PALMER V. AMAZON: A CASE STUDY IN TEXTUALISM AND THE FIXED-MEANING CANON

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INTRODUCTION

A recent Second Circuit panel failed to heed the fixed-meaning rule of statutory interpretation, and its flawed opinion highlights the rule's importance to the rule of law. In *Palmer v. Amazon*, the Second Circuit held that New York's workers-compensation exclusivity does not reach suits for injunctive relief. As in many states, New York statutory law provides that an employer's obligation to pay workers' compensation "shall be exclusive" and "in place of any other liability whatsoever" to an employee for workplace injury. All agree that the provision bars workplace-injury claims for monetary relief, but whether the provision also bars claims for injunctive relief—whether the word *liability* encompasses injunctions—is contested. The Second Circuit held that the provision does not reach suits for injunctive relief because (in the court's view) being enjoined does not make an employer *liable*.

While that conclusion may hold intuitive appeal to modern readers engulfed in modern language usage, it is indefensible as a matter of original meaning. The evidence of original meaning is overwhelming—when the statute was enacted in 1914, *liability* incontestably encompassed injunctive relief. The Second Circuit reached the contrary conclusion by ignoring the evidence.

Because the relevant statutory language involves an extraordinarily consequential difference between original meaning and modern meaning, *Palmer* highlights the necessity of the fixed-meaning rule. By fixing statutory meaning at the time of enactment, the rule anchors case outcomes to the law actually enacted. When later generations apply legal provisions by reference to modern language usage, by contrast, they are applying a *different* law—one that the legislature never adopted. That's what the Second Circuit did in *Palmer*: by substituting its own modern understanding of the word *liability* for that word's original meaning, the court effectively amended the statute to impose a set of rights and obligations different from what the enacted statute imposes.

I take no position on the policy result, but any policy suboptimality should be resolved through the legislative process

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rather than by judicial fiat. The New York Court of Appeals should correct the Second Circuit's error when the opportunity arises, and other courts should take care to avoid replicating the error whether in the workers-compensation context or elsewhere.

I. BACKGROUND

Section 10 of the New York Workers' Compensation statute establishes a scheme that uses employer funding to guarantee compensation for injured workers, and in exchange, Section 11 makes that compensation the exclusive remedy for workplace injury.[2] In full, Section 11 begins:

> **Alternative remedy.** 1. The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise, on account of such injury or death or liability arising therefrom . . . .[3]

In *Palmer*, a group of Amazon employees sued Amazon in the Eastern District of New York over certain "workplace COVID-19 policies, practices, and procedures."[4] They asserted causes of action for public nuisance and violation of New York's labor law.[5] They acknowledged that their alleged injuries arose from the workplace, but argued that Section 11 did not apply because they sought injunctive relief rather than damages.[6]

Because workplace-injury plaintiffs generally seek damages, when the suit was filed only a handful of courts had considered whether workers-compensation exclusivity bars claims for injunctive relief. None of those courts considered original meaning, and each court concluded that prospective relief was *not* barred.[7] Several

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2. N.Y. WORKERS' COMP. LAW § 10 (McKinney 2024) (requiring that an employer "secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment"); *id.* § 11.

3. *Id.* § 11.

4. Palmer v. Amazon.com, Inc., 51 F.4th 491, 498 (2d Cir. 2022).

5. *Id.*

6. *Id.* at 499.

7. *See* Conway v. Circus Circus Casinos, Inc., 8 P.3d 837, 841 (Nev. 2000) (stating without additional discussion that "[w]e conclude that the exclusive remedy provision of the [Nevada Industrial Insurance Act] does not bar injunctive relief"); Nelson v. U.S. Postal Serv., 189 F. Supp. 2d 450, 460 (W.D. Va. 2002) (equally bare *ipse dixit* without even quoting the statute); Hicks v. Allegheny E. Conf. Ass'n of Seventh-Day Adventists, 712 A.2d 1021, 1022 (D.C. 1998) (making the Second Circuit's error discussed *infra*). Other courts have interpreted workers-compensation exclusivity provisions with meaningfully different statutory language. *E.g.*, Shimp v. N.J. Bell Tel. Co., 368 A.2d 408, 412

treatises also had concluded without examining original meaning that state workers-compensation statutes do not bar claims for injunctive relief.[8] The district judge agreed with Amazon, however, that "[a]llowing plaintiffs to avoid [Section 11 exclusivity] by seeking only injunctive relief would thwart the purposes of the statute and the trade-offs embodied in it."[9]

In October 2022 the Second Circuit reversed, as relevant here, concluding that Section 11 "does not bar claims for injunctive relief."[10] But the Second Circuit did not seriously engage the issue and its cursory analysis is easily rebutted.

II. *LIABILITY* ENCOMPASSED INJUNCTIVE RELIEF AT THE TIME OF ENACTMENT

Because it provides that Section 10 liability is exclusive of all alternative remedies for workplace injury, Section 11 is titled "Alternative remedy." Paraphrased for simplification, Section 11 reads:

> An employer's workers-compensation liability shall be exclusive and in place of any other liability whatsoever to the employee or his or her family members or anyone entitled to recover damages on his or her behalf.

It is incontestable that when determining whether Section 11 bars claims for injunctive relief, the sole interpretive question concerns the scope of the term *liability*. If that term means monetary or retrospective relief only, then Section 11 does not reach claims for injunctive relief. But if the meaning of *liability* encompasses injunctive relief, then Section 11 bars claims for injunctive relief because Section 10 liability is "exclusive and in place of" that liability. The only question, to repeat, is whether being enjoined makes an employer "liab[le]" as that term is used in Section 11.

(N.J. Sup. Ct. Ch. Div. 1976) (New Jersey exclusivity provision barred only claims for "[c]ompensation"); Amalgamated Transit Union Loc. 1277 v. L.A. Cnty. Metro. Transp. Auth., 132 Cal. Rptr. 2d 207, 213–14 (Cal. Ct. App. 2003) (California statute provided that the fact of dual capacity did not permit the employee to bring "an action at law for damages against the employer").

8. 1 MODERN WORKER'S COMPENSATION § 102:1 (West Group 2001) (asserting that claims for injunctive relief may not be barred under state workers-compensation statutes); MARK A. ROTHSTEIN, OCCUPATIONAL SAFETY AND HEALTH LAW § 483 (4th ed. 1998) (asserting that "the 'exclusive remedy' provisions of state workers' compensation laws . . . generally apply only to actions for damages and do not apply to actions for injunctive and declaratory relief"); Alfred W. Blumrosen et al., *Injunctions Against Occupational Hazards: The Right to Work Under Safe Conditions,* 64 CALIF. L. REV. 702, 712–13 (1976) (asserting that "employer liability acts and workmen's compensation laws modified the common law only with respect to damages").

9. Palmer v. Amazon.com, Inc., 498 F. Supp. 3d 359, 375 (E.D.N.Y. 2020).

10. Palmer v. Amazon.com, Inc., 51 F.4th 491, 514 (2d Cir. 2022).

While courts often must interpret legal terms in the face of conflicting evidence, the evidence here is wholly one-sided: the term *liability* included both monetary and injunctive relief when the New York Workers' Compensation statute was enacted in 1914. That's most obvious from enactment-era dictionaries,[11] which explain that *liability* referred broadly to "[t]he state of being bound or obliged in law *or justice* [i.e., equity] to do, pay, or make good something; legal responsibility."[12] To be *liable*, likewise, was to be bound in law "or equity."[13]

By specifically naming equitable relief as a form of liability, these dictionary definitions provide dispositive evidence that the term *liability* included injunctions at the time of enactment. These definitions do not merely encompass injunctions with their scope—they single out equitable relief as a prototypical kind of liability. A court interpreting a statutory reference to "animals," for example, may need to grapple with whether an oyster is an *animal* for purposes of the statute because although oysters technically are animals, they are far from the prototype. Here, by contrast, the dictionary definitions leave no doubt that being enjoined is a prototypical form of liability because they specifically name it as such. A trustworthy dictionary definition that includes "e.g., *x*" ends all disputes about whether *x* belongs in the category being defined.

Far from contradicting the dictionaries, other evidence from around the time of enactment emphatically supports them. In 1949, a time much closer to enactment than we are today, the Second Circuit observed that *liability* is "quite differentiated from a mere duty to pay damages."[14] And in 1995, the New York Court of Appeals cited cases from 1943 and 1960 for the assertion that "courts have rejected the proposition that 'liability' means money damages only" and concluded that "'liability,' as a legal term, has an appreciably broader meaning than pecuniary obligations."[15] *Liability*, the 1949

11. *See* Reves v. Ernst & Young, 494 U.S. 56, 77 (1990) (interpreting statutory term by reference to "[c]ontemporaneous editions of legal dictionaries"); PHH Corp. v. CFPB, 881 F.3d 75, 130 (D.C. Cir. 2018) (Griffith, J., concurring) (collecting cases for the observation that the Supreme Court "generally begins [an interpretive task] with dictionaries"); CFPB v. Cmty. Fin. Servs. Ass'n of Am., 601 U.S. 416, 438 (2024) (Court "consult[ed] dictionaries to ascertain the original public meaning").

12. *Liability*, BLACK'S LAW DICTIONARY (2d ed. 1910) (emphasis added); *see also* Breslaw v. Rightmire, 119 Misc. 833, 835 (N.Y. Co. Ct. 1922) (quoting an essentially identical definition in Bouvier's Law Dictionary); *Liability*, BLACK'S LAW DICTIONARY (4th ed. 1951) (*liability* is a "broad legal term" that is "of the most comprehensive significance" and "includ[es] almost every character of hazard or responsibility").

13. *Liable*, BLACK'S LAW DICTIONARY (2d ed. 1910).

14. Krenger v. Penn. R.R. Co., 174 F.2d 556, 559 (2d Cir. 1949).

15. Hartnett v. N.Y.C. Transit Auth., 657 N.E.2d 773, 776 (N.Y. 1995).

Second Circuit explained, is simply the "opposite of immunity."[16] If a person is *not* liable, therefore, the person is immune from suit.[17]

For that reason, the New York Court of Appeals explained in 1934 that the New York Workers' Compensation statute "covers the *entire field of remedy* against an employer for industrial accident."[18] A judge for the Eastern District of New York likewise stated in 1943 that the workers-compensation scheme is "exclusive of all other remedies."[19] The "entire field of remedy," of course, includes injunctions.[20] Section 11 "destroys the *right of action* of the employee and his personal representatives against his employer," a New York court explained in 1945, regardless of the remedy sought.[21]

Statutory purpose points in the same direction. The Workers' Compensation statute was a "quid pro quo"[22] in which "both classes, employer and employé, gained benefits and made concessions."[23] Specifically, workers gained guaranteed compensation for workplace injury, while employers gained immunity from workplace-injury suits, which included the "avoidance of litigation" and associated "expense."[24] After paying for guaranteed compensation, the deal

16. *Krenger*, 174 F.2d at 559.

17. *See, e.g.*, Aaacon Auto Transp., Inc. v. State Farm Mut. Auto. Ins., 537 F.2d 648, 653 (2d Cir. 1976) (the defendant's "exposure to the possibility of having to defend against [the plaintiff's] claim on the merits . . . is a 'liability'"); *Accident Liability Reform Advocated*, N.Y. TIMES, April 9, 1911 (New York Labor Commissioner remarking that "a principal merit of . . . compensation law[s]" is precisely that "questions of industrial safety . . . cease almost altogether to be subject to judicial determination").

18. *In re* Babb, 191 N.E. 15, 16 (N.Y. 1934) (emphasis added); *see also* Shanahan v. Monarch Eng'g Co., 114 N.E. 795, 797 (N.Y. 1916) (Section 11 "clearly provides" that Section 10 compensation "shall be exclusive of *all other rights and remedies*" (emphasis added)); Cifolo v. Gen. Elec. Co., 112 N.E.2d 197, 200 (N.Y. 1953) ("exclusive of any other remedy or right of action"); *id.* ("there is no remedy outside the act").

19. Rappa v. Pittston Stevedoring Corp., 48 F. Supp. 911, 912 (E.D.N.Y. 1943).

20. *See, e.g.*, *Remedy*, BLACK'S LAW DICTIONARY (2d ed. 1910) (defining *remedy* as "the means by which the violation of a right is *prevented*, redressed, or compensated" (emphasis added)).

21. Emps. Mut. Liab. Ins. Co. of Wis. v. Refined Syrups Sales Corp., 53 N.Y.S.2d 835, 838 (N.Y. Sup. Ct. 1945) (emphasis added); *see also, e.g.*, Burlew v. Am. Mut. Ins., 472 N.E.2d 682, 684 (N.Y. 1984) ("no suit against an employer may be maintained" for workplace injury); Liberty Mut. Ins. v. Hurlbut, No. 08 Civ. 7192, 2009 WL 604430, at *1 (S.D.N.Y. Mar. 9, 2009), *aff'd*, 585 F.3d 639 (2d Cir. 2009) ("the worker is not permitted to sue the employer").

22. WMATA v. Johnson, 467 U.S. 925, 931 (1984).

23. *Shanahan*, 114 N.E. at 798.

24. Noreen v. William Vogel & Bros., 132 N.E. 102, 103 (N.Y. 1921); *see also Accident Liability Reform Advocated*, N.Y. TIMES, April 9, 1911 (former Labor Commissioner of State of New York contending in 1911 that a "principal merit of the compensation law" proposed in another state was that "questions of industrial safety would cease [almost] altogether to be subject to judicial determination").

went, employers would be off the hook for "any other liability whatsoever."[25] Putting them back on the hook through litigation and injunctions foils the bargain by upending one side of the quid pro quo.

Finally, statutory context also supports the view that Section 11 reaches claims for injunctive relief. Because Section 10 outlines the workers' end of the deal (guaranteed compensation), it repeatedly uses the narrow term "compensation." But Section 11, which establishes the employers' end of the deal (no other remedy), switches to the broader terms "[r]emedy"—in its title, no less[26]—and "liability." This variation in word choice suggests that the legislature used the broader terms in Section 11 "intentionally."[27]

In sum, whatever *liability* means now, it is crystal clear that at the time of enactment, *liability* encompassed injunctions.

III. THE SECOND CIRCUIT FAILED TO ENGAGE ORIGINAL MEANING

In concluding that Section 11 does not bar claims for injunctive relief, the Second Circuit butchered multiple fundamental principles of statutory interpretation and failed to even mention the vast evidence establishing that the term *liability* encompassed injunctions at the time of enactment. The Second Circuit based its holding entirely on (1) a textual canon that obviously has no application here; and (2) the non sequitur that a statute intended to bar claims for monetary relief cannot also be intended to bar claims for injunctive relief. Remarkably, on an interpretive question turning entirely on the scope of the term *liability*, the Second Circuit offered no argument whatsoever about that term's original meaning.

First, the Second Circuit invoked the *ejusdem generis* canon, asserting that the "any other liability whatsoever" phrase "cannot be divorced from the monetary awards listed later in the same sentence: 'damages, contribution, or indemnity,'"[28] but that canon is undeniably inapplicable. *Ejusdem* applies when there is a "series of specific items ending with a general term,"[29] and the general term serves as a "catchall"—for example: "dogs, cats, horses, cattle, and other animals."[30] Here, the Section 11 term "liability" does not belong to a list at all, much less a list starting with specific kinds of liability that

25. N.Y. WORKERS' COMP. LAW § 11.

26. ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 221 (2012) (a title is a "permissible indicator of meaning").

27. DHS v. MacLean, 574 U.S. 383, 391 (2015) (a legislature "generally acts intentionally when it uses particular language in one section of a statute but omits it in another"); SCALIA & GARNER, *supra* note 25, at 170 (when a legal instrument "has used one term in one place, and a materially different term in another, the presumption is that the different term denotes a different idea").

28. Palmer v. Amazon.com, Inc., 51 F.4th 491, 515 (2d Cir. 2022) (quoting N.Y. WORKERS' COMP. LAW § 11).

29. Hall St. Assocs., LLC v. Mattel, Inc., 552 U.S. 576, 586 (2008).

30. SCALIA & GARNER, *supra* note 25, at 199.

could narrow the meaning of the emphatically broad phrase "any other liability whatsoever."

The "damages, contribution or indemnity" phrase concerns something else entirely. As discussed, the portion of Section 11 that describes the scope of the statute's exclusivity provides that Section 10 liability "shall be exclusive and in place of any other liability whatsoever." The next word, importantly, is "to"—after stating the scope of exclusivity, Section 11 lists persons *to whom the employer is not liable*. Specifically, the employer is not liable "to" the "employee, his or her personal representatives, spouse, parents, dependents, distributees, or any person otherwise entitled to recover damages, contribution or indemnity, at common law or otherwise." The reference to damages merely provides that people seeking damages on the worker's behalf are no less barred by workers-compensation exclusivity than the worker herself. This portion of Section 11 says nothing about the *scope of the claims* those persons cannot bring.

If ordinary principles of language usage were not enough, there are additional reasons the reference to representatives seeking damages cannot modify the meaning of *liability*. Most fundamentally, the phrase "damages, contribution or indemnity" did not exist in the statute when the term *liability* was first included.[31] The Second Circuit's position requires the implausible view that the New York legislature radically altered the meaning of *liability* implicitly by elsewhere adding a phrase designed to ensure that Section 11 barred persons seeking damages on a decedent's behalf. And it was natural for the legislature to use "damages, contribution or indemnity" without referring to injunctive relief because it would be quite anomalous for a representative of an injured or killed employee to bring a claim for injunctive relief on the employee's behalf. The reference to representatives seeking damages has no bearing on the scope of the *liability* term.

Second, the Second Circuit emphasized cases explaining that Section 11 bars claims for monetary relief,[32] but those cases do not say Section 11 bars *only* claims for monetary relief. As the New York state courts explained in the years following enactment, the statute "covers the *entire field of remedy* against an employer for industrial accident."[33] In fact, the Second Circuit apparently missed that in one of its own quotations the quoted court explained that Section 10 liability is "*exclusive of all other rights and remedies*."[34] The Second Circuit quoted cases stating that employers are protected from "large

31. *See* 1914 N.Y. Laws 216.

32. *See id.* at 515–16.

33. *In re* Babb, 191 N.E. 15, 16 (N.Y. 1934) (emphasis added); *see also* Shanahan v. Monarch Eng'g Co., 114 N.E. 795, 797 (N.Y. 1916); Cifolo v. Gen. Elec. Co., 112 N.E.2d 197, 199 (N.Y. 1953).

34. *Palmer*, 51 F.4th at 515 (quoting *Shanahan*, 114 N.E. at 799).

damage verdicts which the statute was intended to foreclose,"[35] but that fact does not mean employers are not also protected from injunctions. Because no one sought an injunction in those cases, these courts simply had no reason to address whether Section 11 reaches injunctions.

Leaning on its perception of what "the legislature was concerned primarily with,"[36] the Second Circuit overlooked that it is "the provisions of our laws rather than the principal concerns of our legislators by which we are governed."[37] That injunction suits have not always been at the forefront of legislative and judicial minds when considering Section 11 simply reflects that injured employees almost always seek damages rather than injunctive relief. Indeed, the *Palmer* plaintiffs did not point to a single prior case in which a plaintiff argued that it could circumvent Section 11 by seeking injunctive relief.

The Second Circuit asserted that the New York legislature "could have" "extend[ed] the . . . exclusivity provision to injunctive relief" with "a statement,"[38] but that question-begging assertion ignores that the legislature *did* extend the provision to injunctive relief by using a term that clearly encompasses "the entire field of remedy"[39] whether in "law or equity."[40] As the 1949 Second Circuit suggested, it is actually the opposite inference that is warranted—"[h]ad a restricted meaning been intended, it would surely have been simple, indeed, to limit the statutory provision to . . . damages" rather than using the broader term *liability*.[41]

IV. ORIGINAL MEANING CONTROLS

Whatever the term *liability* "might call to mind" when heard by "ears today" makes no difference because "modern intuition" is irrelevant.[42] That is because, as the U.S. Supreme Court has explained, "every statute's meaning is fixed at the time of enactment."[43] This principle is known as the fixed-meaning rule.[44]

In academic commentary, the rule is elaborated as encapsulating the *fixation thesis* and the *constraint principle*, terms coined by

35. *Id.* at 516 (quoting Reich v. Manhattan Boiler & Equip. Corp, 698 N.E.2d 939 (N.Y. 1998)); *see also Palmer*, 51 F.4th at 515.

36. *Id.* at 516.

37. Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 79 (1998).

38. *Palmer*, 51 F.4th at 516.

39. *In re* Babb, 191 N.E. 15, 16 (N.Y. 1934).

40. *Liable*, BLACK'S LAW DICTIONARY (2d ed. 1910).

41. Krenger v. Pa. R.R. Co., 174 F.2d 556, 558 (2d Cir. 1949).

42. New Prime Inc. v. Oliveira, 586 U.S. 105, 114 (2019).

43. Wis. Cent. Ltd. v. United States, 585 U.S. 274, 284 (2018) (emphasis omitted).

44. *See, e.g.*, SCALIA & GARNER, *supra* note 25, at 78 (describing the fixed-meaning rule as the principle that "[w]ords must be given the meaning they had when the text was adopted").

Professor Lawrence Solum. The *fixation thesis* is that "[t]he meaning of the [legal] text is fixed when each provision is framed and ratified."[45] The *constraint principle* is that this "original meaning of the [legal] text should constrain [judges]."[46] Scholars often discuss these principles in the context of constitutional interpretation, but as the Supreme Court's articulation demonstrates, they apply materially identically in the statutory context.[47]

As Professor Solum explains, the fixation thesis is "intuitively obvious, even self-evident," as a matter of language.[48] If a person is "reading a text written quite some time ago," "a letter written in the thirteenth century, for example," and wants to know "what the letter means," the person will need to know "what the words and phrases used in the letter meant at the time the letter was written."[49] The reader cannot rely on modern dictionaries because "[w]ords and phrases acquire new meanings over time" through a process called "linguistic drift."[50] The term *domestic violence*, for example, now refers to spousal or child abuse, but when the U.S. Constitution used that term in the eighteenth century, it meant "violence that is internal to a state."[51] If we want to know what the Constitution means by *domestic violence*, we must ask what the term meant in the eighteenth century, not what it means today.[52] A judge interpreting a 1789 statute's prohibition on *domestic violence* as prohibiting familial abuse would amend the statute—the statute would now impose a different set of legal rights and obligations than the one

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45. Lawrence B. Solum, *The Fixation Thesis: The Role of Historical Fact in Original Meaning*, 91 NOTRE DAME L. REV. 1, 1 (2015).

46. *Id.*

47. *See, e.g.*, ANTONIN SCALIA, A MATTER OF INTERPRETATION 38 (1997) ("What I look for in the Constitution is precisely what I look for in a statute: the original meaning of the text."); Diarmuid F. O'Scannlain, *"We Are All Textualists Now": The Legacy of Justice Antonin Scalia*, 91 ST. JOHN'S L. REV. 303, 309 (2017) ("[O]riginalism . . . is merely textualism applied to constitutional interpretation."). This is apparent when considering that an originalist/textualist would interpret the Judiciary Act of 1789 and provisions of the original Constitution with the same principles. Different types of laws may have different audiences, and the audience will account for the identity of the speaker and the context of the speech. But in all cases, under both original-meaning originalism and textualism the question is what the text communicated to the audience when adopted. For more detailed discussion of these points see Lawrence B. Solum, *Pragmatics and Textualism* (July 10, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4881344 (last visited Oct. 30, 2024).

48. Solum, *supra* note 45, at 2.

49. *Id.* at 1; *see also id.* ("Ignoring the time and place at which the letter was written would seem like a strategy for deliberate misunderstanding.").

50. *Id.* at 17.

51. *Id.* at 71.

52. *Id.* at 16–17 (observing that it would "simply be a linguistic mistake to interpret the domestic violence clause of Article IV of the Constitution of 1789 as referring to spouse or child abuse").

enacted by the people's representatives. And while the constraint principle is more controversial (it is what divides those who believe that text controls from those who do not), the Supreme Court has adopted it too. According to the Court, judges interpreting legal text should adopt the interpretation that reflects original meaning.[53] "When government-adopted texts are given a new meaning, the law is changed," and "[a]llowing laws to be rewritten by judges is a radical departure from our democratic system."[54]

The fixed-meaning rule is no recent innovation—it was established at the founding and before. In 1758 the most prominent treatise on the law of nations explained that "[l]anguages incessantly vary, and the signification and force of words change with time," and when an "ancient [statute] is to be interpreted" it is the text's meaning "at the time when it was written" that controls.[55] James Madison similarly asserted that "the meaning of a constitution should be *fixed* and *known*."[56] He once remarked: "What a metamorphosis would be produced in the code of law if all its ancient phraseology were to be taken in its modern sense."[57] According to Madison, the "change which the meaning of words inadvertently undergoes" is a source of "misconstructions of the . . . text," and it would be "preposterous" to let "the effect of time in changing the meaning of words and phrases" justify "new constructions."[58] In the *Federalist*, Publius wrote that laws are "fixed" unless amended.[59] In 1833, a commentator observed that when "the meaning of words or terms" changes over time, "the meaning of the constitution is not therefore changed."[60] As Joseph Story put it the same year, legal texts are to have "a fixed, uniform

53. *See, e.g.*, N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 36 (2022) ("original meaning of the constitutional text" controls); New Prime Inc. v. Oliveira, 586 U.S. 105, 113 (2019) (same in statutory context).

54. SCALIA & GARNER, *supra* note 25, at 57.

55. EMER DE VATTEL, THE LAW OF NATIONS 413 (Béla Kapossy & Richard Whatmore eds., Thomas Nugent trans., Liberty Fund 2008) (1758).

56. JAMES MADISON, THE MIND OF THE FOUNDER: SOURCES OF THE POLITICAL THOUGHT OF JAMES MADISON 391 (Marvin Meyers ed., 1981).

57. 9 JAMES MADISON, THE WRITINGS OF JAMES MADISON 120 (Gaillard Hunt ed. 1910).

58. 4 LETTERS AND OTHER WRITINGS OF JAMES MADISON 249 (Philadelphia, J.B. Lippincott & Co. ed., 1865); *see also* Letter from James Madison to Sherman Converse (Mar. 10, 1826), *reprinted in Founders Online*, NAT'L ARCHIVES (2023), https://founders.archives.gov/documents/Madison/04-04-02-0003 (reference to "original and authentic meaning" of legal text protects against "errors . . . produced by . . . innovations in the use of words and phrases").

59. THE FEDERALIST NO. 62, at 318 (James Madison) (George W. Carey & James McClellan eds., 2001); *see also* Caleb Nelson, *Originalism and Interpretive Conventions*, 70 U. CHI. L. REV. 519, 530–39 (2003) (discussing the founding-era understanding of "fixing" meaning).

60. NATHANIEL CHIPMAN, PRINCIPLES OF GOVERNMENT: A TREATISE ON FREE INSTITUTIONS INCLUDING THE CONSTITUTION OF THE UNITED STATES 254 (1833).

permanent construction"—"the same yesterday, today, and forever."[61] Justice Elena Kagan's famous comment that "we are all textualists now" reflects a return to our country's centuries-old understanding of legal interpretation.[62]

V. FUTURE COURTS SHOULD AVOID THE SECOND CIRCUIT'S MISTAKES

The Supreme Court has "stressed over and over again in recent years" that statutory interpretation must "heed" what the statute "actually says."[63] The Court has "repeatedly stated" that "the text of a law controls over purported legislative intentions unmoored from any statutory text."[64] And the interpreter must look not to the text's meaning to "ears today"[65] but to the text's meaning "at the time of enactment."[66]

The Second Circuit failed to heed these instructions. Though it was interpreting the term *liability*, it never cited any of the enactment-era dictionary definitions of that term. It did not mention that those dictionaries state expressly that *liability* includes equitable relief. It never mentioned the mid-twentieth-century cases saying that *liability* does not mean "money damages only."[67] It never mentioned the enactment-era cases saying that the Workers' Compensation statute "covers the entire field of remedy" and is "exclusive of all other remedies."[68] It never mentioned that Section 11 is titled "Alternative remedy." It never mentioned that the legislature switched from the narrow term "compensation" in Section 10 to the broader term "liability" in Section 11. Rather than grappling with these indicators of meaning, the Second Circuit simply ignored them.

Future courts should avoid these errors. When interpreting an old statutory term, courts should examine sources of meaning from

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61. 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 426, at 315 (Little, Brown & Co., 4th ed. 1873); *see also, e.g.*, DANIEL WEBSTER, THE WORKS OF DANIEL WEBSTER 164 (1851) ("We must take the meaning of the Constitution as it has been solemnly fixed."); THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 55 (Da Capo Press 1972) (1868) ("The meaning of the constitution is fixed when it is adopted."); South Carolina v. United States, 199 U.S. 437, 448 (1905) ("That which [the Constitution] meant when adopted it means now.").

62. *See* Bryan A. Garner, *It Means What It Says*, 105 A.B.A. J. 28, 29 (2019) ("[Y]ou won't really find nontextualist ideas expressed until the late 19th century, and not at all frequently until the mid-20th.").

63. Groff v. DeJoy, 600 U.S. 447, 468 (2023).

64. Oklahoma v. Castro-Huerta, 597 U.S. 629, 642 (2022).

65. New Prime Inc. v. Oliveira, 586 U.S. 105, 114 (2019).

66. Wis. Cent. Ltd. v. United States, 585 U.S. 274, 284 (2018) (emphasis omitted).

67. Hartnett v. N.Y.C. Transit Auth., 657 N.E.2d 773, 776 (N.Y. 1995) (citing 1943 and 1960 cases).

68. *In re* Babb, 191 N.E. 15, 16 (N.Y. 1934) (emphasis added); Rappa v. Pittston Stevedoring Corp., 48 F. Supp. 911, 912 (E.D.N.Y. 1943).

the time of enactment such as enactment-era dictionaries and enactment-era cases. If there is a gap between modern language usage and enactment-era usage, courts should be especially careful to prevent their modern intuition from coloring the analysis. And most importantly, courts should examine enactment-era meaning closely rather than perfunctorily. That will help avoid judicial statutory amendment of the kind imposed by the Second Circuit in *Palmer*.