as follows:

“(a) Employer.---For the purpose of this chapter, the term ‘employer’ means, with respect to any calendar year, any person who----

“(1) during any calendar quarter in the calendar year or the preceding calendar year paid wages of \$1500 or more, or

“(2) on each some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

(b) (1) Section 6157 (a) (1) of such Code (relating to payment of Federal unemployment tax on quarterly or other time period basis) is amended to read as follows:

“(1) if the person----

“(A) during any calendar year in the preceding calendar year paid wages of \$1500 or more, or

“(B) on each of 20 days during the preceding calendar year, each day being a different calendar week, employed at least one individual in employment,

compute the tax imposed by section 3301 for each of the first three calendar quarters in the calendar year, and”

(2) section 6157 (b) of such Code is amended by striking out “the number of percentage points (including fractional points) by which the rate of tax specified in section 3301 exceeds 2.7 percent” an inserting in lieu thereof “0.5 percent”.

(c) (1) The amendments made by subsections (a) and (b) (1) shall apply with respect to calendar years beginning after December 31, 1971.

(2) The amendment made by subsection (b) (2) shall apply with respect to calendar years beginning after December 31, 1969.

SEC. 102. DEFINITION OF EMPLOYEE.

(a) Section 3306 (I) of the Internal Revenue Code of 1954 is amended to read as follows:

“(I) Employee.----For purposes of this chapter, the term ‘employee’ has the meaning assigned to such term by section 3121 (d), except that sub-paragraphs (B) and (C) of paragraph (3) shall not apply.”

(b) Section 1563 (f) (1) of such Code ((relating to surtax exemption in case of certain controlled corporations) is amended by striking out “in section 3306 (I)” and inserting in lieu thereof “by paragraphs (1) and (2) of section 3121 (d)”.

(c) The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.

VERBATIM

84 Stat.]

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PUBLIC LAW 91-373--AUG. 10, 1970

SEC. 103. DEFINITION OF AGRICULTURE LABOR.

(a) Section 3306(k) of the Internal Revenue Code of 1954 is amended to read as follows:

“(k) Agriculture Labor.---For purposes of this chapter, the term ‘agriculture labor’ has the meaning assigned to such term by subsections (g) of section 3121, except that purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

“ ‘ (B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of services described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed:’ “

(b) The amendment made by subsection (a) shall apply with respect to remuneration paid after December 31, 1971, for services performed after such date.

SEC. 104. STATE LAW COVERAGE OF CERTAIN EMPLOYEES OF NON-PROFIT ORGANIZATIONS AND OF STATE HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATIONS.

(a) Section 3304(a) of the Internal Revenue Code of 1954 is amended by redesignating paragraph (6) as paragraph (13) and by inserting after paragraph (5) the following new paragraph:

“(6) (A) compensation is payable on the basis of service to which section 3309 (a) (1) applies, in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that with respect to service in the instructional, research, or principal administrative capacity for an institution of higher education to which section 3309 (a) (1) applies, compensation shall not be payable based on such service for any week commencing during the period between two successive academic years (or, when the contract provides instead for a similar period between two regular but not successive terms, during such period) to any individual who has a contract to perform services in any such capacity for any institution or institutions of higher education for both of such academic years or both of such terms, and

“(B) payments (in lieu of contributions) with respect to service to which section 3309 (a) (1) (A) applies may be made into the State unemployment fund on the basis set forth in section 3309 (a) (2) ;”.

(b) (1) Chapter 23 of Internal Revenue Code of 1954 is amended by redesignated section 3309 as section 3311, and by inserting after section 3308 the following new section:

“SEC. 3309. STATE LAW COVERAGE OF CERTAIN SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS AND FOR STATE HOSPITALS AND INSTITUTIONS OF HIGHER EDUCATION.

“(a) State Laws Requirements.-----for purposes of sections 3304 (a) (6)---

“(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are----

“(A) service excluded from the term ‘employment’ solely by reason of paragraph (8) of section 3306 (c), and

“(B) service performed in the employ of the State, or any instrumentality of the State or of the State and one or more other States, for a hospital or institution of higher education

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[84 Stat.

PUBLIC LAW 91-373—AUG. 10, 1970

located in the State, if such services is excluded from the term ‘employment’ solely by reason of paragraph (7) of section 3306 (c) ; and

“(2) the State law shall provide that an organization {or group of organizations) which, for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) (A) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that organizations so electing will make the payments required under such elections.

“(b) SECTION NOT TO APPLY TO CERTAIN SERVICE.--this section shall not apply to service performed----

“(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised controlled, or principally supported by a church or convention or association of churches;

“(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

“(3) in the employ of a school which is not an institution of higher education;

“(b) Section Not To Apply To Certain Services---This section shall not apply to service performed----

“(3) in the employ of a school which is not an institution of higher education;

VERBATIM

MICHIGAN EMPLOYMENT SECURITY ACT

Act 1 of 1936

MI Public Law 1983---No. 219

Sec:421;27(i)(5) Notwithstanding subdivision (2), on and after April 1, 1984 benefits shall not be denied solely on the basis of reasonable assurance of reemployment, for any weeks of unemployment commencing during the period between 2 successive academic years or term to any individual who perform services in other than an instructional, research, or principle administrative capacity for an Institution of Higher Education, unless such denial is required as a condition for full tax credit against the tax imposed by federal tax act, 26 U.S.C. 3301 to 3311.

REASON FOR GRANTING THE WRIT

In the state of Michigan, public school 2024-2025 had 390,211 support staff and 40% of that count should have been eligible for unemployment benefits during shutdown periods.(156,000).If nothing more than assist in the hardship of lost pay due to shutdowns as intended by Federal Public Law 91-373 and as intended by the Michigan Unemployment Act of 1936

Review is warranted because this case presents important federal questions concerning the administration of unemployment benefits under controlling federal law, including Public Law 91-373. Petitioner consistently raised the federal issue in Michigan proceedings, yet the courts below resolved the matter without addressing the federal standard that governs the benefits determinations. The resulting judgments leaves a federal questions unresolved.

This case is a strong vehicle for review because the issue is purely legal: whether the governing federal law applied to petitioner's unemployment claim. In this case were the questions of the state laws properly interpreted. The record is already developed, the federal issue was preserved and defendants thru their attorneys refused to apply federal law. The Court can decide the federal and state question without becoming entangled in state law disputes or collateral issues.

Review is also warranted to promote uniform application of federal unemployment benefits law. Claimants seeking benefits under a federal regulated unemployment system and claimant should not receive different treatment depending on whether a court addresses the controlling federal statutes including gender discrimination issue raised in original protest complaints with the unidentified UIA agent/agency before appeal started.

Where, as here, the federal issue was presented but not decided, this Court intervention is necessary to ensure the federal rights are given consistent effect. At minimum, the **court should grant the petition, vacate the judgment below, and remand for consideration of a federal claim under the proper framework.**

If nothing more Federal Public Law 91-373 was an increase to school employees working environment and job stability to offset the typical school shutdown periods for the select categories of 150,000 plus school employees in Michigan, that suffer from loss of wages during school shutdown. The dismantling of the law is a going backwards movement against fairer wages and better work environments. Putting school employees back in the dark ages of depression and 1936 when Michigan joined the federal unemployment partnership and school employees were excluded from unemployment benefits.

Make American Schools Great Again with compliance of the intent of Federal Public Law 91-373—AUG. 10, 1970 effective January 1, 1972.

SIMILAR SUPREME COURT CASES

California Department of Human Resources***Development v. Java*** 402 U.S. 121 (1971)

Stopping unemployment payments simply because an employer appealed an initial eligibility determination violated the "when due" requirement.

Reed v. Reed, 404 U.S. 719 (1971)

Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibited differential treatment based on sex.

Davis v. Wechler, 263 U.S. 22, 24; ***Stromberg v. California***, 283 U.S. 359; ***NAACP v. Alabama***, 375 U.S. 449

"The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice.

Elmore v. McCammon (1986) 640 F. Supp 9095

"The right to file a lawsuit pro se is one of the most important rights under the constitution and laws".

Haines v. Kerner, 404 U.S. 519 (1972)

"Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient"... "which we hold to less stringent standards than formal pleadings drafted by lawyers".

Jenkins v. McKeithan, 395 U.S. 411, 421 (1959);

Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; ***Pucker v. Cox***, 456 2nd 233

Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to held to the same standards of perfection as lawyers.

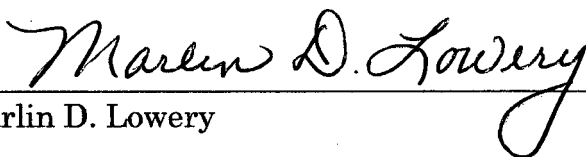
CONCLUSION

For a fair consideration and the foregoing reasons, I ask for
this writ of certiorari to be granted.

Respectfully written,

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August 21, 2026



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