



# LEGISLATIVE INTENT SERVICE, INC.

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## LEGISLATIVE HISTORY AND INTENT AS AIDES TO STATUTORY CONSTRUCTION IN FEDERAL COURT

### I. Can a Court Consider Legislative Intent?

The classical statement of the importance of legislative intent analysis comes from the case of *William v. Berkeley*, Plow 223, 231 (1601) where the Court stated “Whoever would consider an act well ought always have particular regard to the intent of it, and accordingly as the intent appears, he ought to construe the words.” Our own Justice Holmes put it more succinctly when he said “a page of history is worth a volume of logic.” *New York v. Eisner*, 256 U.S. 345, 349 (1921).

When a question arises concerning the applicability of a statute a decision can be reached only by applying some kind of a criterion. For the interpretation of statutes, “intent of the legislature” is the criterion that is most often recited. *U.S. v. Harvey*, 814 F.2d 905 (4<sup>th</sup> Cir. 1987), on reh’g in part, 837 F.2d 637 (4<sup>th</sup> Cir. 1988), cert granted, 488 U.S. 940, 109 (1988) and judgment aff’d, 491 U.S. 617 (1989).

In construing the meaning of a statute the courts must consider the history of the subject matter involved, the end to be attained, the mischief to be remedied and the purpose to be accomplished. *Frillz, Inc. v. Lader*, 925 F. Supp. 83 (D. Mass. 1996), judgment aff’d, 104 F.3d 515 (1<sup>st</sup> Cir. 1997), cert. denied, 522 U.S. 813 (1997). Also see, *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001); *Local 28 of the Sheet Metal Workers’ International Association v. Equal Employment Opportunity Commission et al.*, 478 U.S. 421 (1986); *Securities Industry Association v. Board of Governors of the Federal Reserve System*, 468 U.S. 137 (1984); *North Haven Board of Education v. Bell*, 456 U.S. 512, 534 (1982)

### II. Is there a Need for Ambiguous Language?

#### A. The Plain Meaning Rule and the Need for Ambiguity

It has been held that if a statute is clear and unambiguous on its face there can not be interpretation by a court. *Jay v. Boyd* 351 U.S. 345 (1956) That is, “where the language of an enactment is clear and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended.” *United States v. Missouri Pac. Ry.* 278 U.S. 269, 278 (1929)

However, the Court has disregarded the plain meaning and used extrinsic sources ... *Helvering v. New York Co.* 292 U.S. 455, 464 (1934); *Texas & Pacific Railway v. United States* 289 U.S. 627, 658 (1933) Justice Butler wrote:

The rule that where the statute contains no ambiguity, it must be taken literally and given effect according to its language is a sound one not to

be put aside to avoid hardships that may sometimes result from giving effect to the legislative purpose... But the expounding of a statutory provision according to the letter without regard to the other parts of the Act and legislative history would often defeat the object intended to be accomplished.

*Helvering v. New York Co.* 292 U.S. 455, 464, (1934)

The Court has used legislative history to cadge a more reasonable interpretation out of a broadly phrased statute. *Gomez v. United States*, 109 S. Ct. 2237 (1989); *Price Waterhouse v. Hopkins*, 109 S. Ct. 1775 (1989); *Shell Oil Co. v. Iowa Dep't of Revenue*, 109 S. Ct. 278 (1988)

### 1. Confirmation of the Plain Meaning

*Immigration & Naturalization Services v. Cardoza-Fonseca*, 480 U.S. 421 (1987) The Court stated that the “ordinary and obvious meaning of the phrase is not to be lightly discounted” and, that it would only “assume that the legislative purpose is expressed by the ordinary meaning of the words used.” (Id. at 431) The Court then looked at the legislative history to “determine only whether there is clearly expressed legislative intention contrary to that language, which would require us to question the strong presumption that Congress expresses its intent through the language it chooses.” (Id. at 432 n. 12)

Also see, *United States v. James*, 478 U.S. 597, 606 (1986); *Board of Governors of the Fed. Reserve Sys. V. Dimension Fin. Corp.*, 474 U.S. 361, 371 (1986); *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 570-71 (1982)

### 2. Avoiding an Absurd Result

*Green v. Bock Laundry Machine Co.*, 109 S. Ct. 1981, 1995 (1989) Justice Scalia, a vocal critic of the use of legislative history, wrote that using legislative history to avoid an absurd result was proper. He said that a judge will, and presumably should, consult history “to verify that what seems ... an unthinkable disposition... was indeed unthought-of, and thus to justify a departure from the ordinary meaning of the word[s]” in the statute. (109 S. Ct. at 1683) Also see *Public Citizen v. United States Department of Justice*, 109 S. Ct. 2558, 2565, 2566 (1989); *U.S. v. Public Utilities Commission of Cal.*, 345 U.S. 295 (1953); *U.S. v. Alpers*, 338 U.S. 680 (1950); *Pritker v. Yari*, 42 F.3d 53 (1<sup>st</sup> Cir. 1994); *Rod Warren Ink v. C.I.R.*, 912 F.2d 325 (9<sup>th</sup> Cir. 1990)

### 3. In Variance with Policy

It has been held that even if the words of the statute are plain and unambiguous on their face the court may still look to the legislative history in construing the statute if the plain meaning of the words of the statute is in variance with the policy of the statute or if there is a clearly expressed legislative intention contrary to the language of the statute. *Escobar Ruiz v. I.N.S.*, 838 F.2d 1020 (9<sup>th</sup> Cir. 1988) (overruling on other grounds recognized by, *Castillo-Villagra v. I.N.S.*, 972 F.2d 1017 (9<sup>th</sup> Cir. 1992); *U.S. v Murphy*, 35 F.3d 143 (4<sup>th</sup> Cir. 1994)

The customary meaning of words will be disregarded when it is obvious from the act itself that the legislature intended that it be used in a sense different from its common meaning. *Barber v. Gonzales*, 347 U.S. 637 (1954); *Order of Ry. Conductors of America v. Swan*, 329 U.S. 520 (1947)

#### 4. If it Creates Results Contrary to the Apparent Intention of the Legislature

The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to allow a construction which will effectuate the legislative intention. *O’Gilvie v. U.S.*, 519 U.S. 79 (1996); *California Fed. Sav. & Loan Ass’n v. Guerra*, 479 U.S. 272, 284 (1987); *FDIC v. Philadelphia Gear Corp.*, 476 U.S. 426, 432 (1986); *Carchman v. Nash*, 473 U.S. 716, (1985); *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, 222-32 and n. 20 (1981); *Watt v. Alaska*, 451 U.S. 259, 266 (1981); *United Steelworkers v. Weber*, 443 U.S. 193, 201 (1979); *Muniz v. Hoffman*, 422 U.S. 454, 469 (1975); *United House. Found. V. Forman*, 421 U.S. 837, 849 (1975); *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892)

The “plain meaning rule ... is not to be used to thwart or distort the intent of Congress by excluding from consideration enlightening material from the legislative files.” *Train c. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976); *Wilderness Society v. Morton*, 479 F2d 842 (App DC 1973)

The United States Supreme Court has declared, “even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent.” *National R. Passenger Corp. v. National Ass’n of R. Passengers*, 414 U.S. 453 (1974)

### **III. Extrinsic Aids**

#### **A. General**

The materials for statutory construction are commonly classified into two categories: intrinsic and extrinsic aids. Intrinsic aids are those which derive meaning from the internal structure of the text and conventional or dictionary meanings of the terms used in it. Sources outside the text are known as extrinsic aids. Extrinsic aids are the information which comprises the background of the text, such as legislative history and related statutes.

Extrinsic aids consist of background information about the circumstances which led to the enactment of a statute, events surrounding enactment, and developments pertinent to subsequent operation. These facts comprise the legislative history of a statute.

Sutherland on Statutory Construction, courts have traditionally examined statutory language in terms of the context from which it originated and the events which give it form and substance.

It is established practice in American legal processes to consider relevant information concerning the historical background of enactment in making decisions about how a statute is to be construed and applied.... These extrinsic aids may show the circumstances under which the statute was passed, the mischief at which it was aimed and the object it was supposed to achieve. Although a court may make and pronounce findings about the purpose of a statute, or the mischief it was to remedy, without referring to its historical background, knowledge of circumstances and events which comprise the relevant background of a statute is a natural basis for making such findings. Singer, *Sutherland on Statutory Construction*, (6th Ed. 2000) Extrinsic Aides-Legislative History, §48.03;

## **B. Pre-Enactment History: The Background Circumstances and Events**

For case using extrinsic aids to show the circumstances under which the statute was passed see: *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237 (1985); *Securities Indus. Ass'n v. Board of Governors of the Fed. Reserve Sys.*, 468 U.S. 137 (1984); *Bowsher v. Merck & Co.*, 460 U.S. 824 (1983); *General Bldg. Contractors Ass'n v. Pennsylvania*, 458 U.S. 375 (1982); *United Steelworkers v. Sadlowski*, 457 U.S. 102 (1982); *Leo Sheep Co. v. United States*, 440 U.S. 668 (1979); *United States v. Champlin Refining Co.*, 341 U.S. 290 (1951); *Shapiro v. United States*, 335 U.S. 1, (1948); *Clark v. Uebersee Finanz-Korporation, A.G.*, 323 U.S. 480 (1947); *Ex parte Mitsuye Endo*, 323 U.S. 283 (1944); *Martin J. Smiko Const., Inc. v. United States*, 852 F2d 540 (CA Fed 1988); *United States ex rel. Weiss v. Schwartz*, 546 Supp 422 (ND Cal 1982)

For case using extrinsic aids to show the mischief at which the statute was aimed see, *Bindzyck v. Finucane*, 342 U.S. 76 (1951); *United States ex rel. Eichenlaub v. Shaughnessy*, 338 U.S. 521 (1950); *United States v. Brown*, 333 U.S. 18 (1948)

For case using extrinsic aids to show the objective of the statute see, *Briscoe v. Lahue*, 460 U.S. 325 (1983); *United States v. Public Utilities Commission of California*, 345 U.S. 295 (1953); *Heikkila v. Barber*, 345 U.S. 229 (1953); *Isbrandtsen Co., Inc., v. Johnson*, 343 U.S. 779 (1952); *Johnson v. United States*, 343 U.S. 427 (1952); *Morissette v. United States*, 342 U.S. 246 (1952); *Florida Citrus Packers v. State of California, Dept. of Industrial Relations*, 545 F. Supp 216 (ND Cal 1982)

## **C. Enactment History: The Legislative Process**

The most common source of legislative intent is the legislature itself. The history of events during the process of enactment, from its introduction in the legislature to the signing by the President is typically the first extrinsic aid that the courts turn to. The contemporary history of events during this period consists chiefly in statements by various parties concerning the nature and effect of the proposed law. It is these statements in the form of Congressional committee reports, records of Committee hearings, and debate recorded in the Congressional Record which has been most heavily relied on for its interpretive value by the Supreme and appellate courts. These are the extrinsic aides to statutory construction. Sutherland summarizes the situation succinctly when it states:

The events occurring immediately prior to the time when an act becomes law comprise an instructive source, indicative of what meaning the legislature intended. Therefore, the history of events during the process of enactment, from its introduction in the legislature to its final validation, has generally been the first extrinsic aid to which courts have turned in attempting to construe an ambiguous act.

...

The contemporary history of events during this period consists chiefly in statements by various parties concerning the nature and effect of the proposed law and statements or other evidence on the evils to be remedied. Contemporary history also includes information concerning the activities of pressure groups, economic conditions in the country at the time, prevailing business practices, and the prior state of the law, including judicial decisions, applicable to the subject of the legislation in question.

(Sutherland on Statutory Construction, section 48.04)

#### **D. Different Versions of the Bill**

One of the most readily available extrinsic aids to the interpretation of statutes is the action of the legislature on amendments which are proposed during the consideration of the bill. Generally the rejection of an amendment indicates that the legislature did not intend the bill to include the provisions in the rejected amendment. *Immigration & Naturalization Services v. Cardoza-Fonseca*, 480 U.S. 421, 442-43 (1987); *United States v. Pfitsch*, 256 U.S. 547 (1921); *Lapina v. Williams*, 232 U.S. 78 (1914); *Tahoe Regional Planning Agency v. McKay*, 769 F.2d 534 (CA 9 1985); *Tyler v. U.S.*, 929 F.2d 451 (9<sup>th</sup> Cir. 1991);

Adoption of an amendment is evidence that the legislature intended to change the provisions of the original bill. *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643 (1931); *Wright v. Vinton Branch of Mountain Trust Bank of Roanoke*, 300 U.S. 440 (1937); *Bindczyck v. Finucane*, 342 U.S. 76, 96 (1951); *United States v. Henning*, 344 U.S. 66 (1952)

#### **E. Congressional Committee Reports**

The Report of Congressional Committees is often used as a source for determining the intent of Congress. *United States v. Craft*, 535 U.S. 274 (2002); *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers, et al.*, 531 U.S. 159 (2001); *Gustafson v. Alloyd Company, Inc.*, 513 U.S. 561 (1995);

Committee reports are the “authoritative source for legislative intent.” (*Thornburg v. Gingles*, 478 U.S. 30, 43-44 nn. 7-8 (1986));

The most “authoritative source for finding the Legislature’s intent lies in the Committee Reports on the bill... (*Garcia v. United States*, 469 U.S. 70, 76 (1984)) Also see, *Connecticut v. Teal*, 457 U.S. 440 (1982)

#### **F. Conference Committee Reports**

*Tanner v. United States*, 483 U.S. 107, 122-25 (1987); *Golf Oil Co. v. Copp Paving Co.*, 419 U.S. 1, 11-12 (1972); *Denver Building & Construction Trades Council*. 341 U.S. 675 (1951); *United States v. Stauffer Chemical Co.*, 684 F.2d 1174 (CA 6 1982)

The conference report, representing the final statement of terms ... as accepted by both houses, was the most persuasive evidence next to the statute itself of the congressional intent behind the statute. (*Davis v. Lukhard*, 788 F.2d 973 (CA 4 1986); *Resolution Trust Corp. v. Gallagher*, 10 F.3d 416 (7<sup>th</sup> Cir. 1993) implied overruling on other grounds recognized by *F.D.I.C. v. Gravee*, 966 F. Supp. 622 (N.D. Ill. 1997))

#### **G. Statements of Author**

*Public Employees Retirement Sys. Of Ohio v. Betts*, 109 S. Ct. 2854, 2867 (1989); *Jett v. Dallas Indep. School Dist.*, 109 S. Ct. 2702, 2711-14 (1989) *United States v. Taylor*, 108 S. Ct. 2413, 2418 n. 7 (1988); *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Contr. Trades Council*, 485 U.S. 568, 584-88 (1988); *Bowen v. Yuckert*, 482 U.S. 137, 152 n. 10 (1987); *Northhaven Bd. of Educ. V. Bell*, 456 U.S. 512, 526-27 (1982); *Lewis v. United States*, 445 U.S. 56, 63 (1980); *TVA v. Hill*, 437 U.S. 153, 183-84 (1978)

## **H. Congressional Debate/Record**

Statements by individual members of the legislature about the meaning of provisions in a bill, made during the general debate are generally held not admissible as aids in construing the statute. However, such statements can be given effect if they are consistent with statutory language and other legislative history which justifies reliance upon them as evidence of legislative intent. *Grove City College v. Bell*, 465 U.S. 555 (1984); *Connecticut v. Teal*, 457 U.S. 447 (1982); *Cannon v. University of Chicago*, 441 U.S. 677 (1979); *Griggs v. Duke Power Co.*, 401 U.S. 435 (1971); *National Woodwork manufacturers Ass'n v. National Labor Relations Board*, 386 U.S. 612 (1967); *National Labor Relations Board v. Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58 (1964)

Floor statements made by individual members of Congress have been considered when they show a common agreement in the legislature about the meaning of an ambiguous provision. They are also considered to show the problems or evils the legislature was trying to remedy and contemporary conditions and events. *National Woodwork manufacturers Ass'n v. National Labor Relations Board*, 386 U.S. 612 (1967); *First Nat. Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252 (1966); *Galvan v. Press*, 347 U.S. 522 (1954); *Guessfeldt v. McGrath*, 342 U.S. 308 (1952); *United States v. Henning*, 344 U.S. 66 (1952); *Bindeczyck v. Finucane*, 342 U.S. 76, 96 (1951); *United States v. United Mine Workers of America*, 330 U.S. 258 (1947); *United States v. City & County of San Francisco*, 310 U.S. 16, 22 (1940); *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643 (1931)

## **I. Statements at Committee Hearings**

Statements of members of the committee or of interested parties at the hearing have been considered as aids in determining the legislative intent. *Dawson Chemical Co. v. Rohm & Haas Co.*, 448 U.S. 176 (1980); *Chicago & N.W. Ry. Co. v. United Transp. Union*, 402 U.S. 570 (1971)

## **J. Official Commission Reports and Comments**

In the interpretation of legislation that was suggested or recommended by an official Commission, the reports of that commission are considered valuable aids. *Doherty v. United States*, 404 U.S. 28, 30 (1971); *Johansen v. United States*, 343 U.S. 427 (1952); *Bindeczyck v. Finucane*, 342 U.S. 76, 96 (1951)

In construing uniform acts the courts have called the official commentary of the Conference of Commissioners on Uniform State Laws as “powerful dicta” and “most appropriate source” of law. *In re Augustine Bros. Co.*, 460 F.2d 376 (CA 8 1972); *In re Yale Exp. System, Inc.*, 370 F.2d 433 (CA 2 1966)

## **K. Statement of Drafters/Nonlegislators**

Much legislation is actually drafted by people outside the Congress, which is then persuaded to enact it, often without much discussion or alteration. Opinions of the executive departments, independent agencies, or private persons who drafted or supported legislation are often noted in the Supreme Court’s discussion of legislative history. *Immigration & Naturalization Services v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *Wright v. City of Roanoke Redevelopment & Hous. Auth.*, 479 U.S. 418, 425 n. 7 (1987) (HUD testimony); *Bank America Corp. v. United States*, 462 U.S. 122, 134-35 (1983) (testimony of Louis Brandeis, adviser to President Wilson and drafter of proposed legislation);

*Jefferson county Pharmaceutical Ass'n v. Abbott Laboratories*, 460 U.S. 150, 159-62 (1983) (private lobbyist drafter); *United States v. Vogel Fertilizer Co.*, 455 U.S. 16, 31-32 (1982) (giving “great weight” to Treasury Department views because of its role in drafting and explaining statute); *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 221-23 (1979) (report of private lobbying group that originated bill ultimately enacted); *Piper v. Chris-Craft Indus., Inc.*, 430 U.S. 1, 27-28, 33035 (1977) (testimony of SEC Chair given substantial emphasis)