Navigating Statutory Interpretation in New Hampshire

A Continuing Legal Education Program

Tuesday, March 4, 2025

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Navigating Statutory Interpretation in New Hampshire

Tuesday, March 4, 2025
NH Bar Association Seminar Room, Concord

Faculty Roster

Jack P. Crisp, Program Chair
The Crisp Law Firm, PLLC
15 N. Main Street, Suite 208
Concord, NH 03301
603-225-5252
jack.crisp@crisplaw.com

Hon. N. William Delker
NH Superior Court
1 Granite Place N400
Concord, NH 03301
603-271-2646

Hon. Joseph N. Laplante
US District Court
Warren B. Rudman Bldg.
55 Pleasant Street
Concord, NH 03301
603-225-1423

Hon. Robert J. Lynn
NH Supreme Court Chief Justice (Ret)

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Faculty Bios

Jack P. Crisp, Jr., Program Chair/CLE Committee Chair, is the managing member and founder of The Crisp Law Firm, PLLC in Concord, NH. The firm concentrates on commercial transactions and litigation, professional licensure, family law, and estate planning. Jack earned his BA from Boston University in 1972 and his JD from Franklin Pierce Law Center in 1978. He is a past president of the NHBA and the New England Bar Association, and a past board member of the NH Association for Justice. Jack is the current treasurer and a sustaining fellow of the NH Bar Foundation, a Fellow of the American Bar Foundation, a member of the NHMCLE Board, as well as a member of the NHBA's Law Related Education Committee. He is a current member of the following NHBA Sections: Trust & Estate; Family Law; Corporation, Banking & Business Law; and Real Property Law. Jack is also a member of the NH Judicial Conduct Committee. In recognition of his long history of pro bono work, Jack was presented with the Bruce E. Friedman Pro Bono Award in 2015. In 2020 he received the Vickie M. Bunnell Award for community service. Jack is a board member of numerous nonprofit organizations and has chaired and served as faculty on numerous NHBA CLE programs.

Hon. N. William Delker is an associate justice for the New Hampshire Superior Court. He was appointed in August 2011. In July 2014, Chief Judge Tina Nadeau designated Judge Delker as the Supervisory Judge for Rockingham County Superior Court where he had been sitting since his appointment. In December 2019, Judge Delker transferred to the Hillsborough Superior Court-North in Manchester to fill a vacancy in that courthouse. Upon Judge Nicolosi's retirement in April 2022, Judge Delker was named as the Supervisory Judge of that court. Judge Delker is an active member of the Supreme Court Advisory Committee on Rules, the Judicial Conduct Committee, the NH Lawyer's Assistance Program Board of Trustees, and the NH Bar Association Leadership Academy. He has also been actively involved in civics education with area schools and teaches Remedies and State Constitutional Law as an adjunct professor of UNH Franklin Pierce Law School. Prior to joining the bench, Judge Delker was a senior assistant attorney general in the NH Attorney General's Office, where he worked as a prosecutor for 13 years. While at the Attorney General's Office, Judge Delker prosecuted many high-profile homicide cases, including the capital murder case against Michael Addison. He founded the NH Cold Case Unit, prosecuted white collar and public integrity crimes, and worked in the appellate unit. He also served as bureau chief of the Criminal Justice Bureau. Prior to joining the Attorney General's Office, Judge Delker was an associate at Testa, Hurwitz & Thibeault in Boston and a law clerk for NH Supreme Court Justice Sherman Horton. Judge Delker earned his JD from American University's Washington College of Law and his undergraduate degree from the University of Massachusetts at Amherst.

Hon. Joseph N. Laplante sits on the U.S. District Court for the District of NH in Concord, NH. He was appointed as a U.S. District Judge in 2007 (serving as Chief Judge from 2011-2018) after five years in the U.S. Attorney's offices in Boston, MA and Concord, NH working primarily for the New England Organized Crime Drug Enforcement Task Force, as both an Assistant and First Assistant US attorney. Judge Laplante also worked in the Public Integrity Section of the Department of Justice in Washington, DC and Los Angeles, CA, the NH Attorney General's Office Homicide Unit and White-Collar Crime Unit, and the Manchester, NH law firm of Wiggin & Nourie**. EDUCATION**: Judge Laplante earned both his A.B. and his J.D. from Georgetown University, and attended one semester (3L, non-matriculating) at the University of Pennsylvania Law School, from which his spouse, Atty. Carol A. Fiore, graduated. He sits on the Georgetown University Alumni Association Board of Governors as well as the Georgetown Law Alumni Board. TEACHING: Judge Laplante currently teaches Statutory Interpretation as an adjunct professor at Boston College Law School, Georgetown Law, the UNH School of Law, and taught previously at Suffolk University Law School. He frequently teaches in NH Bar Association CLE programs as well as the National Advocacy Center in Columbia, SC, and has written several articles of legal analysis published in the NH Bar Journal, and book reviews for the NH Bar News. **JUDICIAL GOVERNANCE & ACCESS TO JUSTICE:** Judge Laplante serves on (former chair) the N.H. Access to Justice Commission, and on the United States Judicial Conference (governing body of US Judiciary) Criminal Law Committee, and served on the Committee on Court Administration and Case Management (CACM) and the Board of Directors for the Federal Judges Association. He currently represents the District of NH on the First Circuit Judicial Council, chairs the First Circuit Committee on Access to Justice, sits on the First Circuit Committee on Alternative Sentencing Programs and IT Committee, and served on the Board of Directors for the Federal Judges Association. He is a member of the Nashua Bar Association and the Webster-Batchelder American Inns of Court. **PROFESSION:** He is a member of the Nashua Bar Association and the Webster-Batchelder American Inns of Court. He has served on the NHBA's New Lawyers' Committee (former chair), the Committee on Professionalism (former chair), and the Committee on Cooperation with the Courts. **AWARDS:** Judge Laplante received the 2018 Golden Gavel Award from the New England Chapter of the American College of Trial Lawyers, the 2017 NH Bar Association Distinguished Service to the Public Award, the NH Bar Foundation's Robert E. Kirby Award (2001), the Edward "Ted" Jordan Humanitarian Award (Nashua Bar Association 2008), and the Thomas More Award. Prior to assuming the bench, he received several awards from the New England Organized Crime Drug Enforcement Task Force, the NH Drug Task Force, the U.S. Drug Enforcement Administration, the Boston Police Department, and the NH Congressional Delegation. **CIVIC:** Judge Laplante is former vice chair of the Rivier University Board of Trustees and is the vice chair of the board of trustees of the Southern New Hampshire Regional Health System. He serves as the Vice Chair of the St. Paul's School Advanced Studies Program Board of Overseers. Locally, the majority of Judge Laplante's volunteer time is spent at the Boys and Girls Club of Greater Nashua, and Nashua PAL.

Hon. Robert J. Lynn, who retired from judicial service on August 23, 2019, served as chief justice of the New Hampshire Supreme Court from April 2018 through August 2019, and was an associate justice of the Supreme Court from 2010 through 2018. He was the chief justice of the Superior Court from 2004 through 2010 and was an associate justice of the Superior Court from 1992 through 2004 after a career that took him across New England, New York and Pennsylvania. Justice Lynn earned his B.S. from the University of New Haven, CT in 1971 and his J.D. from the University of Connecticut School of Law in 1975. Prior to his judicial appointment, he was a special agent with the U.S. Drug Enforcement Administration; law clerk for the Hon. J. William Ditter, Jr. at the U.S. District Court, Eastern District of Pennsylvania; special attorney for the Organized Crime Strike Force in the Eastern District of NY; assistant U.S. attorney (and later first assistant) for the District of NH; associate and partner at Cleveland, Waters & Bass, PA; of counsel and director at McSwiney, Jones, Semple & Douglas; assistant U.S. attorney for the Special Prosecutions Unit in the District of CT; assistant U.S. attorney in the District of MA; and chief and New England Coordinator for the Organized Crime Drug Enforcement Task Force. Justice Lynn was an adjunct faculty member for the Massachusetts School of Law until 2004, and prior to that was an instructor at the Attorney General's Advocacy Institute in Washington, DC. He served as Chair of the Supreme

Court's Advisory Committee on Rules from 2011-2018. Justice Lynn is a past member of many bar committees, including the Continuing Legal Education Committee. He is the author of numerous published works and the recipient of many academic awards.

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General Overview of Statutory Interpretation – Basic Foundational Theories and Fundamental Canons

Hon. Joseph N. Laplante
U.S. District Court
Concord, NH

Statutory Interpretation

Judge Joseph Laplante
US District Court, District of New Hampshire
Joseph_Laplante@nhd.uscourts.gov
Chambers: 603-225-1461 Cell: 603-545-7969

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The 3 “threads”: (1) practice, (2) theory, & (3) doctrine

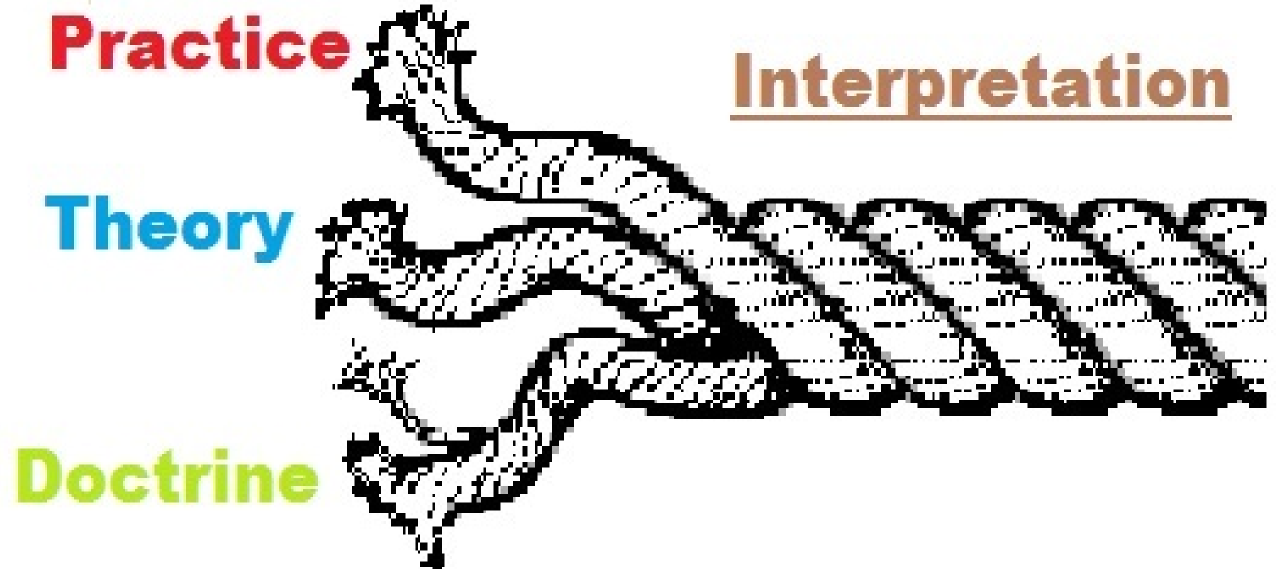
Practice: Case studies

Judicial opinions interpreting statutes

Theory: Theoretical explanation of statutory interpretations

Descriptive: how things **are**

Normative: how things **should be**



Doctrine: The rules, i.e., the canons of statutory interpretation

Textual canons: structure, language, grammar, punctuation

- Content neutral

Substantive canons: presumptions, tiebreakers, “clear statement rules” thumb

- Not content neutral – policy preferences involving the Constitution, the common law, taxation, federalism, immunity, etc.

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Statutory Interpretation: Determining what statutes mean in the "hard cases"

Example: "All pharmacies shall be closed each day at 10:00 p.m."

- Is "closed" part of a verb, meaning the *act of closing must occur* at 10pm?
- Or is it an adjective, describing the *status of the store at 10pm*, requiring only that at 10pm, the pharmacy no longer be open for business? (But also closable earlier at 9pm? And re-openable later at 10:30pm?)

What a statute "means":

- the meaning of the language? TEXTUAL MEANING
- the intent of the enacting legislature? LEGISLATIVE INTENT
- The problem/situation the statute was enacted to address or remedy? **STATUTORY** PURPOSE
- The consequences and ramifications of a given interpretation. PRAGMATIC
  - Can a pharmacy closed at 10pm reopen at 10:30?

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REMEMBER: This is NOT Con Law!

There's a temptation to think of these theories and legal concepts as "aligning" with constitutional theories like:

- Originalism
- Living Constitutionalism
- and the emerging "Classical/History/Tradition" schools of thought

Don't do that.
These are statutes, not the Constitution.
This is statutory interpretation, not Constitutional interpretation.

- **Statutory textualism & intentionalism ≠ constitutional originalism**
- **Statutory purposivism & pragmatism ≠ "living constitutionalism"**

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CITY ORDINANCE: "No vehicles in the park." *Or, expressed in more modern statutory prose, "Vehicles are not permitted in Greeley Park."*

HLA Hart, Oxford University, 1958

- Automobile driving through
- Motorcycle
- Bicycle (adult)
- Bicycle (child)
- Stroller
- Skateboard
- Hoverboard (motorized)
- Scooter (gas powered/Vespa)
- Scooter (electric (urban))
- Scooter (unpowered)
- Military truck (operable, but stationary as a monument/memorial)
- Ambulance (dispatched to park, park user in distress)
- Ambulance (shortcut through park)
- Go kart

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“Classical” statutory thought experiments

(in the unlikely event that you’re interested in such less practical, academic exercises . . .)

“No vehicles in the park” – 1958, HLA Hart, Oxford University

“Case of the Speluncean Explorers” – 1949, Lon Fuller, Harvard University

Soup Meat Hypothetical: “Fetch some soupmeat” – 1837, Francis Lieber, University of South Carolina, Columbia University

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"S.T.A.R.T." -- the way to BEGIN a legal research problem

In THIS order:

1. **STATUTES – you start here, not with applicable precedent. If there's a statute, that's where you start. Include definitions and exceptions.**
2. **ADMINISTRATIVE LAW – if there are rules and regulations promulgated under applicable statues, research those next.**
3. **REPORTERS – decisional case law, applying and interpreting the statute (Unites States Reports, New Hampshire Reports, Federal Reporter, Atlantic Reporter). The temptation is to start here; don't do that. It's a mistake and will cause you to overlook and miss important applicable law. You would think that it makes sense to start here because any good opinion will account for any applicable statute or regulations. (But sometimes they don't.)**
4. **TREATISES – a good idea to check, especially in an unfamiliar area of law.**

Develop this discipline. It will serve you well.

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Justice Felix Frankfurter’s “threefold directive” of statutory interpretation:

1. **Read the statute.**
2. **Read the statute.**
3. **Read the statute.**

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The Tools of Statutory Interpretation

Intrinsic Tools

- Statutory language (text, statutory definitions, punctuation, grammar, syntax)
- Aids to understanding language (dictionaries, Code-wide statutory definitions, Corpus Linguistics, general and specialized/technical definitions)
- Aids to understanding language (textual canons, i.e. *"expressio unius")*
- Statutory purposes **when expressly set forth in the statute** (maybe)

Extrinsic Tools

- Legislative history as evidence of legislative intent
- Evidence of statutory purpose (legislative history, statutory preambles and "findings," media accounts, historical material)
- Other statutes ("in pari materia" rule)
- Facts of the case
- Practicalities of implementation
- Substantive canons (i.e., the Rule of Lenity, Constitutional Avoidance Canon, *Chevron*)
- Consequences (pragmatic considerations)
- "Meta-values" – fairness, private property, freedom of contract, constitutional principles (free speech, due process) sometimes embodied in substantive canons)

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The American Legislative Process

You do not need to commit this to memory. But… it helps to understand it.

6 Steps or Phases:

1. Introduction of the bill (by legislative branch itself, with very few exceptions)
2. Committee work
   - Negation
   - Discharge Petition
   - Committee Reports # (traditional source of legislative history)
3. Scheduling/Calendar
4. Floor Consideration **(traditional source of legislative history) (page 33)** #
   - Debate # (set speeches, colloquies, bullets)
   - Amendment # (perfecting, killer, nature of a substitute, substitute)
   - **Vote*** (voice, division of house, teller, roll call)
5. **Reconciliation***
6. **Presentment***
   - Veto
   - Pocket Veto
   - Presidential signing statement (?)
   - ~~Line item veto~~ (no!)

* Constitutionally required (Art 1, § 7) Note: 2/3 majority required for constitutional amendment, treaty, expulsion and veto override

 # Traditional source of statutory interpretation (legislative intent or purpose)

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The 3 Majors

The major “foundational” theories of interpretation

Intentionalism: Identify the intent of the enacting legislature, then decide the case before the court as that *enacting* legislature would have intended

- Legislative history, context
- Learned Hand, Samuel Alito

Textualism: Interpret the statute according the “plain” or “ordinary” meaning of its words, or, when necessary or appropriate, the technical, specialized, or contextual meaning of its words

- Text, context, dictionaries, canons, plain meaning rule, New Textualism
- Antonin Scalia

Purposivism (“purpose-driven” interpretation): Identify the problem or situation the statute was meant to remedy or address, and interpret the statute in the way that best facilitates/advances that purpose

- Legal process theory, ascertaining purpose (levels of generality), synthesis of “Natural Law” & “Legal Realist” modes of thinking
- Stephen Breyer

Other theories: Pragmatism (Richard Posner), Dynamic Statutory Interpretation

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The "grand theories" of statutory interpretation

62 Geo. Wash. L. Rev. 1 (1993)

Foundationalist theories (the 3 majors)

Choose a foundational principle based on legal and jurisprudential values (**NOT** politics or policy preferences) and proceed logically from there.

- What are the available "foundational principles" to choose from? Basically (1) statutory text, (2) legislative intent, or (3) statutory purpose.

- Intentionalism ("imaginative reconstruction")
- Textualism (the "New Textualism" and "ordinary meaning")
- Purposivism ("Legal Process" theory)

- aka The Big 3

Dynamic theories (a little less conventional)

- Be rational, but focus less on overarching principles and rigorous logic. In other words, it is **NOT** an exercise in identifying a principle, and logically proceeding from the principle to a conclusion.
- Informed by some of the same ideas underlying the foundationalist theories like Legal Realism and the Legal Process scholars, but also by hermeneutics.

- Practical reasoning
- Pragmatism (Posner, J.)
- Dynamic statutory interpretation (Eskridge)

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Evaluating theories of statutory interpretation

Descriptive theories

- How statutory interpretation *is **actually*** conducted

Normative theories

- How statutory interpretation ***should be*** conducted

Factors & Values: considerations implicated (emphasized and deemphasized by each theory)

- Rule of law (evenhanded justice equally applicable)
- Coherence (vertical and horizontal)
- Judicial discretion (how much is desirable?)
- The Constitution (separation of powers)

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Eskridge et al., *Cases and Materials on Legislation and Regulation* 405-06 (6th Ed. 2020) (bracketed class references added by professor).

For most of this country's history, both the theory and practice of statutory interpretation have been "eclectic" rather than systematic **[Class 4].** After 1900, judges and scholars began to organize their thoughts more systematically. An initial impulse was to emphasize *legislative* ***intent*** as the foundational enterprise in statutory cases **[Classes 5, 6].** In turn, beginning in their 1930s an influential group of skeptics, the legal realists, debunked legislative intent as an indeterminate and incoherent concept for statutory interpretation **[Classes 4 & 5].** During the New Deal, American public law turned toward ***purpose***-based approaches as the foundation for statutory meaning **[Classes 7-8].** Purpsovism was in turn criticized for slighting traditional rule-of-law values (e.g., predictability of law, limiting judicial discretion) and for engaging courts in policy analysis for which they were ill-equipped. These critiques revived interest in ***plain meaning*** as the lodestar for statutory interpretation. The "new textualism" is a particularly stringent version of the plain meaning rule, although this approach has in turn been criticized as impractical and unrealistic **[Class 12].**

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The three historical "schools" of thought about the law, including statutes

Formalism

LEGAL REALISM

LEGAL PROCESS

Blackstone

- Pre-US Constitution
- "Equitable interpretation"

"Classical" Period

Critical Concept: Legislative Intent

- "Equity" of statute concept retracting
- "Absurdity Rule"
- Mischief Rule
- Literal Rule

Turn of the Century

- Legal Realism
- Canons questioned, critiqued
- "Natural Law" questioned, critiqued

1930's – 60's

Critical concept: Statutory purpose

- **Legal Process**
- **"Purposivism"**
- Post WWII bipartisan consensus

1970's

- Reemergence of plain meaning (presaging New Textualism)
- Post WWII bipartisan consensus eroding

1980's – 2000's

Critical concept: meaning of text

- Rise of **New Textualism**
- Increased academic emphasis on pragmatism

17th & 18th Centuries

- Natural Law
- **Focus: "equity" of the statute**
- Canons of construction
- Disrespect for statutory law
- Respect for common law

19th Century

- **The "Classical Period"**
- Natural law
- Canons of construction
- **Focus: ascertaining legislative intent vis an ECLECTIC method**
- Disrespect for statutory law
- Respect for common law
- **Interpret statutes NARROWLY, especially those in derogation of common law**

20th Century

- Natural law concepts **replaced by positive law concepts (Legal Realism)**
- Post-WWII bipartisan consensus, followed by 1960's upheaval, and then a backlash against judicial lawmaking
- **Focus:** search for legislative intent **supplanted first by judicial searches for statutory purpose and then (late century) for textual meaning**
- Century ends with conflict between Justice Scalia and Justice Stevens (this is an oversimplification but a way to think of it)

21st Century

- Dynamic theories
- Pragmatism
- Heavy textual emphasis (Scalia legacy)

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Steven Breyer: *Reading the Constitution* *[and Statutes!]* (2024)

PURPOSIVISM

PREFACE ("My Way") . . .

In recent years, many scholars who write about judging and many judges themselves have emphasized the role of text in answering this kind of question. Many now say that judges should put primary weight, perhaps exclusive weight, on the text of the statute, as understood by an ordinary person. **Indeed, one of my Supreme Court colleagues recently said (perhaps tongue in cheek) "We're all textualists now."!**

But I am not.

Without ignoring the text, **I normally put more weight on the statute's purposes and the consequences to which a particular interpretation will likely lead.** I will sometimes ask how a (hypothetical) "reasonable legisla-tor" would have interpreted the statute in light of its purposes. And I will sometimes examine the legislative history of a statute in order to answer these questions.

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Steven Breyer: *Reading the Constitution* *[and Statutes!]*(2024)

PURPOSIVISM

Chapter 1 – Purpose Based Approaches, p. 3

The basic purpose-related tool is the question "why?" Why did Congress or the Constitution's Framers choose these words? **What purposes do they serve in this statute or constitutional provision? What purposes does this legal provision serve in our nation? How will my interpretation further (or create an obstacle to achieving) those purposes?**

By "purposes," I call to mind Justice Frankfurter's observation that "laws are not abstract propositions. They are expressions of policy arising out of specific situations and addressed to the attainment of particular ends.“ They have "an aim." They seek "to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government.* **A purpose-oriented judge will ask: What does this phrase seek to do? And how?** And to quote Justice Holmes again, a law's "general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down."

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Steven Breyer: *Reading the Constitution [and Statutes]*(2024)

PURPOSIVISM

Chapter 1 – Purpose Based Approaches, p. 14-15

I should like the reader to keep in mind:

1) that a purpose-oriented judge, not surprisingly, will first and foremost put considerable weight upon the purposes that a statutory phrase seeks to achieve and, drawing on the traditional common law method, will interpret the statutory phrase narrowly or flexibly;

2) that the purpose-oriented judge is a "pragmatic judge," not in the sense that he or she decides a case to achieve what he or she believes is "good" but rather in the special sense that the judge works within a framework of rules, approaches, standards, presumptions, legal institutions, and a host of other doctrines that inevitably shape which is the "better" view of a case; and

3) that one legal tool that often helps that judge understand and interpret statutory silence or ambiguity is a fiction: the hypothetical reasonable legislator, a fiction useful in some, but not all, cases.

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A. Scalia and B. Garner: *Reading Law* (2012)

TEXTUALISM

PREFACE

- “Both your authors are textualists: We look for meaning in the governing text, ascribe to that text the meaning that it has borne from its inception, and reject judicial speculation about both the drafters’ extratextually derived purposes and the desirability of the fair reading’s anticipated consequences.”
- “It is not too much to say that the preference for the rule of law over the rule of [people] depends on the intellectual integrity of interpretation.”

FORWARD 7th Circuit Judge Frank H. Easterbrook

- [T]he more interpretive process strays outside a law’s text, the greater the interpreter’s discretion.
- **[T]he real problem lies in a transfer of authority from elected officials to those with life tenure**. …[I]n a democracy, policy makers are supposed to be ion short leashes: for the federal government two years (the House), four years (the President and [ ] appointees), or six years (the Senate). Judges serve for 20 years or more and never face voters.
- Discretion often comes from the interpreter’s sense of wise policy. . . .
- . . . But discretion can be hedged in by rules, such as this book covers in detail. . . . A more latitudinous approach to interpretation . . . makes it hard to see when the judge has succumbed to The Dark Side of Tenure – which, like the Dark Side of the Force in *Star Wars*, is marked by self indulgence.

INTRODUCTION

- It in unsurprising that judges who used to be the lawgivers [in the Anglo and earliest American common law era] took some liberties with the statutes that began to supplant their handiwork . . . Such distortion of texts that have been adopted by the people’s elected representatives is undemocratic.

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CONCEPTS WE'LL COVER: THE "THREEs"

3 ways we study statutory interpretation

(1) Practice (Descriptive – case law); (2) Theory (Normative and descriptive too); (3) Doctrine (the law)

3 First & Fundamental Canons

(1) Ambiguity First; (2) Ordinary Meaning; (3) Whole Act Rule

3 Schools of LEGAL Thought

(1) Formalism; (2) Legal Realism; (3) Legal Process School

3 "Foundational" Theories of Statutory Interpretation

(1) Intentionalism; (2) Purposivism; (3) Textualism

3 "Dynamic" Theories of Statutory Interpretation *

(1) Practical Reasoning; (2) Pragmatism; (3) Dynamic Statutory Interpretation

3 Rules of Statutory Interpretation

(1) Read the statute; Read the statute; (3) Read the statute

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"Moves" – judicial maneuvers and measures to advance the analysis in a statutory construction opinion

(No, you don't need to memorize these. But you'll learn to recognize them.)

1. **Underlying assumptions – the most appropriate starting point (text? legislative intent? purpose?)**
2. **Quote the statute? (Or not?)** Shifting the focus from text to something else (precedent? purpose?)
3. **Finding ambiguity in the text (extending and expanding the inquiry)**
4. **Finding NO ambiguity in the text (ending the inquiry)**
5. CREATING ambiguity
   - **Based on extrinsic sources (purpose, intent, legislative history, Whole Act Rule, Whole Code Rule, canons)**
   - Context
6. **Applying the Whole Act Rule (or "Whole Code Rule") to determine word meaning or statutory purpose.**
7. **Ascertaining LEGISLATIVE INTENT through legislative history**
8. **Determining PURPOSE at different levels of generality (e.g. – ADOPTION: best interests of the child (maximizing adoptions by expanding permissible adopters) vs. best interests (encouraging adoptions into traditional family unit; TITLE VII EMPLOYENT: eliminating all discrimination/colorblind society vs. remedying past discrimination)**
9. **Ascertaining statutory purpose from public policy articulated in other statutes.**
10. **Ascertaining statutory purpose, or legislative intent, from a statutory TITLE or PREAMBLE.**
11. **Using precedent to ascertain purpose (e.g. cases involving Civil Rights Act, Endangered Species Act)**
12. **Applying a textual canon (to resolve a textual ambiguity)**
13. **Use other textual raw material (Title, headings, structure)**
14. **Applying a substantive canon (favoring or disfavoring an interpretative outcome; favoring or disfavoring a result or policy outcome)**
15. **Deferring/NOT deferring to an administrative agency interpretation (*Chevron* deference, NH "administrative gloss" doctrine)**
16. **Harmonizing with/relying on other statues (modeled or borrowed – the in pari materia rules)**
17. **Evaluating outcome consequences – targeting a desired result, or avoiding an unfavorable result (pragmatism)**

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Canon #1 of the THREE FIRST & FUNDAMENTAL CANONS: No interpretation without ambiguity

"Canons of construction are no more than rules of thumb that help courts determine the meaning of legislation, and **in interpreting a statute a court should always turn first to one, cardinal canon before all others.** We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there. **When the words of a statute are unambiguous, then, this first canon is also the last: judicial inquiry is complete."** *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992) (internal quotations and citation omitted).

1. **Ambiguity first**
2. Ordinary meaning
3. Whole Act Rule

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#2 of the THREE FIRST & FUNDAMENTAL CANONS

Ordinary meaning

Ordinary meaning canon: Words are to be understood in their ordinary, everyday meanings, unless the context indicates that they express a specialized or technical sense.

- Ordinary does not mean "strict" or "literal." It means "everyday."
- Nonetheless, dictionaries can be helpful
  - Dictionaries from the time of enactment (+10 years are OK to aid in understanding meanings of words as understood by enacting legislature)
- **EXCEPTION 1: Statutorily defined words**
- **EXCEPTION 2: Specialized or technical words**. A special technical statute may establish a **context** that confers a specialized technical meaning (terms of art -- medical, commercial, maritime, legal, environmental, etc.) The point? **Context is paramount**, even for the most rigorous textualists.
- **EXCEPTION 3: Legal terms**. When a word has acquired a **settled meaning under the common law** or equity, the legislature is presumed to incorporate that meaning into its words unless it indicates otherwise. CANON -Imputed Common Law Meaning Rule. (We'll study later in the course.)

EXAMPLE: "DISCRIMINATE"

- **Literal meaning**: to differentiate, as between chocolate and vanilla, or apples and oranges
- **Ordinary meaning**: to differentiate with invidious intent

1. Ambiguity first
2. **Ordinary meaning**
3. Whole Act Rule

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#3 of the Three Fundamental Canons: Whole Act Rule

- **A statute must be interpreted as a whole**
- **Underlying theoretical rationale**: Enacting legislature drafted and enacted the statute as a whole, single, *internally consistent* document, knowing and understanding:
  - its language
  - the way its provisions work together
- Widely assumed and applied by courts
- But…is the theoretical rationale accurate?
  - And even if it's not accurate (*descriptively)*, is it good policy to apply it (*normatively)*?

1. Ambiguity first
2. Ordinary meaning
3. **Whole Act Rule**

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Whole Act Rule corollaries

- **Titles & Headings** – Titles and section headings may provide clues to statutory meaning, but not to undermine the plain meaning of the text.
- **Preambles and Purpose Clauses** – Preambles, findings and purpose clauses may provide clues to statutory meaning, but not to undermine the plain meaning of the text.
- **Presumption of Consistent Usage/Meaningful Variation** – Interpret the same or similar terms in a statute the same way throughout; different statutory wording suggests different statutory meaning.
- **Rule Against Redundancy/Surplusage** – Avoid an interpretation that would render another provision or phrase superfluous, duplicative, unnecessary or repetitive.
- **Rule Against Derogation** – Avoid any interpretation that is inconsistent with a statute's overall structure, with another provision of the statute, with a subsequent amendment, or with another statute enacted by Congress that requires a particular interpretation.
- **Provisos** – Provisos limit the application of the statute to the terms of the proviso, but they should be read narrowly.

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SUBSTANTIVE CANONS

They generally require that a provision be construed narrowly or broadly, OR *create a presumption that may only be overcome with a "clear statement" in the statute.*

1. **Chevron deference – OVERRULED** The court should defer to the reasonable interpretation of the administrative agency made pursuant to Congressional delegation unless Congress has directly addressed the issue. **OVERRULED**
2. **Statutory stare decisis** – "Super-strong presumption" of correctness of statutory interpretation precedents.
3. **Rule against derogation of common law** – a statute enacted in derogation of common law should be construed narrowly.
4. **Presumption in favor of common law usage** – an undefined term or word should carry its common law meaning unless legislature has directly addressed the issue or the common law meaning is inconsistent with statutory purpose.
5. **Rule of Lenity –** Resolve ambiguities in penal statutes by construing them narrowly, in favor of the defendant/penalized party**.**
6. **Constitutional Avoidance Canon** –Resolve ambiguities by choosing the interpretation that avoids constitutional [questions/difficulties/violations.]
7. **Federalism canon(s)** – Presumption against statutory interpretations that would alter the federal-state balance.
8. **Presumption against repeal by implication** – Statutes and provisions are not impliedly repealed by other statutes/provisions; a clear statement, clear contradiction, or subject matter replacement in the more recent statute is required.
9. **In pari materia** rule – When similar statutory provisions are found in comparable statutory schemes, they should presumptively be interpreted harmoniously, and applied in the same way.
10. **Borrowed statute rule** – When a legislature borrows a statute from another jurisdiction, it also impliedly adopts judicial interpretations of that statute (absent a clear indication to the contrary).
11. **Re-enacted statute rule** – When a statute is re-enacted, the legislature presumptively incorporates settled interpretations of the re-enacted statutes.

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Appeal of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, No. 2022-0146 (N.H. Nov. 15, 2023)

THE SUPREME COURT OF NEW HAMPSHIRE

Public Utilities Commission
No. 2022-0146

APPEAL OF LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP., D/B/A LIBERTY
(New Hampshire Public Utilities Commission)

Argued: February 9, 2023
Opinion Issued: November 15, 2023

Pastori | Krans, PLLC, of Concord (Terri L. Pastori and Ashley D. Taylor on the brief, and Terri L. Pastori orally), for the petitioner.

John M. Formella, attorney general, and Anthony J. Galdieri, solicitor general (Christopher G. Aslin, senior assistant attorney general, on the brief and orally), for the New Hampshire Department of Energy.

Donald M. Kreis, consumer advocate, on the brief, for the Office of the Consumer Advocate.

HANTZ MARCONI, J. The petitioner, Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty (Liberty), appeals an order of the New Hampshire Public Utilities Commission denying Liberty's request to recover development costs related to a proposed natural gas pipeline and tank system, the Granite Bridge project. The respondents, the New Hampshire Department

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Liberty asserts that its costs are recoverable under RSA 378:30-a because construction never began on Granite Bridge. See RSA 378:30-a (2009). Determining whether Liberty's costs are recoverable requires interpreting RSA 378:30-a. We first look to the language of the statute itself, and, if possible, construe that language according to its plain and ordinary meaning. Doe v. Attorney General, 175 N.H. 349, 352 (2022). We interpret the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. The legislature is not presumed to waste words or enact redundant provisions and, whenever possible, every word of a statute should be given effect. Id. We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result. Id. Moreover, we do not consider words and phrases in isolation, but rather within the context of the statute as a whole. Id.

We begin with the text of the statute to determine whether Liberty's costs are recoverable:

> Public utility rates or charges shall not in any manner be based on the cost of construction work in progress. At no time shall any rates or charges be based upon any costs associated with construction work if said construction work is not completed. All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress, shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to consumers.

RSA 378:30-a.

The plain language of RSA 378:30-a prohibits Liberty from recovering its costs for Granite Bridge through its rates. We focus on the second sentence because its breadth is broadest. See Appeal of Public Serv. Co. of N.H., 125 N.H. 46, 52 (1984). The second sentence prohibits recovering "any costs

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Liberty asserts that the Public Utilities Commission ignored the word "work" in the second sentence of RSA 378:30-a, improperly expanding the statute's reach. By doing so, Liberty contends, the Public Utilities Commission barred costs without giving effect to the entirety of the statute. The statute bars "costs associated with construction work," and Liberty contends no "construction work" occurred here. Because interpreting RSA 378:30-a is a legal question, we review the Public Utilities Commission's order de novo. See Appeal of Pennichuck Water Works, 160 N.H. at 26. Interpreting the entirety of the second sentence still leads to the same conclusion, regardless of whether the Public Utilities Commission ignored a word in its analysis. We have already interpreted "construction work" to refer to a physical structure. Appeal of Public Serv. Co. of N.H., 125 N.H. at 53-54. Granite Bridge was to consist of a pipeline and tank system, a physical structure. See id. While no physical structure was built, Liberty's costs remained "associated with" one because Liberty incurred costs specifically related to its plan to build a physical structure.

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Turning to Liberty's argument that the first sentence of RSA 378:30-a does not apply, we agree because the "construction work" was not "in progress." Regarding the third sentence, Liberty contends that it is inapplicable because it addresses "construction work in progress" and no "construction work in progress" occurred here. Because "construction work in progress" must be different from "construction work," the examples in the third sentence are irrelevant to interpreting the second sentence. We also agree with Liberty that the third sentence does not apply, but disagree that its examples are irrelevant to our analysis of the second sentence. The third sentence states:

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> All costs of construction work in progress, including, but not limited to, any costs associated with constructing, owning, maintaining or financing construction work in progress, shall not be included in a utility's rate base nor be allowed as an expense for rate making purposes until, and not before, said construction project is actually providing service to consumers.

RSA 378:30-a. The third sentence describes "construction work in progress" to include "any costs associated with constructing, owning, maintaining or financing construction work in progress." Id. In comparison, the second sentence also uses the term "any costs associated" but does not delimit the timing of the costs incurred to while construction is "in progress." Id. Because the second sentence captures costs beyond those "in progress" in the third sentence, the costs in the second sentence necessarily encompass costs similar to those costs in the third sentence. Thus, construed together, the third sentence informs the nature of the costs "associated with" construction work to also encompass pre-construction activities, such as "owning" and "financing." Because the statute is unambiguous, we decline to look to the legislative history of RSA 378:30-a. See Sutton v. Town of Gilford, 160 N.H. 43, 55 (2010).

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On the merits of Liberty's additional statutory construction argument, we are not persuaded. Liberty contends that RSA 162-H:2, III should be read in conjunction with RSA 378:30-a. RSA 162-H:2, III defines "[c]ommencement of construction."

> "Commencement of construction" means any clearing of the land, excavation or other substantial action that would adversely affect the natural environment of the site of the proposed facility, but does not include land surveying, optioning or acquiring land or rights in land, changes desirable for temporary use of the land for public recreational uses, or necessary borings to determine foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental use and values.

RSA 162-H:2, III (2023). Liberty contends that its costs cannot be "associated with construction work" because they do not fall under RSA 162-H:2, III. The Department of Energy and the Office of the Consumer Advocate counter that RSA 162-H:2, III and RSA 378:30-a differ, and should not be read together. We agree with them.

RSA 162-H:2, III and RSA 378:30-a are part of separate and distinct regulatory regimes dealing with different subject matter. See RSA 162-H:2; RSA 378:30-a. RSA chapter 162-H pertains to the energy facility evaluation, siting, construction and operation for projects. RSA ch. 162-H (2023). Conversely, RSA chapter 378 governs public utility rate setting. See RSA 378:27 (Supp. 2022); RSA 378:28 (2009). RSA 162-H:2, III defines what constitutes "commencement of construction" before which a certificate must be obtained from the Site Evaluation Committee. RSA 162-H:2, III; RSA 162-H:5, I. RSA 378:30-a, however, restricts certain costs from being recovered through

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a utility's rates. RSA 378:30-a. Furthermore, the statutes were enacted at different times, rendering RSA 162-H:2, III, enacted in 1991, of little help in interpreting RSA 378:30-a, enacted more than a decade earlier in 1979. Laws 1979, 101:1; Laws 1991, 295:1. Therefore, we decline to import the definition of "[c]ommencement of construction" in RSA 162-H:2, III into RSA 378:30-a.

For the foregoing reasons, we affirm the order of the Public Utilities Commission.

Affirmed.

MACDONALD, C.J., and DONOVAN, J., concurred.

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JUDICIAL DECISION MAKING IS NOT JUDICIAL OPINION WRITING

(There's a difference. . .) 62 Geo. Wash. L. Rev. 1 (1993)

- They are two different things: decision **making** and decision **justifying**.
- A judicial **decision** in statutory interpretation (especially an appellate opinion) is not the application of a unitary cogent theory, or a canon of construction, to a statutory provision.
- Rather, a judicial **opinion** in statutory interpretation is a **reasoned justification** for a ruling or decision.
- Several factors undermine the idea that a single grand theory or canon of obstruction will carry the **actual decision** in a statutory interpretation case:
  - At least three judges on a panel (with different judicial views and approaches)
  - Counsel for each side will not restrict themselves to theories or canons; they will argue the "kitchen sink" approach
  - Judges confer after oral argument, and the reasons for their **decision** may have been neither developed nor express in terms of formal legal principles ***(but they are the real reasons)***
  - A single judge will be assigned **opinion** writing task
  - A law clerk (not present at the judge conference) likely writes first draft
  - Clerk and author judge will strive to write an **opinion that is:**
    - **technically sound, applying relevant constitutional, statutory, and jurisprudential authority (precedent)**
    - **a fair and just resolution of the case at bar**
    - **utilizes a rationale that does not contain undesirable implications for factual situations presented in future cases**
    - **acceptable to the bar and public**
  - Other members of panel will frequently sign on to an **opinion** that has these characteristics, despite jurisprudential or stylistic differences
- **This statutory interpretation opinion** will **not** likely reflect a single grand theory or approach, a decisive canon of construction, or the actual reasons for **the actual decision** (any more than a single statutory provision can reflect a unitary legislative motivation or "legislative intent").

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REALITY

Robert Martineau, *Craft and Technique, Not Canons and Grand Theories: A Neo-Realist View of Statutory Interpretation,* 62 Geo. Wash. L. Rev. 26 (1993)(emphasis added)

"The entire [opinion writing] process is accompanied by a give-and-take among judges and their law clerks, and among the judges. Additional research may be done at any point in the process. Further, the court is not restricted to the arguments made by the parties but may rely on any fact or legal theory supported by the record. The court may even decide the case on issues not presented to or decided by the trial court.

There are several key elements to the appellate process that the statutory construction scholar should keep in mind. **First**, the positions that the parties take in their arguments to a court are purely result-oriented. Their lawyers make the arguments, textual or contextual, that support their position. **Second**, the judges' primary concern prior to the decision conference is understanding the facts and the contentions of the parties. **Third**, the decision conference is devoted primarily to the result, not to the approach to be taken in the opinion. **Fourth**, the law clerk, often the person with the principal responsibility for drafting an opinion to support the decision, is not present at the decision conference. The judge assigned the opinion-writing responsibility directs the law clerk concerning the result and may instruct the clerk about the approach to be taken in the draft opinion. **Finally**, the other judges on the panel play some part, but not a major role, in the opinion's development."

READ IT AND REMEMBER IT when you are tempted to overindulge in theoretical argument in law practice. Theories are great … in theory, but not so much in practice (both puns very much intended).

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If your constitutional interpretations always align with your partisan political views, you're not really doing constitutional interpretation.

- (Unless you sincerely think the United States Constitution always supports your partisan political preferences, in all cases.)

If your statutory interpretations always align with your public policy preferences, you're not really doing statutory interpretation.

- (Unless you sincerely think the United States Congress' enactments always support your public policy preferences, in all cases.)

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The Use of Legislative History: When, What & How

Hon. N. William Delker
NH Superior Court
Concord, NH

STATUTORY INTERPRETATION

Legislative History

JUDGE

N. WILLIAM DELKER

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THEORY VS. PRACTICE

- **Statutory History vs. Legislative History**
- **Textualism vs. Purposivism**
- **Types of Legislative History**
- **Legislative History in N.H.**

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STATUTORY HISTORY VS. LEGISLATIVE HISTORY

Statutory history:

- Prior version of statute
- Judicial interpretation of statute
- Legislative amendment to statute

Legislative History:

- Information generated during process of creation of statute such as committee reports, floor debate, veto or signing message

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TEXTUALISM: THE CASE AGAINST LEGISLATIVE HISTORY

- Constitutional objections
- Rule of law
- Efficiency considerations

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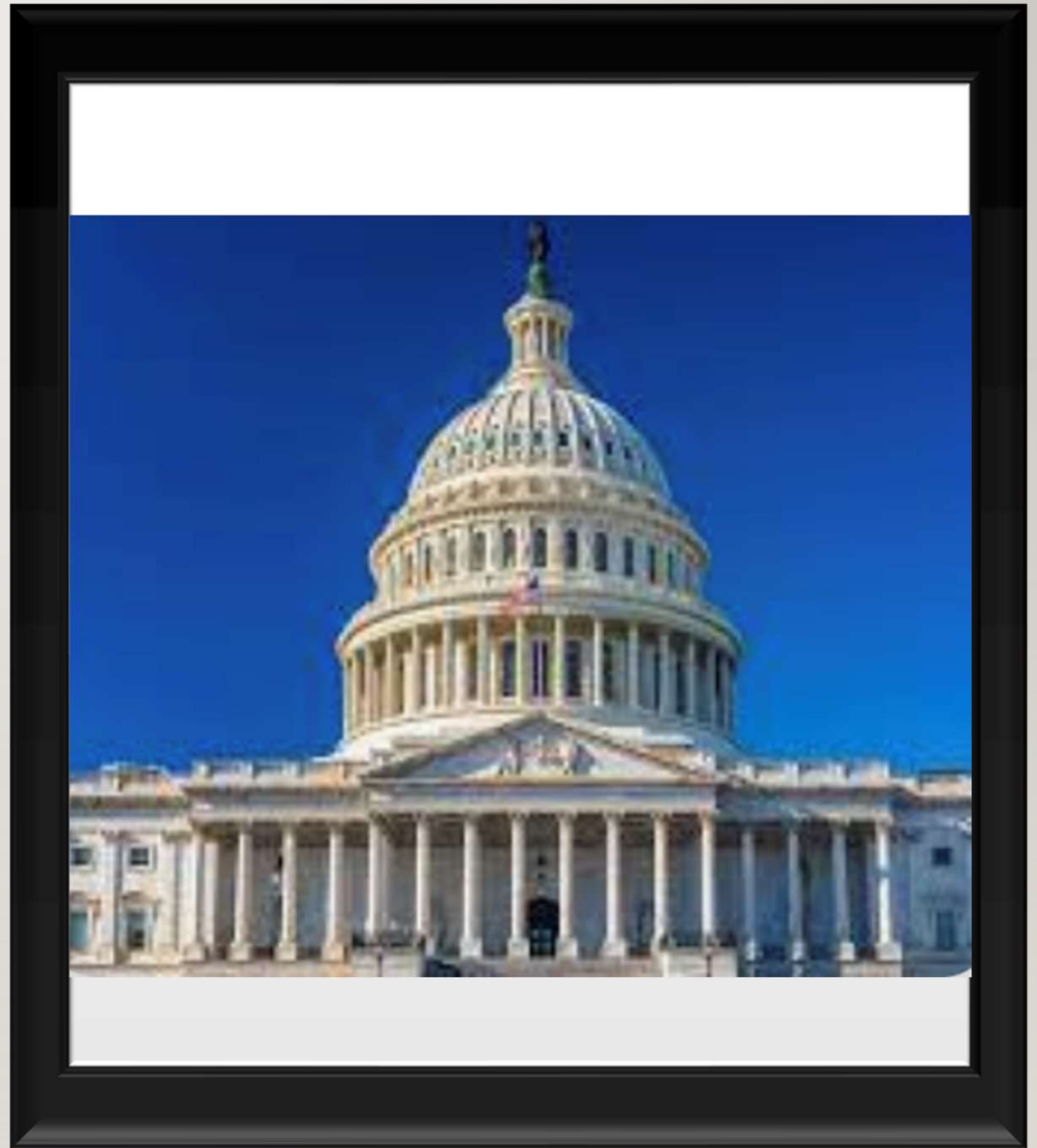
TEXTUALISM: THE CASE AGAINST LEGISLATIVE HISTORY

- Constitutional objections:
  - Bicameralism and presentment
  - Delegation of lawmaking to committees
  - Role of the courts



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TEXTUALISM: THE CASE AGAINST LEGISLATIVE HISTORY

- Bicameralism and presentment:
- To reflect intent of legislature statute must:
  - Pass both house of legislature
  - Be presented to President
  - Be signed by President or subject to 2/3 veto override

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TEXTUALISM: THE CASE AGAINST LEGISLATIVE HISTORY

- Legislative history is not subject to this process:
  - Committee reports are not voted on by Congress or presented to the President
  - Legislation is the result of compromise
  - Individual law makers have various motives for voting for statute

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TEXTUALISM:
THE CASE AGAINST LEGISLATIVE HISTORY

- Improper delegation of lawmaking authority:
  - Committee reports are drafted by staffers
  - Language inserted into the congressional record at request of lobbyists

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TEXTUALISM:
THE CASE AGAINST LEGISLATIVE HISTORY

- Role of the courts and the rule of law:
  - Interpretation of meaning of statutory language vs. determining intent of the legislature
  - Constraining subjectivity: judge is not policy maker
  - Impossible to reliably determine legislative intent

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TEXTUALISM: THE CASE AGAINST LEGISLATIVE HISTORY

- Promoting efficiency:
    - Legislative history is expensive for litigants
    - Results in unnecessarily longer judicial opinions
    - Encourages legislature to write statutes with greater precision

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PURPOSIVISM: IN DEFENSE OF LEGISLATIVE HISTORY

- Disregarding legislative history:
  - Ignores how laws are really made
  - Injects subjectivity into statutory interpretation
  - Can result in unreliable interpretations

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PURPOSIVISM: IN DEFENSE OF LEGISLATIVE HISTORY

- Practical reality of lawmaking:
  - Legislators do not use canons of statutory interpretation to understand meaning of statutes.
  - Committee reports help legislators to understand policies and purposes of statutory language in plain language.
  - Congress relies on the fact that courts look to committee reports for the purpose of states. The legislative drafting manual from 1995 for example discourages including statement of purpose in statutes and encourages the use of committee reports for this information.
  - Bills are drafted with more or less care depending on origin of language: e.g., legislative counsel/vs. floor amendments.
  - Committee reports form the basis for institutional memory.

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PURPOSIVISM: IN DEFENSE OF LEGISLATIVE HISTORY

- Legislative history removes subjectivity and promotes the rule of law:
  - Textualism allows judges to choose between two or more reasonable interpretations of statute.
  - Legislative history constrains choice by focusing on what the legislators were considering.
  - Judges who interpret statutory language contrary to strong evidence of legislative purpose undermine will of the elected representatives.

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PURPOSIVISM: IN DEFENSE OF LEGISLATIVE HISTORY

More reliable results:

Legislative history can help court understand:

- Interpretation of specialized terms or phrases in technical statute
- How legislators envisioned the statute in operation
- What problems legislators sought to address
- What purpose they meant to achieve
- What method they employed to secure those purposes
- Correctness of interpretation of plain statutory language
- And apply the law in situations not necessarily contemplated by legislature

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LEGISLATIVE HISTORY IN PRACTICE

At least three states have enacted statutes the invite (or require) judges to consider legislative history when interpreting statutes:

"If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters … legislative history." N.D. Cent. Code sec. 1-02-39(3).

"A court shall give the weight to legislative history that the court considers to be appropriate." Ore. Rev. Stat. sec. 174.020(3).

"In constructing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the … legislative history." Tex. Gov. Code sec. 311.023(3).

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LEGISLATIVE HISTORY IN PRACTICE

Consider N.H.'s approach:

"In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature or repugnant to the context of the same statute." RSA 21:1 (emphasis added).

"Words and phrases shall be construed according to the common and approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed and understood according to such peculiar and appropriate meaning." RSA 21:2.

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LEGISLATIVE HISTORY IN PRACTICE

"All legislative history is not created equal."

- Chief Justice John Roberts in his Senate confirmation hearing (2005).

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TYPES OF LEGISLATIVE HISTORY

Most reliable to least reliable:

- Conference Committee Reports/Joint Statement of Conferees
- Committee reports
- Statements of Bill Managers or Prime Sponsors
- Rejected proposals
- Legislative investigations leading to legislation
- Silence in the legislative record about a particular meaning of a statutes: ”the dog that didn’t bark canon”
- Remarks of individual legislators
- Signing statement or veto message and veto override
- Subsequent legislative history
- Input of lobbyists, supporters, and opponents

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ADJUNCTS LEGISLATIVE HISTORY

Official commentary from uniform statutes:

- Uniform Code,
- Uniform Interstate Family Support Act,
- Model Penal Code,
- Model Business Corporations Act

Commissions tasked with recommending statutory revisions:

- N.H. Commission to Recommend Codification of Criminal Laws, Report of Commission to Recommend Codification of Criminal Laws (1969)

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LEGISLATIVE HISTORY IN THE GRANITE STATE

- We are to look to the words in the first instance; and when they are plain, we must decide on them; if they be doubtful, we must then have recourse to the subject matter. And Mr. Justice Story, in *United States* vs. *Winn,*3 *Sumner* 209, observes, "in consulting penal statutes the proper course is to search out and to follow the true intent of the legislature, and to adopt that sense which harmonizes best with the context, and promotes, in the fullest manner, the apparent policy and objects of the legislature."

  Pike v. Jenkins, 12 N.H. 255, 261 (1841)

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LEGISLATIVE HISTORY IN THE GRANITE STATE

- "The question of the civil jurisdiction of a justice of the peace throughout the State is, so far as we are aware, a new one, and has never been investigated in this court. In order to determine it, it is necessary to inquire into the early legislative history of this State and Province, for the purpose of ascertaining what jurisdiction has heretofore been exercised by such officers, what has been the form of their commissions, and how it happened that justices of the peace were created with different jurisdictions and exercising different powers."

Young v. Bride, 25 N.H. 482, 490 (1852)

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LEGISLATIVE HISTORY IN THE GRANITE STATE

"If a statute is ambiguous, however, we consider legislative history to aid our analysis."

- Petition of State, 175 N.H. 547, 551, 294 A.3d 243, 246 (2022)

"The legislative history shows that House Bill 236 intended to exclude only the date of the vote from the 30-day count, not the date after the vote. Therefore, our interpretation of RSA 677:15, I, is consistent with the above legislative history.

- Krainewood Shores Ass'n, Inc. v. Town of Moultonborough, 174 N.H. 103, 110, 260 A.3d 804, 809–10 (2021)

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PRACTICE POINTERS

- Do not abandon a good argument
  - Your job is to win the case for your client.
  - Find the strongest support for your position whereever you can.
  - Even a strict textualist may be influenced by compelling evidence in the legislative history.
- Know your audience
  - Prioritize your arguments based on the interpretative philosophy of the judge.

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- Primer on N.H. legislative process: How a Bill Become a Law, N.H. Almanac, https://www.nh.gov/almanac/bills.htm
- N.H. General Court website: https://gencourt.state.nh.us
- Advanced Bill Status Search (1989-present): https://gencourt.state.nh.us/bill_status/legacy/bs2016/

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PRACTICE POINTERS

- Compiling a N.H. Legislative History, https://courts-state-nh-us.libguides.com/legislativehistory
- N.H. Law Library: https://courts-state-nh-us.libguides.com/az.php
- N.H. State Library: https://www.nh.gov/nhsl/services/index.html

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https://gencourt.state.nh.us/bill_status/legacy/bs2016/

General Court of New Hampshire

Advanced Bill Status Search

- General Court of NH Home
- View Past Member's Legislation

Session Year: 2023 1989-Current

Origin Body: Both

Title Search: tax, fish

General Status: Codes -Select Codes-

Bill Number: hb34,sb450

LSR Number: 1,56,235

Hse Committee: Codes -Select Committee-

Sen Committee: Codes -Select Committee-

Hse Comm. Ref: Codes -Select Committee-

Sen Comm Ref: Codes -Select Committee-

House Status: Codes -Select Status-

Senate Status: Codes -Select Status-

Hse Flr/Session Day: MM/DD/YYYY

Sen Flr/Session Day: MM/DD/YYYY

Hse Amended:

Sen Amended:

Sponsor:

Last Comm Rpt: Codes Click Down Arrow

Chapter #: 0001,0045

Comm Hearing Date: MM/DD/YYYY

All Senate Rereferred All House Retained All Bills With Fiscal Note

All Bills With Appropriations Local Government Bills

Submit Reset

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Statutory Construction from the Legislator's Perspective and How Legislators Consider the Way Courts View Statutes They Have Enacted

Hon. Robert J. Lynn(ret.)
NH Supreme Court
Concord, NH

NAVIGATING STATUTORY INTERPRETATION

NEW HAMPSHIRE BAR ASSOCIATION CONTINUING LEGAL EDUCATION PROGRAM
March 4, 2025
by Robert J. Lynn

I. NH follows generally accepted rules of statutory construction

A. First Principle: Plain Meaning Rule
Statute means what it says. State v. Wamala, 158 N.H. 583, 592 (2009).
No resort to legislative history to discover intent unless statute is ambiguous. Matter of Lyon, 166 NH 315, 318 (2014) ("When the language of a statute is plain and unambiguous, we do not look beyond it for further indications of legislative intent. . . . However, we review legislative history to aid our analysis when the statutory language is ambiguous or subject to more than one reasonable interpretation.")

B. Meaning of Words
Statutory definition if it exists.
Dictionary definition otherwise. In re Guardianship of B.C., 174 NH 628, 634 (2021).

C. Consider whole statutory scheme, not parts in isolation. K.L.N. Construction Company, Inc. v. Town of Pelham, 167 NH 180, 184 (2014).

D. All words must be considered.
No construction permissible that renders words superfluous. Appeal of Marti, 169 NH 185, 191 (2016).

E. Court will not add words legislature did not include in statute. Forster v. Town of Henniker, 167 NH 745, 750 (2015) ("In construing a statute, we will neither consider what the legislature might have said nor add words that it did not see fit to include.").

F. Different words mean different things. See City of Concord v. State of New Hampshire, 164 NH 130, 141 (2012) ("where the enacting body uses two different words, it generally means two different things").

G. Consider purpose to be achieved – but only from text of the statute as written. See State v. Dor, 165 NH 198, 205 (2013) (quoting Rodriguez v. United States, 480 U.S. 522, 525 (1987) ("[I]t frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law.").

H. Construction that avoids absurd, unreasonable, or unjust result. Appeal of Port City Air Leasing, Inc., 2024 NH 71, *2.

II. Particular Rules of Construction:

A. The Last Antecedent Rule
A general rule of statutory as well as grammatical construction that a modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation; therefore, qualifying phrases are to be

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applied to the words or phrases immediately preceding and are not to be construed as extending to others more remote. See State v. Brooks, 164 NH 272, 292 (2012).

Importance of punctuation, commas, etc. between the modifying phrase and the last antecedent may indicate that the phrase is intended to apply to all antecedents. See State v. Kousounadis, 159 NH 413, 423-24 (2009).

B. The Principle of Ejusdem Generis
Where a statute contains a listing of specific terms either followed by or preceded by more general terms, the general terms will be construed to apply only to things that are of a similar character to the ones specifically stated. See State v. Proctor, 171 NH 800, 806 (2019).

C. The Maxim Expressio Unius Est Exclusio Alterius
"[T]he expression of one thing in a statute implies the exclusion of another." See Rudder v. Director, New Hampshire Division of Motor Vehicles, 175 NH 38, 43 (2022).

D. Specific statute generally controls over more general one where the two conflict. Sanborn Regional School Dist. v. Budget Committee of Sanborn Regional School Dist., 150 NH 241, 242 (2003). See also Professional Firefighters of Wolfeboro v. Town of Wolfeboro, 164 NH 18, 22 (2012) ("When a conflict exists between two statutes, . . . the later [enacted] statute will control, particularly when the later statute deals with a subject in a specific way and the earlier enactment treats that subject in a general fashion.").

E. Avoid construction that would raise question as to statute's constitutionality unless doing so would be plainly at odds with legislative intent. Matter of Blaisdell, 174 NH 187, 194 (2021).

F. Statutes in derogation of the common law are strictly construed. Kurowski v. Town of Chester, 170 NH 307, 310 (2017). There is a presumption that the legislature does not intend to abolish a common law rights, and if it intends to do so, such intent must be clearly expressed. Bisceglia v. Secretary of State, 175 NH 69, 72 (2022).

G. Repeal of statutes by implication is disfavored. See In re Regan, 164 NH 1, 7 (2012) ("Repeal by implication occurs when the natural weight of all competent evidence demonstrates that the purpose of [a] [new] statute was to supersede [a] former statute, but the legislature nonetheless failed to expressly repeal the former statute.
Because repeal by implication is disfavored, [i]f any reasonable construction of the two statutes taken together can be found, we will not hold that the former statute has been impliedly repealed." (internal citations omitted)).

III. Use of Legislative History

A. Permitted only if statutory language is ambiguous, i.e., subject to more than one reasonable interpretation. Cady v. Town of Deerfield, 169 NH 575, 578 (2017) (emphasis added).

B. When legislative history is unavailable or unhelpful, the court will construe a statute to address the mischief or evil it appears intended to address or remedy. See Hogan v. Pat's Peak Skiing, LLC, 168 N.H. 71, 74 (2015).

IV. Making the Sausage – How Statutes are Enacted in New Hampshire

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A. Unique Features of the New Hampshire Legislature:

400 Member House of Representatives – one of largest in the world; each Representative represents about 3500 constituents. In many districts, it can cost very little to run for this office.

24 Member Senate.

Compensation: $100 per year (plus mileage). Result: large number of members who are retired or otherwise do not have to work day to day for a living.

Every legislator can introduce a bill and every bill gets a hearing before a committee.

B. Standing Legislative Committees:

House has 23 standing committees.

Senate has 14 standing committees.

C. Drafting Legislation

All bills are drafted by 7 attorneys who work for Office of Legislative Services.

Short filing periods – in the House, a matter of 3-4 weeks; somewhat longer in Senate.

This year they were asked to draft 830 House bills, and 325 Senate bills. Often, members give OLS only basic outline of what they want legislation to say or to do; they may provide little or no text.

OLS attorneys also draft all amendments to all bills, of which there are many and time frames are even shorter.

D. The Committee Process

Hearing on the bill:
- Noticed and open to public.
- Sponsor testifies to introduce the bill; explain what it does and why it is needed.
- Witnesses then have opportunity to testify for or against the bill.
- Written testimony can be submitted via paper or electronically.
- All hearings recorded and available on Legislative website.
- Lobbyists and expert testimony often particularly important.

Work Sessions at which Committee considers the bill.
- Noticed, open to the public and recorded.
- Amendments to bill may be considered or a sub-committee appointed.
- Sometimes Committee will permit attendees to speak, especially if members have questions or concerns about the bill.

Executive Sessions
- This is where the Committee will debate and vote on the bill.

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Noticed, open to public and recorded.
Again, sometimes (but rarely) Committee will allow public to speak.
Amendments may be offered by members of the Committee.

Possible Committee Recommendations on bills:

1. Ought to Pass (OTP)
2. Ought to Pass with Amendment (OTPA)
3. Inexpedient to Legislate (ITL)
4. No recommendation (when there is a tie vote in committee)
5. Retained (in first year of biennium)
6. Interim Study (in second year of biennium)

Committee Reports (the "blurbs")

Summarize what bill does and reason for Committee's recommendation.
If disagreement, there will be majority and minority report.
Reports are prepared by committee members appointed by chair or ranking minority member.
Usually only a paragraph or two in length (unlike federal legislation, there is no section by section analysis).
Still, these reports often are the best indicator of legislative intent.

E. Floor Action by the Body

Debate is on the Committee's recommendation on the bill and any amendments.
Usually, but not always, only one member speaks for each side in debates.
Amendments voted on first; floor amendments may be offered.
Then vote on the main bill with or without amendment.
Vote may be by voice vote, division vote, or roll call vote.
If Committee recommendation fails, an alternative motion may be made and voted on.
Procedural maneuvers: motion to table; motion to indefinitely postpone.
All proceeding are recorded.

F. Referral to Second Committee

Typically, but not always, the Finance Committee if bill has financial implications for state budget.
Same committee process, and then bill goes to floor for second vote.

G. Crossover Day

The date by which all bills passed by one chamber must be sent to the other chamber.
Usually, date is in late March.

Post-Crossover, same basic process described above occurs in the other Chamber (although rules are not exactly the same).

What happens if second Chamber changes the bill?
It goes back to first chamber, which may:
Concur (bill goes to the Governor for approval or veto)

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Non-Concur (the bill dies and will not become law)
Non-Concur and request Committee of Conference

H. Committees of Conference

Purpose is to resolve differences between the two Chambers regarding the bill.
Speaker and Senate President appoint conferees from their respective Chambers.
Very short time to (usually no more than one week) to come to agreement.
All conferees must sign off on report by the deadline or bill dies.
Speaker or Senate President can replace members who refuse to agree
with their position on the bill.

The records generated from all of the above legislative proceedings are available for the purpose of demonstrating the intent of the legislature in enacting legislation. Of course, the value a court will attach to such materials will depend on the persuasiveness of any particular material to demonstrate legislative intent, which in turn will depend on the particular facts and circumstances of each situation. See generally United States v. Howe, 167 NH 143, 151 (2014) (quoting 2A N. Singer & J.D. Singer, Statutes and Statutory Construction § 48:4, at 562–63 (7th ed.2007) (stating that "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" and noting that "[l]egislative history can ... consider part of a statute that never came into existence" because, for instance, "the language under question was rejected by the legislature"); and citing Chesapeake Industries v. Comptroller, 59 Md.App. 370, 475 A.2d 1224, 1226–27, 1229 (1984) (discerning legislative intent from bill that failed to make it through Ways and Means Committee).

Note, however, that the legislature's failure to enact a bill amending existing law may be an ambiguous indicator of legislative intent, in that it could mean either that the legislature did not desire to make the change of law proposed or that it believed such change was unnecessary because the existing law already accomplished what the change proposed.

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A Review of Recent NH Supreme Court Decisions on Statutory Interpretation

Hon. N. William Delker
NH Superior Court
Concord, NH

Jack P. Crisp, Jr.
The Crisp Law Firm PLLC
Concord, NH

Overview SCOTUS Term Statutory Interpretation Cases
2023-2024 Term and 2024-2025 Term (through Feb. 26, 2025)

1. Murray v. USB Securities, 601 U.S. 23 (Feb. 8, 2024): Whistleblower must prove his protected activity was a contributing factor in unfavorable personnel action but need not show that the employer acted retaliatory intent. Unanimous (Sotomayor, J.) with Alito and Barrett concurring.[1]
2. Bissonnette v. LePage Bakeries Park St. LLC, 601 U.S. 246 (Apr. 12, 2024): Whether the Federal Arbitration Act exception for transportation worker applies to workers in the bakery industry. Unanimous (Roberts, CJ.).
3. MacQuarie Infrastructure Corp. v. Moab Partners LP, 601 U.S. 257 (Apr. 12, 2024): Interpretation of Section 10(b)-5 of the Securities and Exchange Act to pure omissions. Unanimous (Sotomayor, J.).
4. McIntosh v. United States, 601 U.S. 330 (Apr. 17, 2024): Interpretation of rule regarding timing of order for criminal forfeiture under the Hobbs Act. Unanimous (Sotomayor, J.).
5. Smith v. Spizzirri, 601 U.S. 472 (May 16, 2024): Whether a stay is mandatory under the Federal Arbitration Act. Unanimous (Sotomayor, J.).
6. Harrow v. Department of Defense, 601 U.S. 480 (May 16, 2024): Whether 60 day deadline to appeal the decision of Merit Systems Protection Board's ruling is jurisdictional or can be subject to waiver, equitable tolling, or forfeiture. Unanimous (Kagan, J.).
7. Coinbase, Inc. v. Suski, 602 U.S. 143 (2024): Application of Fed. Arbitration Act to conflicting contracts between the parties. Unanimous (Jackson, J.) (Gorsuch, J. concurring).
8. Cantero v. Bank of America, 602 U.S. 205 (2024): Interpretation of Dodd-Frank Act standard for determining whether state banking laws are preempted by federal statutes. Unanimous (Kavanaugh, J.).
9. Connelly v. United States, 602 U.S. 257 (2024): Estate tax case involving valuation of redemption of shares purchased by a life insurance policy of a member of a closely-held corporation. Unanimous (Thomas, J.).
10. Truck Insurance Exchange v. Kaiser Gypsum Co., 602 U.S. 268 (2024): Statutory interpretation of bankruptcy act. Whether insurance company responsible for bankruptcy claims is a party in interest who can be heard on any issue. Unanimous (Sotomayor, J.) (Alito, J. was recused).
11. Muldrow v. City of St. Louis, 601 U.S. 346 (2024): Interpretation of Title VII employment discrimination case. Unanimous in judgment 6-3 (Kagan, J.) (Thomas, Alito, and Kavanaugh, JJ., concurring in judgment).

[1] This summary indicates when justices concurred or dissented separately or joined the concurrence or dissent of a colleague. Where not specifically indicated, other justices joined the majority opinion without a separate concurrence.

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12. Starbucks Corp. v. McKinney, 602 U.S. 229 (2024): Courts must apply traditional 4-prong test for equitable relief when deciding whether to grant a preliminary injunction under the NLRA and not the more relaxed “reasonable cause” standard used by the 6th Circuit. 8-1 (Thomas, J.) (Jackson, J., concurring, in part, dissenting, in part, and concurring in judgment).
13. Rudisill v. McDonough, 601 U.S. 294 (2024): Interpretation of GI bill: 7-2 (Jackson, J.) (Barrett and Kavanaugh, JJ., concurring) and (Thomas and Alito, JJ., dissenting).
14. Garland v. Cargill, 602 U.S. 406 (2024): Bumpstock is not a machine gun within the meaning of National Firearms Act of 1934. 6-3 (Thomas, J.) (Kagan, Sotomayor, and Jackson, JJ., dissenting).
15. Synder v. United States, 603 U.S. 1 (2024): Federal statute prohibits state and local officials from accepting brides but not gratuities. 6-3 (Kavanaugh, J.) (Gorsuch, J., concurring) and (Jackson, Sotomayor, and Kagan, JJ., dissenting).
16. Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024): Case involved whether federal statute required fishing companies to pay for observers on fishing vessels. Lower court ruled that the federal statute was ambiguous so it deferred to the NMFS interpretation of the law under *Chevron* doctrine. Overruling *Chevron.* 6-3 (Roberts, CJ) (Thomas and Gorsuch, JJ., concurring) and (Kagan, Sotomayor, and Jackson, JJ., dissenting).
17. Corner Post, Inc. v. Board of Governors of the Federal Reserve System, 603 U.S. 799 (2024): Merchant could pursue challenge to Federal Reserve rule regarding fees charged by credit cards more than 6 years after the rule went into effect. The statute of limitations for challenges to agency action under the Administrative Procedure Act is 6 years after the regulated party is injured by a “final agency action” not 6 years after the rule became final. 6-3 (Barrett, J.) (Kavanaugh, J. concurring) and (Jackson, Sotomayor, and Kagan, JJ., dissenting).
18. Pulsifer v. United States, 601 U.S. 124 (2024): Whether the defendant can take advantage of a safety value to avoid mandatory minimum sentence for possession of 50 grams of meth. Question of statutory interpretation regarding qualifications of safety valve exception to mandatory minimum sentence. The defendant must meet all three requirements to qualify for the exception. 6-3 (Kagan, J.) (Gorsuch, Jackson and Sotomayor, JJ., dissenting).
19. Wilkinson v. Garland, 601 U.S. 209 (2024): Whether an immigration law judge’s decision regarding cancellation of removal is reviewable by a court: 6-3. (Sotomayor, J.) (Jackson, J., concurring in judgment) and (Alito, Roberts, and Thomas, JJ., dissenting).
20. Warner Chappell Music Inc. v. Nealy, 601 U.S. 366 (2024): Statute of limitations for Copyright Act violation. 6-3 (Kagan, J.) (Gorsuch, Thomas, and Alito, JJ., dissenting).
21. Brown v. United States, 602 U.S. 101 (2024): When state convictions qualify as a “serious drug offense” to qualify as a predicate offense under the Armed Career Criminal Act. 6-3 (Alito, J.) (Jackson, Kagan, and Gorsuch, JJ., dissenting).

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22. Fischer v. United States, 603 U.S. 480 (2024): January 6 rioter challenged his conviction for obstructing the counting of electors under section 1512(c)(2) of the Sarbanes-Oxley Act. The Court interpreted the statute to only apply to efforts to impair the availability or integrity of evidence in official proceedings, not to obstructing the proceedings themselves. 6-3 (Robert, CJ.) (Jackson, J., concurring) and (Barrett, Kagan, and Sotomayor, JJ., dissenting).
23. Becerra v. San Carlos Apache Tribe, 602 U.S. 222 (2024): Complicated statutory interpretation case involving the Indian Self-Determination and Education Assistance Act. 5-4 (Roberts, CJ.) (Kavanaugh, Thomas, Alito, and Barrett, JJ., dissenting).
24. Campos-Chaves v. Garland, 602 U.S. 447 (2024): Whether respondents received proper notice they were inadmissible or deportable within the meaning of the Immigration and Nationalization Act. 5-4 (Alito, J.) (Jackson, Kagan, Sotomayor, and Gorsuch, JJ., dissenting).
25. Harrington v. Purdue Pharma, LP, 603 U.S. 204 (2024): Bankruptcy court approved a plan to enjoin opioid lawsuits against the Sackler family individually if they returned $4.3 billion to the Purdue Pharma bankruptcy estate. Bankruptcy Code does not allow court to bar claims by non-parties to the bankruptcy case. 5-4 (Gorsuch, J.) (Kavanaugh, Roberts, Sotomayor, and Kagan, JJ., dissenting).
26. Bouarfa v. Mayorkas, 604 U.S. 6 (2024): "This case involves the Secretary of Homeland Security's decision to revoke initial approval of a visa petition that Amina Bouarfa, a U. S. citizen, filed on behalf of her noncitizen spouse. The Secretary points to 8 U.S.C. § 1155 as the source of the agency's revocation authority; that provision states that the Secretary "may, at any time," revoke approval of a visa petition "for what he deems to be good and sufficient cause." The issue we address today is whether revocation under § 1155 qualifies as a decision "in the discretion of" the Secretary such that it falls within the purview of a separate statute—§ 1252(a)(2)(B)(ii)—that strips federal courts of jurisdiction to review certain discretionary actions. We hold that it does. Unanimous. (Jackson, J.) Addressing the following statutory interpretation tools:
    - Plain text
    - Statutory context
    - Agency practice
    - Case law precedent
    - Presumption in favor of judicial review
27. E.M.D. Sales, Inc. v. Carrera, 604 U.S. ___, 145 S. Ct. 34 (2025): "The Fair Labor Standards Act of 1938 requires employers to pay their employees a minimum wage and overtime compensation. But the Act also exempts many categories of employees from the minimum-wage and overtime-compensation requirements. The dispute here concerns the standard of proof that an employer must satisfy to show that an employee is exempt. The usual standard of proof in civil litigation is preponderance of the evidence. A more demanding standard, such as clear and convincing evidence, applies only when a statute or the Constitution requires a heightened standard or in certain other rare cases, such as when the government seeks to take unusual coercive action—action more dramatic than entering an award of money damages or other conventional

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relief—against an individual. None of those exceptions applies to this case. Therefore, the preponderance-of-the-evidence standard governs when an employer attempts to demonstrate that an employee is exempt. (Quotation omitted). Unanimous (Kavanaugh, J.) (Gorsuch and Thomas, JJ., concurring). Addressing the following statutory interpretation tools:

- When statutory is silent, applying presumption in favor of default burden of proof.
- Rejecting policy arguments

28. Royal Canin U. S. A., Inc. v. Wullschleger, 604 U.S. 22 (2025): "If a complaint filed in state court asserts federal-law claims, the defendant may remove the case to federal court. See 28 U. S. C. § 1441(a). And if the complaint also asserts state-law claims arising out of the same facts, the federal court may adjudicate those claims too, in the exercise of what is called supplemental jurisdiction. See § 1367. This case presents a further question: What happens if, after removal, the plaintiff amends her complaint to delete all the federal-law claims, leaving nothing but state-law claims behind? May the federal court still adjudicate the now purely state-law suit? We hold that it may not. When an amendment excises the federal-law claims that enabled removal, the federal court loses its supplemental jurisdiction over the related state-law claims. The case must therefore return to state court." Unanimous (Kagan, J.). Addressing the following statutory interpretation tools:
    - Plain language
    - Statutory context
    - Congressional intent evidenced in other statutes
    - Judicially created procedural rules
29. Republic of Hungary v. Simon, No. 23-867, 604 U.S. ___, 2025 WL 567336, at *3 (U.S. Feb. 21, 2025): "To sue a foreign sovereign in the courts of the United States, plaintiffs must follow the strictures of the Foreign Sovereign Immunities Act of 1976 (FSIA). In general, the FSIA provides that foreign sovereigns and their agencies cannot be haled into this Nation's courts at all, but the Act sets forth exceptions to that general immunity. One such exception is the expropriation exception. Plaintiffs may sue foreign sovereigns who expropriate their property, provided certain conditions are satisfied, including that the property (or any property "exchanged for" the expropriated property) has a commercial nexus to the United States. 28 U.S.C. § 1605(a)(3). . . . The issue presented in this case is whether alleging commingling of funds alone can satisfy the commercial nexus requirement of the expropriation exception of the FSIA. The Court holds that it cannot." Unanimous (Sotomayor, J.). Addressing the following statutory interpretation tools:
    - Plain language
    - Statutory structure
    - Statutory history
    - Statutory purpose as expressed in language of the statute and legislative history
    - Policy arguments

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30. Wisconsin Bell, Inc. v. United States ex rel. Heath, No. 23-1127, 604 U.S. ___, 2025 WL 567337, at *2 (U.S. Feb. 21, 2025): "The E-Rate (short for Education-Rate) program subsidizes internet and other telecommunications services for schools and libraries across the United States. Established under the Telecommunications Act of 1996, 110 Stat. 56, the program disburses funds—collected from telecommunications carriers and managed by a private corporation—to cover a substantial percentage of a school's internet costs. The funds are payable, under Federal Communications Commission (FCC) regulations, to either a carrier or a school upon receipt of a reimbursement request. This case asks us to decide whether such a request can count as a 'claim' under the False Claims Act (FCA or Act), 31 U.S.C. §§ 3729–3733." Unanimous (Kagan, J.) (Thomas, Kavanaugh and Alito, JJ., concurring). Addressing the following statutory interpretation tools:
    - Plain language using dictionary definitions
31. Dewberry Group, Inc. v. Dewberry Engineers Inc., 604 U.S. ___, 2025 WL 608108 (U.S. Feb. 26, 2025): "A prevailing plaintiff in a trademark infringement suit is often entitled to an award of the "defendant's profits." 15 U.S.C. § 1117(a). In making such an award, the District Court in this case totaled the profits of the named corporate defendant with those of separately incorporated affiliates not parties to the suit. We hold today that the court erred in doing so. Under the pertinent statutory provision, the court could award only profits properly ascribable to the defendant itself." Unanimous (Kagan, J.) (Sotomayor, J., concurring).
    - Relying on Black's Law Dictionary for definition of a "defendant".
    - Considering whether common law or corporate law justify a departure from dictionary definition.
32. Waetzig v. Halliburton Energy Servs., Inc., No. 23-971, 2025 WL 608110, at *4 (U.S. Feb. 26, 2025) "Rule 60(b) permits a court to 'relieve a party ... from a final judgment, order, or proceeding.' We hold that a Rule 41(a) voluntary dismissal without prejudice qualifies as a 'final ... proceeding' under Rule 60(b). Text, context, and history support that interpretation." Unanimous (Alito, J.).

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OVERVIEW N.H. SUPREME COURT STATUTORY INTERPRETATION CASES JANUARY 1, 2024 THROUGH FEB. 24, 2025

2025 Statutory Interpretation Cases
6 Cases (5 Published Opinions And 1 Non-Precedential Order)

1. Appeal of Est. of Menke, No. 2023-0323, 2025 N.H. 10, 2025 WL 541956, at *2 (N.H. Feb. 19, 2025) (Bassett, J.): "The question before us is whether the CAB erred when it construed RSA 281-A:21-a to require that every dependent of an employee suffering a work-related fatality must request allocation of death benefits within three years of the employee's injury, regardless of whether a timely workers' compensation claim for death benefits has previously been filed."
   - **Considering plain language of statute: use of singular versus plural**
   - **Interpreting statute to give the language "the broadest reasonable effect to its remedial purpose"**
   - **Determining whether interpretation of statute would render purpose of statute of limitations meaningless**
2. State v. Jeffrey Norman Huckins, Jr., No. 2024-500, 2025 N.H. 9 (Feb. 12, 2025) (*per curiam*) interpreting RSA 597:7-a, III(a) [bail revocation statute] to determine whether the trial court must find by clear and convincing evidence that the defendant's conduct "indicat[es] a potential danger to another" before revoking the defendant's bail based on a violation of "any other condition of release."
   - **Using the principle of the last dependent clause**.
3. State of New Hampshire v. Joseph Hoell, Jr., No. 2023-0345, 2025 WL 412019, at *1 (N.H. Feb. 5, 2025) (non-precedential order) interpreting RSA 265:79-c (2024), "Use of Mobile Electronic Devices While Driving; Prohibition" to determine whether a driver who was holding a cellphone in his hand but using the Bluetooth feature through the car radio violated the statute.
   - **Use if Oxford Dictionary for ordinary meaning of words in statute.**
   - **Considering statutory context and structure.**
4. Matter of Penichet, No. 2023-0678, 2025 N.H. 8, 2025 WL 439989, at *2 (N.H. Feb. 7, 2025) (Countway, J.) interpreting Uniform Interstate Family Support Act (UIFSA), RSA ch. 546-B (2021), to determine whether N.H. family court should have registered a Mexico parenting order when the father claimed the Mexico court did not have personal jurisdiction over him.
   - **Relying the official comments to UIFSA,**
   - **later amendments to UIFSA when they provide insight into the intended meaning of New Hampshire's existing statute,**
   - **the interpretation of UIFSA by other jurisdictions**

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- **“When interpreting a uniform law, such as UIFSA, the intention of the drafters of a uniform act becomes the legislative intent upon enactment.”**

5. In re M.T., No. 2024-0092, 2025 N.H. 4, 2025 WL 258843 (N.H. Jan. 22, 2025) (Donovan, J.): In its order, the trial court stated that detention at SYSC is “the only option available to the Court” because New Hampshire “lacks alternative residential options for juveniles.” M.T. argues that the trial court cannot consider unavailability in its placement decision because RSA 169-B:19 is silent as to whether availability may be considered.
   - **Interpreting the statute, the court held: “Although RSA 169-B:19, I(j) does not specify availability as a consideration, it mandates that the trial court determine the ‘least restrictive’ and ‘most appropriate’ placement. RSA 169-B:19, I. That mandate vests the trial court with discretion to determine the ‘least restrictive’ and ‘most appropriate’ placement. See id. In exercising that discretion, the court could sustainably determine that the ‘most appropriate’ placement for a minor is one that is available. See id.”**
6. Att'y Gen. v. Hood, No. 2023-0663, 2025 N.H. 3, 2025 WL 63272 (N.H. Jan. 10, 2025) (*per curiam*): “[T]he parties disagree over the proper definition and scope of the term “trespass on property” as used in the Act. . . . This is our first occasion to address the scope and framework of the [N.H. Civil Rights] Act, which authorizes civil enforcement by the Attorney General, provides for injunctive relief, see RSA 354-B:2, :3, and supplements existing criminal statutes, see, e.g., RSA 631:4 (2016) (criminal threatening); RSA 635:2 (Supp. 2023) (criminal trespass); RSA 651:6, I(f) (Supp. 2023) (hate crimes sentencing enhancement).”
   - **Case recognizes that a court may interpret the statute to avoid unconstitutionality by requiring the State to prove the defendant “knowingly” trespassed on government property.**
   - **Considering text and structure of statute.**

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2024 Statutory Interpretation Cases
28 Cases (24 Published Opinions And 4 Non-Precedential Orders)

2024 published opinions:

1. Appeal of Port City Air Leasing, Inc., No. 2023-0278, 2025 N.H. 71, 2024 WL 5205318, at *2 (N.H. Dec. 24, 2024) (Bassett, J.): interpreting "landowner" for purposes of appealing a wetland permit decision under RSA 482-A:9 and -A:10 to include only those leaseholds that are the equivalent of a fee interest in land.
   - **Use of Merriam-Webster Dictionary (rather than Oxford English Dictionary) together with prior case law precedent for meaning of "landowner."**
2. Petition of Mason, No. 2023-0488, 2024 N.H. 67, 2024 WL 5161733, at *1 (N.H. Dec. 19, 2024) (Donovan, J.): We conclude that all petitioners had a right to appeal pursuant to New Hampshire Administrative Rule, He-M 503.07 (effective July 25, 2015; amended December 29, 2023) (Rule 503.07), but that RSA chapter 171-A prohibits BDS from using state funds to pay for services that do not comport with the federal Settings Rule.
   - **Use of Oxford English Dictionary for meaning of "in accordance with."**
   - **"Other principles of statutory construction support our conclusion. For example, we have relied on legislative preambles and purpose clauses as indicators of the meaning of a statute."**
   - **"The broad statutory purpose of RSA chapter 171-A, however, does not override the specific language chosen by the legislature that prohibits the use of state funds for services that do not comply with the Settings Rule."**
3. In re Estate of Pelton, No. 2023-0606, 2024 N.H. 69, 2024 WL 5161729, at *1 (N.H. Dec. 19, 2024) (*per curiam*): interpreting RSA 560:18 and :19 regarding whether surviving spouse is entitled to inherit by intestacy when the surviving spouse was justifiably living apart from the deceased and engaged in adultery.
   - **Relying on prior case law for meaning of statute which required both conditions to be met at the time of death.**
4. State v. Clark, No. 2023-0451, 2024 N.H. 64, 2024 WL 4758038, at *2 (N.H. Nov. 13, 2024) (Bassett, J.): The defendant argues that both misdemeanor and felony violations of the Wiretapping and Eavesdropping Law require suppression under RSA 570-A:6 and, therefore, that the trial court erred when it failed to suppress the recording at issue in this case.
   - **Considering statutory structure to conclude only felony-level violations of wiretap statute requires suppression of evidence.**

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5. Rod v. Town of Peterborough, No. 2023-0538, 2024 N.H. 61, 2024 WL 4575912, at *4 (N.H. Oct. 25, 2024) (MacDonald, CJ): The Club argues that the 2019 zoning ordinance amendment requiring shooting ranges be in an enclosed, indoor facility is unlawful because it is preempted by both RSA 159:26, I, and RSA chapter 159-B. The Club, therefore, asserts that its shooting range "is not subject to zoning regulations." We disagree.
    - **Relying on plain language of both statutes to conclude that neither statute governed local zoning regulations of shooting ranges.**
6. Adams v. Moose Hill Orchards, LLC, No. 2023-0615, 2024 N.H. 58, 2024 WL 4469346, at *1 (N.H. Oct. 11, 2024) (MacDonald, CJ): The defendant moved to dismiss, arguing in part that, as a landowner who makes its land available for recreational use at no charge, it is entitled to immunity under RSA 508:14, I. [The plaintiffs] assert that recreational immunity does not apply because they were on the defendant's property "for a purpose related to" the defendant's business and for which the defendant "customarily charges."
    - **Applying plain meaning of statutory language to conclude that use of the defendant's sledding hill was the "recreational use" of the land that the defendant provided "without charge."**
7. State v. Fortune, No. 2022-0397, 2024 N.H. 52, 2024 WL 4127812, at *1 (N.H. Sept. 10, 2024) (MacDonald, CJ): The defendant sold drugs to the victim in Belknap County but the victim consumed the drugs and died in Sullivan County. The defendant was charged with the crime of Selling Drugs with Resulting Death in Sullivan County. On appeal, the defendant argues, in part, that "RSA 602:1 permits venue only in places where the defendant acted" and because the defendant "committed no act in Sullivan County, venue there was improper." The State argues that trial may be had "where the victim died."
    - **Relying on plain meaning to conclude that statutory language establishing venue in the county where the offense "was committed." Since defendant committed all of his acts in Belknap County venue was not proper in Sullivan County.**
8. Keller Tr. of the Mika Tr. v. Dwyer, No. 2023-0142, 2024 N.H. 51, 2024 WL 4127085, at *2 (N.H. Sept. 10, 2024) (Bassett, J.): The plaintiffs argue that Harbour Hill's declaration of condominium is defective under the Condominium Act, and, therefore, the purported assignment, and the reassignment, of Parking Space 2 were invalid. The defendants counter that, although the declaration of condominium is facially deficient, when all the condominium instruments are read together, the provisions of the Condominium Act are satisfied. . . . Resolving this issue requires that we interpret the Condominium Act and Harbour Hill's condominium instruments. Both present questions of law that we review de novo.
    - **Applying plain language of statute to condominium documents.**

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9. Doe v. New Hampshire Att'y Gen., 176 N.H. 806, 813, 324 A.3d 928, 936 (2024), as modified (Sept. 30, 2024) (Donovan, J. with Countway and Bassett, JJ., concurring and MacDonald, CJ, dissenting): The parties' arguments turn on the standard by which conduct is deemed "potentially exculpatory," which, in turn, determines whether an officer's placement on the EES is appropriate. See RSA 105:13-d, I. Because determining whether the plaintiffs' conduct is "potentially exculpatory" requires interpreting RSA 105:13-d, our review is de novo.
   - **Majority holds: "considerations made to determine the admissibility of evidence, such as the age of the conduct and its materiality to an officer's general credibility, should factor into the determination of whether information in an officer's personnel file warrants his or her inclusion on the EES. If there is no reasonably foreseeable case in which "potentially exculpatory evidence" relating to an officer's conduct would be admissible, due to the passage of a significant length of time or some other factor weighing on the conduct's relevance, an officer's inclusion on the EES would be inappropriate."**
   - **"Therefore, in any particular case, factors such as the nature and age of the conduct are relevant for the purpose of determining whether information in a personnel file pertaining to an officer is exculpatory and thus subject to Brady disclosures…. Similarly, such considerations should factor into the determination of whether specific conduct is potentially exculpatory for the purposes of RSA 105:13-d."**
   - **Dissent disagrees with narrowing of the term "potentially exculpatory."**
   - **Dissent states: "The majority's gloss on 'potentially exculpatory' raises multiple concerns. First, the breadth of the statutory definition as written reflects a policy determination by the legislature. Such a determination is reserved for the legislature…. The majority undermines that policy determination by adopting a narrower standard for inclusion. Second, it is not at all apparent why, for example, the 'age of the conduct' or the 'passage of a significant length of time' may render evidence not potentially exculpatory. I am unaware of any legal basis to impose an expiration date on the potentially exculpatory fact that, for instance, an officer lied. Third, the majority directs a trial court interpreting RSA 105:13-d, I, to assess 'whether there is a reasonably foreseeable case in which the information would be admissible.' This approach invites boundless speculation about hypothetical permutations of facts that may exist under any case brought under any of the crimes defined by the**

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Criminal Code. That effectively renders the analysis one of determining whether the evidence is actually admissible in a hypothetical case under hypothetical facts, as opposed to whether the evidence is potentially exculpatory with admissibility to be determined in an actual case. I respectfully suggest that the analysis the majority vests in the trial court is not only contrary to the statute, but will prove to be unworkable. Finally, the majority's narrowing of 'potentially exculpatory' evidence might lead to confusion over a prosecutor's constitutional obligation to disclose. It should not. A prosecutor must disclose 'evidence favorable to an accused.'"

10. Matter of Landgraf, 176 N.H. 724, 727, 324 A.3d 941, 944 (2024) (Bassett, J.) Addressing the question of whether "distributions intended to be used to pay the husband's tax liability" were "dividends" and whether "distributions the husband received to cover the cost of the succession insurance premiums" were "bonuses" within the meaning of RSA 458-C:2, IV. Then considering whether those sources of income were "available" to the father. Finally, the Court addressed how to calculate "net income" within the meaning of the statute.
    - **Relying on Black's Law Dictionary for the meaning of "dividend."**
    - **Relying on DHHS Child Support Guidelines for meaning of "net income."**
11. State v. Sargent, 176 N.H. 713, 715, 324 A.3d 412, 413 (2024) (Donovan, J. with Countway and Bassett, JJ., concurring and MacDonald, CJ, dissenting): We conclude that the trial court erred in broadly interpreting "to benefit himself" as used in RSA 643:1 [the crime of Official Oppression] and that the evidence is insufficient to establish that the defendant sought "to benefit himself," as correctly defined.
    - **Majority relies on Webster's Third New International Dictionary to define "benefit.**
    - **Holding that to "benefit" is broader than the meaning of "substantial benefit" in the extortion statute but imposing the requirement that the State prove the defendant acted "with a purpose to obtain a specific advantage, or to advance or improve his or her situation or that of another."**
    - **Dissent disagrees with the limitation imposed by the majority on the meaning of "to benefit." Reasoning that the plain language of the statute combined with the dictionary definition of "to benefit" creates broad criminal liability. Criticizing the majority's narrowing as rewriting the statute inconsistent with legislative intent.**
12. Matter of Sutton, 176 N.H. 709, 710, 324 A.3d 359, 361 (2024) (Hantz Marconi, J.): Resolving this dispute requires that we interpret the statute to determine the

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appropriate burden of proof required when a party seeks to modify a parenting schedule pursuant to RSA 461-A:11, I(c). Statute imposes "clear and convincing evidence" burden on the ultimate finding that the child's present environment is detrimental to the child's well-being and advantages to modifying the parenting plan outweigh the harm. The statute, however, is silent on the burden of proof to establish the predicate facts.

- **When a statute is silent on the burden of proof, the presumption is that the ordinary preponderance of the evidence standard applies.**
- **Relying on cases from Massachusetts and Tennessee with similar statutes.**

13. Petition of City of Manchester, 176 N.H. 697, 700, 324 A.3d 344, 347 (2024), as modified (Sept. 6, 2024) (Bassett, J.): The petitioners, eight New Hampshire employers, seek a writ of mandamus to compel the New Hampshire Department of Labor (DOL) to hold department-level hearings to allow the employers to challenge the denial of their applications for reimbursement from the Special Fund for Second Injuries (Fund). . . . Because resolution of this issue requires us to determine whether the procedures set forth in RSA 281-A:43 apply when an employer's request for reimbursement pursuant to RSA 281-A:54 is denied, the issue is one of statutory construction, and our review is de novo.
    - **Relying on purpose of the statutory scheme to hold that employers are entitled to a DOL-level hearing whether there is a dispute about whether the employer is entitled reimbursement from a special fund created "to encourage employers to hire or retain employees with permanent physical or mental impairments by reducing the employer's liability for workers' compensation claims."**
14. Union Leader Corp. v. New Hampshire Dep't of Safety, 176 N.H. 672, 675, 324 A.3d 399, 401 (2024) (Countway, J.): Because the trial court based its dismissal of this action solely on its interpretation of RSA 169-B:35 [the confidentiality provision of the juvenile delinquency statute] and RSA 91-A:4, I [the Right to Know ("RTK") Law], our review is de novo.
    - **When interpreting the RTK law Court reads statutory language "with a view to providing the utmost information in order to best effectuate the law's statutory and constitutional objectives."**
    - **To that end, the Court "broadly construe[s] provisions favoring disclosure and interpret[s] the exemptions restrictively."**
    - **Construing the confidential provisions of the juvenile delinquency statute with the RTK Law, the Court held that to the extent "court records" in RSA 169-B:35 "encompasses records generated and possessed by governmental entities other than the courts, it includes only**

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information whose disclosure would run counter to the purpose of rehabilitating delinquent minors."

15. Matter of Carter, 176 N.H. 635, 637, 324 A.3d 340, 342 (2024) (Hantz Marconi, J.) We first address the mother's argument that the trial court erred when it determined that the mother failed to meet her burden under RSA 461-A:11, I(c) regarding her request for expanded parenting time. Specifically, the mother argues that the trial court improperly narrowed its "present environment" inquiry to the children's routine with the father and failed to consider other factors, including the infrequency of their contact with their mother.
    - **Relying on the Oxford English Dictionary for meaning of "present" and "environment."**
    - **Concluding, "This broad definition comports with the policy underlying the statutory scheme" as evidenced in various other provisions of RSA 461-A.**
16. State v. Doyle, 176 N.H. 594, 597, 321 A.3d 274, 277 (2024) (MacDonald, CJ): On appeal, the defendant challenges the trial court's determination that RSA 329:26 and RSA 330-A:32 [statutes regarding patient-counselor privilege] allow for the transfer of his medical and mental health records relied upon by the OFE to the State's designated evaluator under RSA 135:17-a, V [competency statute].
    - **Relying on purpose of privileges to encourage full disclosure to doctors and plain language of RSA 329:26 and RSA 330-A:32 which creates an exemption for the privilege to civil commitment proceedings under RSA 135-C:34 but not for the dangerousness assessment under RSA 135:17-a, V.**
17. Appeal of Hoekstra, 176 N.H. 575, 576, 320 A.3d 1087, 1088 (2024) (per curiam) The petitioners, Elizabeth Hoekstra and Peter Hoekstra, appeal an order of the Housing Appeals Board (HAB) upholding a decision of the Zoning Board of Adjustment (ZBA) for the respondent, the Town of Sunapee (Town), that the petitioners' rental of their travel trailer for short-term occupancy is not permitted under the Town's zoning ordinance. . . . We use the traditional rules of statutory construction when interpreting zoning ordinances.
    - **Applying plain meaning of ordinances to conclude that travel trailers can be used as short term rentals.**
    - **Refusing to consider policy arguments when language of ordinance is unambiguous.**
18. Cole v. Town of Conway, 176 N.H. 560, 562, 320 A.3d 604, 607–08 (2024) (Hantz Marconi, J.): In its order, the court concluded that the plaintiff had failed to plead, with sufficient particularity, that the defendant had received notice of the holes in the sidewalk, or that an intentional act by a municipal official had caused the sidewalk's condition. It further concluded that Primex's pooled risk

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management program (PRMP) established under RSA chapter 5-B (2020 & Supp. 2022) in which the defendant was enrolled did not constitute an insurance policy within the meaning of RSA 507-B:7-a. Accordingly, the trial court concluded that the defendant was entitled to statutory immunity. . . . [T]he plaintiff asserts that, even if Primex is a PRMP, as opposed to a traditional insurance company, it still provides insurance within the meaning of RSA 507-B:7-a.

- **Relying on earlier federal cases which interpreted statutes to hold that PRMP's like Primex do not provide insurance.**

19. Com. Park Condo. Ass'n v. Little Deer Valley, LLC, 176 N.H. 517, 522, 320 A.3d 638, 642 (2024) (Donovan, J.): On appeal, the parties dispute the correct interpretation of RSA 356-B:20 and RSA 356-B:23 and the requirements necessary to convert convertible land.
    - **Holding, "that the Act allows a developer to convert convertible land without substantially completing physical construction" based on statutory purpose as evidenced by various provisions of the statute read as a whole.**
20. Newfound Serenity, LLC v. Town of Hebron, 176 N.H. 495, 497, 320 A.3d 631, 634 (2024) (MacDonald, CJ): Resolving the plaintiff's appeal requires that we engage in interpretation of statutes governing appeals from planning board decisions.
    - **"[B]y their plain terms, the statutes [RSA 577:15, I, and RSA 577:15, I-a(a)] require that issues arising from a planning board decision that are appealable to the ZBA must be resolved by the ZBA before an appeal can be taken to superior court or the HAB [Housing Appeals Board]."**
    - **Dismissal of a premature HAB appeal did not defeat jurisdiction in superior court because the statutory "objective is plain: exhaustion of ZBA remedies avoids serial litigation and potentially inconsistent outcomes arising from a single site plan application."**
21. Hardy v. Chester Arms, LLC, 176 N.H. 421, 429, 320 A.3d 6, 16 (2024) (Bassett, J.): Analyzing whether RSA 508:21 created immunity for gun dealers from negligence lawsuits.
    - **"Because the statute is unambiguous, we need not examine its legislative history."**
    - **But relying on legislative history when evaluating constitutionality of classifications against an Equal Protection claim. "To discern the legislative purpose for creating a classification, we may look to legislative history." Id. at 433, 320 A.3d at 19.**
22. In re Guardianship of J.H., 176 N.H. 410, 411, 320 A.3d 35, 37 (2024) (Hantz Marconi, J.): In an October 2022 order, the court ordered that the guardian and her husband "are enjoined from testifying against father's release at any parole or

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similar hearing without first seeking leave of this court." The guardian asserts that the court's order reaches beyond the authority conferred by RSA chapter 463 and that "the court's authority is limited to issuing orders relative to the guardianship of the minor." In response, the father asserts that RSA 463:12, IV (2018) grants the circuit court the authority to impose this restriction on the guardian. He contends that because of the acrimony between the guardian and the father, it is in J.H.'s best interests for the court to prevent the guardian from giving testimony to the parole board motivated by an intent to prevent contact between the father and J.H.

- **"Relevant here, the statute [RSA 463:12, IV] also includes a catchall provision, which states, in pertinent part: 'The court may limit or restrict the powers of the guardian or impose additional duties if it deems them desirable in the best interests of the minor.'"**
- **"Read in the context of the whole statute, the 'powers' and 'duties' contemplated here relate to the guardian's role as custodian of the minor's affairs and welfare….Restrictions on the guardian's and her spouse's participation in a parole hearing, however, bear no connection to the guardian's management of the minor's affairs."**

23. Matter of Satas, 176 N.H. 415, 419, 319 A.3d 1271, 1273 (2024) (Hantz Marconi, J.): The respondent argues that the petitioner is not a stepparent for purposes of RSA 461-A:6, V because the "statutory references to the rights of non-parents refer to individuals who have a current stepparent relationship."
    - **Noting that the statute uses the present tense to define the rights of a stepparent and relying on Black's Law Dictionary to define "stepparent" to mean the current spouse of the child's mother or father.**
    - **Rejecting application of the canon of statutory construction that the interpretation of a current stepparent would leave to an absurd result because the court's interpretation would not invalidate previously entered visitation orders entered while the stepparent was still married to the child's natural parent.**
24. State v. Shea, 176 N.H. 395, 396, 313 A.3d 803, 804 (2024) (Hantz Marconi, J.): the defendant, Joshua D. Shea, was convicted of criminal threatening with a deadly weapon. On appeal, the defendant argues, inter alia, that the trial court erred when instructing the jury regarding the statutory defense related to the display of a firearm required the jury to consider whether the defendant could safely retreat from the encounter. See RSA 631:4, IV (2016).
    - **Relying on statutory history which previously had codified the duty to retreat when using "deadly force." The self-defense statute was later amended to allow the defendant to use deadly force without**

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retreating in any place he had the right to be. Noting that the legislature addressed the duty to retreat when using "deadly force" it did not impose a duty to retreat when using "non-deadly force," as in the case at bar.

- **Further observing that requiring the defendant to retreat when using "non-deadly" force is inconsistent with the statutory amendment which eliminated the duty to retreat when using "deadly" force.**

2024 Non-precedential orders:

25. Keith v. Keith, No. 2023-0204, 2024 WL 5183704, at *2 (N.H. Dec. 20, 2024) (non-precedential order): interpreting jurisdiction of probate court
26. State v. Flanagan, No. 2023-0333, 2024 WL 5003241, at *2 (N.H. Dec. 6, 2024): The defendant argues that because the protective order that she violated was issued under RSA 633:3-a, III-a, which is not among those listed in RSA 173-B:9, the State did not prove an element of the offense.
27. N.E. v. J.Y., No. 2023-0702, 2024 WL 4133091, at *2 (N.H. Sept. 10, 2024): the plaintiff argues that the trial court erred in denying his petition because the "five distinctly worded and separately sent threatening text messages are sufficient evidence of a 'course of conduct' under RSA 633:3-a, II(a)." The plaintiff maintains that the trial court's finding that the defendant did not engage in a "course of conduct" "conflicts with the plain and ordinary meaning of the words used to define 'course of conduct' under the Stalking statute" and is inconsistent with New Hampshire caselaw.
28. Morris v. Town of Barnstead, No. 2022-0583, 2024 WL 622094, at *4 (N.H. Feb. 14, 2024): The plaintiffs first contend that the trial court erred in determining that Section 8-1 does not apply to ITW's tower, and, more specifically, argue that the trial court erred in: (1) showing deference to the ZBA's interpretation of the BZO; (2) failing to interpret the BZO according to well-settled canons of construction; and (3) declining to consider the merits of the plaintiffs' administrative gloss argument. The plaintiffs further urge us to rule that the ZBA impermissibly applied an administrative gloss.

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2024-2025 N.H. case law

Statutory Interpretation

Judge

N. William Delker

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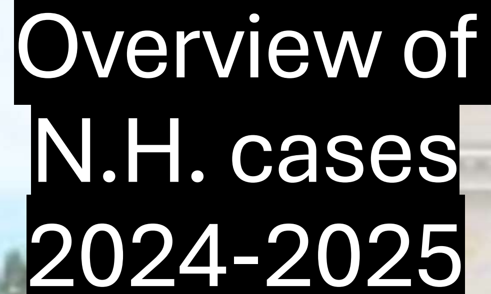

Overview of N.H. cases 2024-2025

2024 Statutory Interpretation Cases

- 24 Published Opinions
- 4 Non-Precedential Orders

2025 Statutory Interpretation Cases

- 5 Published Opinions
- 1 Non-Precedential Order

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Appeal of Estate of Menke,

No. 2023-0323, 2025 N.H. 10, 2025 WL 541956
(N.H. Feb. 19, 2025) (Bassett, J.)

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Appeal of Estate of Menke

"The question before us is whether the CAB erred when it construed RSA 281-A:21-a to require that every dependent of an employee suffering a work-related fatality must request allocation of death benefits within three years of the employee's injury, regardless of whether a timely workers' compensation claim for death benefits has previously been filed."

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Appeal of Estate of Menke

- **Ordinary principles of statutory interpretation:**
  - First look to the language of the statute itself
  - If possible, construe that language according to its plain and ordinary meaning
  - Interpret the statute as written, [do] not consider what the legislature might have said, or add language that the legislature did not see fit to include
  - Construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result
  - Do not consider words and phrases in isolation, but rather within the context of the statute as a whole
  - Discern the legislature's intent in light of the policy or purpose sought to be advanced by the statutory scheme
  - Absent an ambiguity, [do] not look beyond the language of the statute

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Appeal of Estate of Menke

- **In addition to ordinary principles of statutory interpretation the Court applied the following guidelines:**

- We construe the Workers' Compensation Law liberally to give the broadest reasonable effect to its remedial purpose.

- Thus, we resolve all doubts in statutory interpretation in favor of the injured worker.

- Our construction of the Workers' Compensation Law gives the broadest reasonable effect to its remedial purpose — to protect those who were dependent upon an employee's wages that were diminished or lost due to a workplace injury.

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Appeal of Estate of Menke

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QUERY

Consider whether the outcome would be different if these principles did not apply.

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RSA 281-A:21-a

"Compensation for . . . death benefits under this chapter shall be barred unless **a claim** *is filed within 3 years* after the date of injury…."

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Appeal of Estate of Menke

"The fact that the legislature chose to use the singular form of claim in RSA 281-A:21-a demonstrates that filing a single claim within three years satisfies the statute."

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RSA 281-A:21-a

“. . . if the nature of the injury and its possible relationship to the employment are not known to the employee, the time for filing a claim shall not begin to run until the earlier of the following:

. . . .

II. In the event of death, the date **any dependent** knows, or by reasonable diligence should know, of the nature of the injury and its possible relationship to the employee’s employment.”

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Estate of Menke

"The statute of limitations is not triggered when 'the dependent' or 'each dependent' knows of the injury; rather, for purposes of death benefits, the time limitation starts to run when **any one dependent** has knowledge of the injury."

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RSA 281-A:26

"If death results from an injury, weekly compensation shall be paid to **the dependents** of the deceased employee."

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Appeal of Estate of Menke

"[A]s long as a timely claim for workers' compensation death benefits is filed by a dependent, RSA 281-A:26 mandates that death benefits be paid to any of the deceased employee's dependents who request an allocation of the benefits under an open death benefits claim, regardless of whether that request is made within the limitations period."

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Appeal of Estate of Menke

The carrier argued that Beh's interpretation of RSA 281-A:21-a rendered the statute of limitation meaningless and undermined the purpose of providing notice to the carrier of its liability.

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Appeal of Estate of Menke

Purpose of statute of limitations is:

(1) to provide timely notice of liability and

(2) to eliminate stale or fraudulent claims

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Appeal of Estate of Menke

Notice of Liability:

Adding dependents does not increase carrier's exposure. The carrier merely allocates weekly benefits between additional dependents.

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Appeal of Estate of Menke,

Eliminating Stale or Fraudulent Claims:

No risk of stale or fraudulent claims because the determination of whether someone is a dependent is based on records that can easily be verified, like birth certificate, marriage license, or probate court order.

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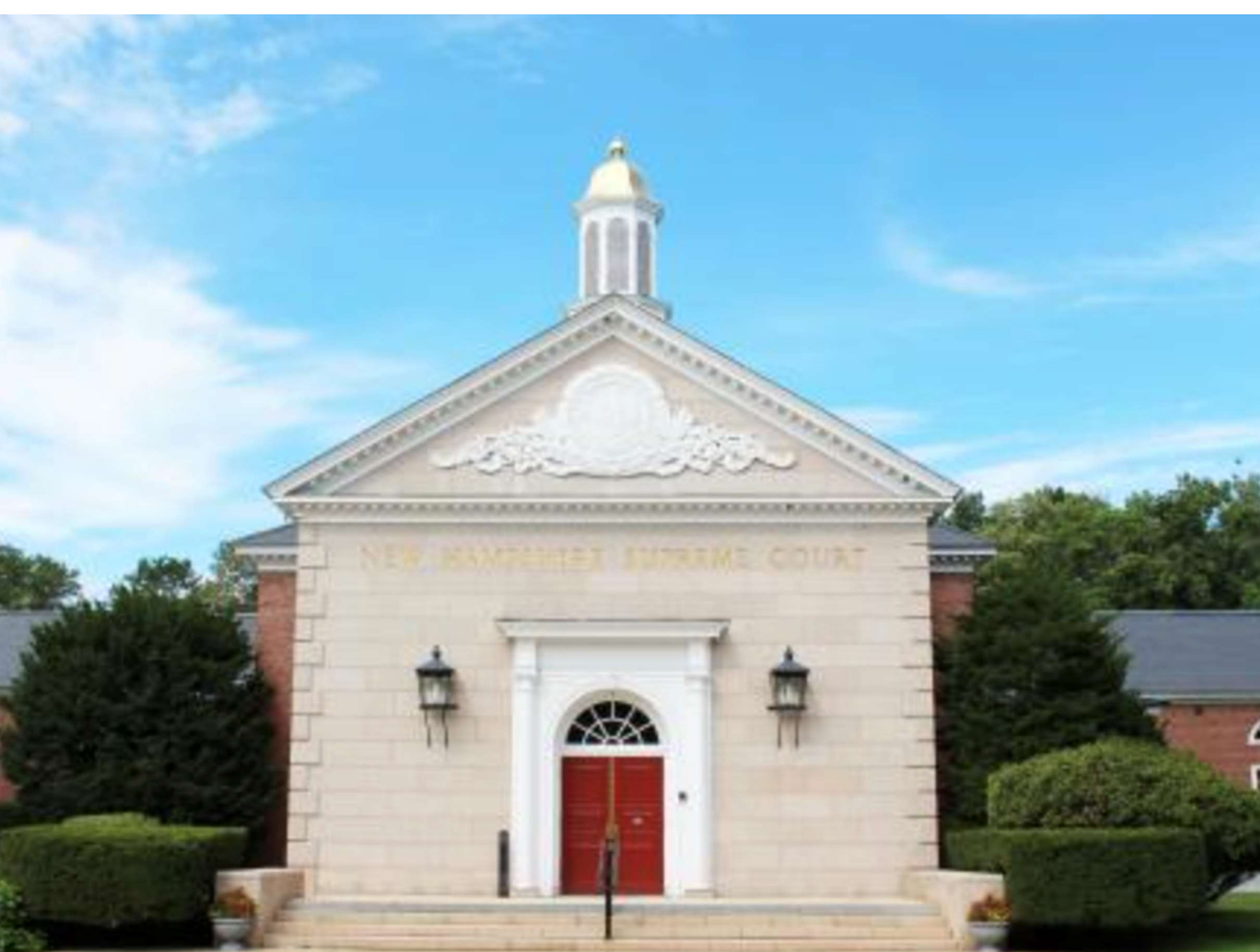

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State v. Jeffrey Norman Huckins, Jr.,

No. 2024-500, 2025 N.H. 9 (Feb. 12, 2025) (*per curiam*)

Whether RSA 597:7-a, III(a)(2) requires the trial court to find by clear and convincing evidence that the defendant's conduct in violation of his bail conditions "indicat[es] a potential danger to another" before revoking the defendant's bail and ordering detention?

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RSA 597:7-a, III(a)

"The court shall enter an order of revocation and detention, if, after hearing, the court:

(a) Finds there is:

. . .

(2) Clear and convincing evidence that the person has violated any other condition of release or has violated a temporary or permanent protective order by conduct indicating a potential danger to another; . . . ."

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RSA 597:7-a, III(a)(2)

Defendant's reading of the statute:

The trial court must find "[c]lear and convincing evidence that the person has violated any other condition of release or has violated a temporary or permanent protective order by conduct indicating a potential danger to another."

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State v. Jeffrey Norman Huckins, Jr.

The Court rejected this reading applying the **last antecedent** rule of statutory construction:

> “[A] modifying clause [in a statute] is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires a different interpretation.”

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RSA 597:7-a, III(a)(2)

The trial court must find "[c]lear and convincing evidence that the person has violated any other condition of release <u>or</u> has violated a temporary or permanent protective order **<u>by conduct indicating a potential danger to another</u>."**

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State v. Jeffrey Norman Huckins, Jr.

"Nothing in either the text of RSA 597:7-a, III or its context indicates that the clause 'by conduct indicating a potential danger to another' was intended to modify the phrase 'has violated any other condition of release.'"

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Matter of Penichet,

No. 2023-0678, 2025 N.H. 8, 2025 WL 439989, at *2 (N.H. Feb. 7, 2025)
(Countway, J.)

- **Interpreting Uniform Interstate Family Support Act (UIFSA), RSA ch. 546-B (2021), to determine whether N.H. family court should have registered a Mexico parenting order when the father claimed the Mexico court did not have personal jurisdiction over him.**

- **UIFSA is a model act adopted by the National Conference of Commissioners on Uniform State Laws at the behest of Congress**.

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Matter of Penichet

- The Court applied the ordinary rules of statutory interpretation to uniform acts, but the Court also relied on:
  - the official comments to UIFSA
  - later amendments to UIFSA when they provide insight into the intended meaning of New Hampshire's existing statute and
  - the interpretation of UIFSA by other jurisdictions
  - "When interpreting a uniform law, such as UIFSA, the intention of the drafters of a uniform act becomes the legislative intent upon enactment."

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RSA 546-B:3, I

Mother's reading of the statute:

- "In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if … [t]here is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction."

- RSA 546-B is silent about when a N.H. court should enforce a foreign support order.

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Matter of Penichet

The Court observed: "The official comment following Section 201 of UIFSA provides insight into the intended meaning of the New Hampshire statute in the circumstances presented by this case."

Quoting commentary to UIFSA:

- "[A] state tribunal may be called upon to determine whether the facts underlying the support order would have provided the issuing foreign tribunal with personal jurisdiction over the respondent under the standards of this section. In effect, the question is whether the foreign tribunal would have been able to exercise jurisdiction in accordance with Section 201."

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Doe v. New Hampshire Att'y Gen. (Activity Logs),

176 N.H. 806, 813, 324 A.3d 928, 936 (2024)
(Donovan, J. with Countway and Bassett, JJ., concurring)
(MacDonald, CJ, dissenting)

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Doe v. New Hampshire Att'y Gen. (Activity Logs)

- RSA 105:13-d provides: “The [DOJ] may voluntarily maintain an [EES]. The [EES] shall consist of a list of all current or former law enforcement officers whose personnel information contain potentially exculpatory evidence. Subject to the provisions of this section, the [EES] may be maintained by the [DOJ] and shall be a public record subject to RSA 91-A.” (Emphasis added).

- The parties’ arguments turned on the standard by which conduct is deemed “potentially exculpatory,” which, in turn, determines whether an officer’s placement on the EES is appropriate.

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Doe v. New Hampshire Att'y Gen. (Activity Logs)

Majority Opinion

- Majority relied on Black's Law Dictionary to define "potential" as "[c]apable of coming into being; possible if the necessary conditions exist."

- Relied on case law to define the prosecutor's obligation to disclose exculpatory evidence.

- The Court defined "potentially exculpatory evidence" "as evidence, including impeachment evidence, that is reasonably capable of being material to guilt or to punishment."

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Doe v. New Hampshire Att'y Gen. (Activity Logs)

Majority Opinion

- “[C]onsiderations made to determine the admissibility of evidence, such as the age of the conduct and its materiality to an officer’s general credibility, should factor into the determination of whether information in an officer’s personnel file warrants his or her inclusion on the EES.”
- “If there is no reasonably foreseeable case in which ‘potentially exculpatory evidence’ relating to an officer’s conduct would be admissible, due to the passage of a significant length of time or some other factor weighing on the conduct’s relevance, an officer’s inclusion on the EES would be inappropriate.”
- The majority concluded: “to determine whether the information in the plaintiffs’ personnel files is “potentially exculpatory,” RSA 105:13-d, I, the trial court should consider whether there is a reasonably foreseeable case in which the information would be admissible as exculpatory evidence or could be used to impeach the plaintiffs’ credibility.”

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Doe v. New Hampshire Att'y Gen. (Activity Logs)

Majority Opinion

- Majority reasoned that this interpretation of RSA 105:13-d was designed “to effectuate [the statute’s] overall purpose, which requires a balancing of the competing interests of prosecutors in meeting their [discovery] obligations under Brady v. Maryland and officers in protecting their reputations.”

- Majority criticized the dissent for not taking into account the officer’s reputational interest which is the purpose of allowing the officer to have a hearing to determine whether he or she should be removed from the EES.

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Doe v. New Hampshire Att'y Gen. (Activity Logs)

(MacDonald, CJ, dissenting)

- Disagreed with the majority opinion's narrowing construction of "potentially exculpatory evidence."
- "The majority recites, but then ultimately disregards, the plain meaning of "potential." (defining 'potential' as '[c]apable of coming into being; possible if the necessary conditions exist' (quotation omitted))."
- "To be sure, a faithful application of the statute's language results in a standard for inclusion on the EES that is, without doubt, broad."

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Doe v. New Hampshire Att'y Gen. (Activity Logs)

(MacDonald, CJ, dissenting)

- Dissent identified four concerns with the majority's narrowing of the statutory language:

- "First, the breadth of the statutory definition as written reflects a policy determination by the legislature. Such a determination is reserved for the legislature…. The majority undermines that policy determination by adopting a narrower standard for inclusion."

- "Second, it is not at all apparent why, for example, the 'age of the conduct' or the 'passage of a significant length of time' may render evidence not potentially exculpatory. I am unaware of any legal basis to impose an expiration date on the potentially exculpatory fact that, for instance, an officer lied."

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Doe v. New Hampshire Att'y Gen. (Activity Logs)

(MacDonald, CJ, dissenting)

- "Third, the majority directs a trial court interpreting RSA 105:13-d, I, to assess 'whether there is a reasonably foreseeable case in which the information would be admissible.'"
- "This approach invites boundless speculation about hypothetical permutations of facts that may exist under any case brought under any of the crimes defined by the Criminal Code."
- "That effectively renders the analysis one of determining whether the evidence is actually admissible in a hypothetical case under hypothetical facts, as opposed to whether the evidence is potentially exculpatory with admissibility to be determined in an actual case."
- "I respectfully suggest that the analysis the majority vests in the trial court is not only contrary to the statute, but will prove to be unworkable."

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Doe v. New Hampshire Att'y Gen. (Activity Logs)

(MacDonald, CJ, dissenting)

- "Finally, the majority's narrowing of 'potentially exculpatory' evidence might lead to confusion over a prosecutor's constitutional obligation to disclose. It should not. A prosecutor must disclose 'evidence favorable to an accused.'"

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State v. Sargent,

176 N.H. 713, 715, 324 A.3d 412, 413 (2024)
(Donovan, J. with Countway and Bassett, JJ., concurring)
(MacDonald, CJ, dissenting)

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State v. Sargent,

- **643:1 Official Oppression. –** A public servant . . . is guilty of a misdemeanor if, with a purpose to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

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State v. Sargent,

Majority Opinion

- “We conclude that the trial court erred in broadly interpreting ’to benefit himself’ as used in RSA 643:1 [the crime of Official Oppression] and that the evidence is insufficient to establish that the defendant sought ‘to benefit himself,’ as correctly defined.”

- Majority relied on Webster’s Third New International Dictionary to define “benefit” as “to be useful or profitable to : aid, advance, improve” and “to receive benefit : become protected, aided, or advanced.”

- Holding that to “benefit” is broader than the meaning of “substantial benefit” in the extortion statute.

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State v. Sargent,

Majority Opinion

- "Although we recognize that 'to benefit' is broader than to 'substantially benefit,' there is nevertheless an outer limit to the breadth of what 'to benefit,' as contemplated in RSA 643:1, includes."
- "To conclude otherwise would invite the conclusion that RSA 643:1 criminalizes virtually any empathetic, interpersonal conversation which could be the basis for seeking a momentary personal benefit. Rather, someone acting "with a purpose to benefit himself," RSA 643:1, must seek a specific advantage or gain that is more than a momentary or fleeting personal, emotional, or psychological benefit."
- The Court imposed the requirement that the State prove the defendant acted "with a purpose to obtain a specific advantage, or to advance or improve his or her situation or that of another."

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State v. Sargent,

(MacDonald, CJ, dissenting)

- Disagreed with the limitation imposed by the majority on the meaning of "to benefit."

- Reasoning that the plain language of the statute combined with the dictionary definition of "to benefit" creates broad criminal liability.

- Criticizing the majority's narrowing as rewriting the statute inconsistent with legislative intent.

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State v. Sargent,

(MacDonald, CJ, dissenting)

- "The legislature has defined the 'outer limit' of when conduct done 'with a purpose to benefit himself' is criminalized: if the defendant 'knowingly commits an unauthorized act which purports to be an act of his office' or 'knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.' RSA 643:1. The statute contains no further constraints."

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18 USC §666 prohibits corrupt payments to **local** government officials.. Does it apply to both bribes and gratuities, or only to bribes?

Snyder v. US (SCOTUS 2024)

Only bribes are prohibited; gratuities are not prohibited, for basically 6 reasons.

MAJORITY (Breyer, J.) --

1. **TEXT.** §666 requires a corrupt state of mind, tracking the language of the federal official bribery statute §201(b), suggesting it applies to bribery, but not post-government decision/action gratuity payments as prohibited by §201(c), which applies to gratuities and specifies no "corrupt" mens rea.
2. **STATUTORY HISTORY.** The §201-based distinction above was the result of an amendment that harmonized §666 with the bribery provision applicable to federal officials, adding bribery-oriented mens rea language. Interpreting it to have remained unchanged (continuing to prohibit gratuities) makes no sense.
3. **STRUCTURE.** §666, like most federal corruption statutes (including §201), does not combine bribes and gratuities into a single provision. Precedents establish that bribes and gratuity payments are two separate crimes. So §666 should be interpreted similarly.
4. **PUNISHMENT**. The widely divergent penalties under §201 for **federal** bribes compared to penalties makes it unlikely that Congress wanted a single severe penalty for **local** gratuities, equal to that for bribes.
5. **FEDERALISM**. Penalizing local gratuities (as opposed to bribes) would infringe on federalism principles.
6. **RULE OF LENITY (sort of – notice principles).** The lack of clarity in the statute doesn't put citizens on clear enough notice of the prohibited conduct, so an interpretation excluding gratuities is required.

DISSENT (Jackson, J.) – The statute's use of the term "rewarded" makes clear that gratuities are covered. The majority ignores plain textual meaning ("We can begin – and end – with only the text.") and disregards legislative intent. The majority's concerns about federalism are misplaced and overblown.

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The ATF subjects “bump stocks” to regulations applicable to “machine guns” under the National Firearms Act of 1934. Is this a correct interpretation of the NFA? Does a “bump stock” qualify as a “machine gun” under the Act?

Garland v. Cargill (SCOTUS 2024)

No. A bump stock does not convert a semi-automatic to one that “shoots…automatically more than one shot…by a single function of the trigger” as required by the Act’s definition of “machine gun,” and even if it did, it would not do so “automatically,” as also required by the definition.

MAJORITY (Thomas, J.) (joined by Roberts, Alito, Gorsuch, Kavanaugh, Barrett)

- A machine gun is defined by the NFA as a firearm that “shoots…automatically … more than one shot “by a single function of the trigger.” A bump stock does not enable a semi-automatic firearm to do this. It merely reduces the time required to effectuate separate functions of the trigger. Dictionary definitions of words. Ordinary meaning.
- Bump stocks also don’t enable semi-automatic firearms to shoot multiple by a single trigger pull “automatically.” Bump firing also requires the shooter to apply forward pressure with the nonshooting hand.
- The “presumption against ineffectiveness” canon (basically a corollary of the rule against surplusage) does not apply here, because the majority’s construction does not render the NFA’s machine gun prohibition to be useless. Canon not applied.

CONCURRENCE (Alito, J.) – Although legislative intent likely would favor the opposite outcomet urged by the dissent, legislative intent cannot overcome clear unambiguous statutory language.

DISSENT (Sotomayor, J.) (joined by Jackson and Kagan) -- Dictionary defintions of “function” as well as statutory purpose require opposite result. The majority’s decision is “tone deaf,” and its disregard for statutory purpose ignores the “presumption against ineffectiveness” canon.

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Does the "catchall" provision under §1123(b)(6) under Chapter 11 of the Bankruptcy Code, which authorizes bankruptcy plans to "include any other appropriate provision not inconsistent with" other bankruptcy laws, allow the Bankruptcy Court to release third party claims without their consent?

Harrington v. Purdue Pharma (SCOTUS 2024)

No. As a "catchall," provision, §1123(b)(6) must be interpreted in light of the preceding, pre-catchall subsections of §1123(b).

MAJORITY (Gorsuch, J.) (joined by Thomas, Alito, Barrett, Jackson) --

- **TEXTUAL CANON** – *Ejusdem generis* requires that the "catchall" at §1123(b)(6) be read in light of the subsections leading up to it, §1123(b)(1) through (b)(5). It doesn't allow discretion to permit anything deemed appropriate; the "appropriateness" is determined by the previous subsections. Textual canon.
- **STATUTORY SCHEME**. Providing this relief to the Sackler family, which is not the bankrupt petitioner, and was involved in alleged fraud and malicious injury to parties who have not consented to this plan. The Code's overall structure does not permit a bankruptcy discharge to solvent non-petitioners under these circumstances. Whole Act Rule, Whole Code Rule.
- **HISTORY**. There is no indication that Congress, by adopting the Bankruptcy Code, meant to so fundamentally reshape debtor-creditor law in this fashion. Canon against derogation of common law (sort of).
- **ROLE OF THE COURT**. Public policy arguments do not sway the Court. The Court applies statutory law here, and does not engage in policy analysis.

DISSENT (Kavanaugh, J.) (joined by Roberts, Sotomayor, Kagan) – The purpose of the Bankruptcy Code dictates that the catchall provision be "naturally" interpreted to afford the court broader discretion.

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STATE HOUSE

THE BULLETIN BOARD

How to follow a bill and share your thoughts with NH lawmakers

BY: **ANNMARIE TIMMINS** - JANUARY 16, 2024 11:20 AM

Snow falls on the State House on Jan. 16, 2024. (Dana Wormald | New Hampshire Bulletin)

Lobbyists, advocacy groups, and state agency heads are not the only ones who can influence the fate of legislation at the State House. The public can, too. Here's how to find bills, stay up to date on hearings and votes, and tell your lawmakers your thoughts and concerns.

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ANNMARIE TIMMINS

Senior reporter Annmarie Timmins is a New Hampshire native who covered state government, courts, and social justice issues for the Concord Monitor for 25 years. During her time with the Monitor, she won a Nieman Fellowship to study journalism and mental health courts at Harvard for a year. She has taught journalism at the University of New Hampshire and writing at the Nackey S. Loeb School of Communications.

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