

AZ JUDICIAL CONFERENCE

*The Legislature is a
"They, Not an "It"*



THE LEGISLATURE IS A THEY, NOT AN IT

The Legislature is a They, Not an It.....	1
State ex rel Arizona Department of Revenue v Tunkey.....	35
State v Gordon in and for County of Mohave.....	42
9W Halo OPCO LP v Arizona Department of Revenue.....	53
State v Marner in and for County Pima	62
State v Serrato	76
In re Drummond.....	83
Garibay v Johnson in and for County of Pima.....	92
Brett M. Kavanaugh – Fixing Statutory Interpretation	102
Southern Arizona Home Builders Association v Town Marana	148
Planned Parenthood Arizona Inc v Mayes.....	155

AZ JUDICIAL CONFERENCE

*250 Years of the Declaration of Independence
The Promise of Liberty Secured Through Law*

**The Legislature is a They,
Not an It**

**Justice Kathryn King, Hon. John Blanchard,
Hon. Michael Catlett, Hon. Ken Chevront,
Ms. Linley Wilson**





The Arizona Legislature: An Overview

Linley Wilson

Partner

*Former General Counsel to Majority Caucus,
Arizona House of Representatives*

Governor – 9th Floor

Sec of State – 7th Floor

Arizona Senate

Arizona House of
Representatives



Types of Measures

Bills

Memorials

Resolutions (including Ballot Referrals)

Measures: Bills, Resolutions, and Memorials

HB: House Bill (starts with 2000)

SB: Senate Bill (starts with 1000)

HR: House Resolution

SR: Senate Resolution

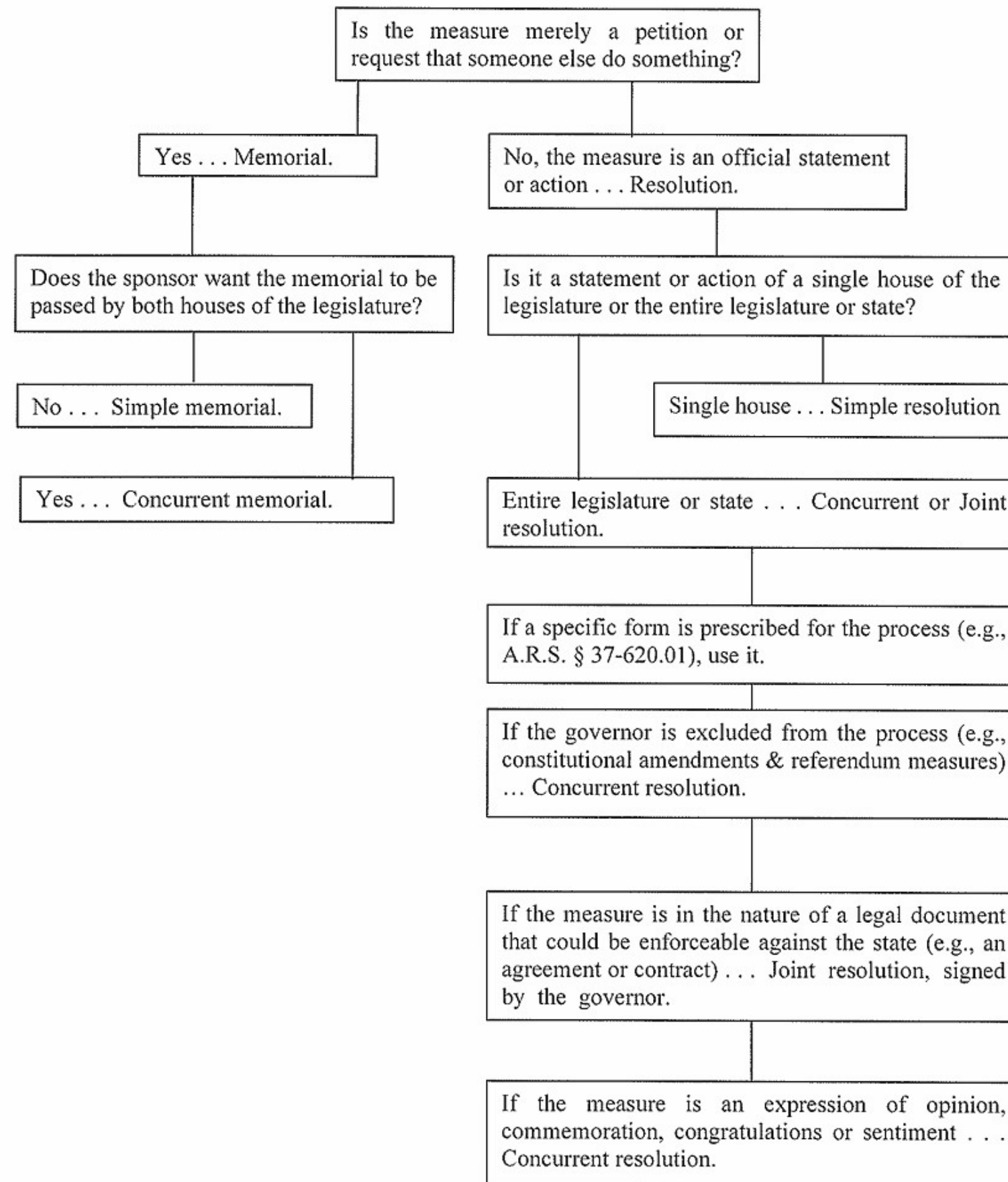
HCR: House Concurrent Resolution

SCR: Senate Concurrent Resolution

HCM: House Concurrent Memorial

SCM: Senate Concurrent Memorial

HCRs + SCR are the vehicles used for ballot referrals (exercising Legislature's referendum power to amend AZ Constitution or statutes)



The Rules

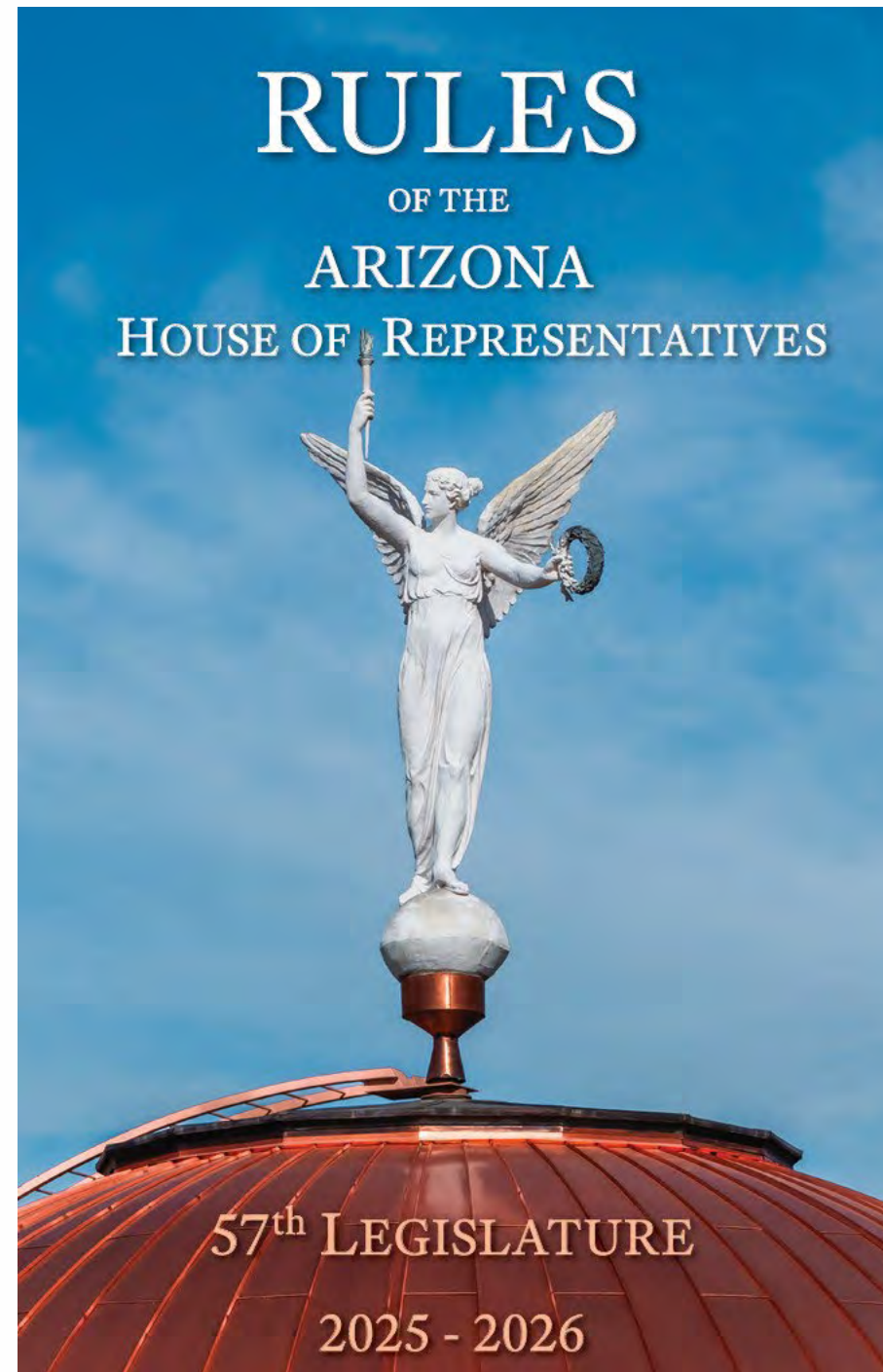
Arizona Constitution: art IV, part 2, Section 8:

“Each house, when assembled, shall choose its own officers, judge of the election and qualification of its own members, and determine its own rules of procedure.”

House & Senate Rules

- Adopted at the beginning of each legislative term (odd-numbered years)
- Currently in the 57th Legislature (2025-2026)
- Any House or Senate Rule be amended or suspended by a majority in each chamber

100-Day Session



(SENATE)

RULE 27 Length of Session

A. Except as provided herein, regular sessions shall be adjourned sine die no later than Saturday of the week in which the one hundredth day from the beginning of each regular session falls. The President may by declaration authorize the extension of the session for a period of not to exceed seven additional days. Thereafter the session can be extended only by the Senate by a majority vote of the members present.

B. If not considered in the regular session the General Appropriations bill, the General Capital Outlay bill and the University Capital Outlay bill may be considered in a special session which shall be called only for those purposes.

(HOUSE)

RULE 2 ANNUAL SESSIONS

A. Except as provided herein, regular sessions shall be adjourned sine die no later than Saturday of the week in which the one hundredth day from the beginning of each regular session falls. The Speaker may by declaration authorize the extension of the session for a period not to exceed seven additional days. Thereafter the session can be extended only by a majority vote of the House.

B. If not considered in the regular session, the general appropriations bill, the general capital outlay bill and the university capital outlay bill may be considered each year in a special session which shall be called only for that purpose.

Deadlines



STATE OF ARIZONA
HOUSE OF REPRESENTATIVES

Office of the Chief Clerk
1700 West Washington • Phoenix, AZ 85007-2844
Phone: (602) 926-3032 • Email: cclerks@azleg.gov

MEMO

(HOUSE)

IMPORTANT DEADLINES

Second Regular Session, 57th Legislature, 2026

- Financial Disclosure Statements – Saturday, January 31, 2026**
Every “public officer” is required to file a financial disclosure statement with the Secretary of State each year on or before the 31st of January (ARS 38-541 - 38-545, 18-444 & 1-303) Electronic forms are provided on the Secretary of State's website.
- Last day for pre-filing of bills - Noon, Monday, January 12, 2026**
House Rule 8D: Bills, resolutions and memorials may be pre-filed by any member-elect for introduction in the first regular session during the period following the filing of the certification of the election until the first day of the first regular session. . .
- Last day for sponsorship of bills before the seven-bill limit begins - 5:00 p.m., Thursday, January 15, 2026**
House Rule 8C: . . . Every bill, resolution or memorial shall have at least one prime sponsor. A member may not be the prime sponsor of more than seven bills introduced after the fourth day of each regular session. For the purposes of this rule the first name on a bill shall be considered the prime sponsor.
- Last day for House Members to submit bill requests to Legislative Council – 5:00 p.m., Friday, February 6, 2026**
- Last day for introduction of bills – 5:00 p.m., Monday, February 9, 2026**
House Rule 8C: Bills, resolutions and memorials may be introduced during the first 29 days of regular session. . . Thereafter, with the exception of death resolutions, introduction may be allowed only with the permission of the Rules Committee.
- Last day for House consideration of House Bills – Friday, February 20, 2026**
House Rule 9F: . . . all House Bills shall be considered by committees prior to the Saturday of the week in which the 60th day (March 12) of session falls.
- Last day for House consideration of Senate Bills – Friday, March 27, 2026**
House Rule 9F: . . . all Senate Bills shall be considered by committees prior to the Saturday of the week in which the 90th day (April 11) of session falls.
- Last day for consideration of bills in Conference Committees - Friday, April 17, 2026**
House Rule 17E: . . . Conference Committees shall consider all bills prior to the Saturday of the week in which the 97th day (April 18) of session falls.
- Adjournment Sine Die - Saturday, April 25, 2026**
House Rule 2A: . . . regular sessions shall be adjourned sine die no later than the Saturday of the week in which the 100th day of session falls. (The Speaker and the President may extend the session for a period not to exceed seven additional days. Thereafter, the session can be extended only by a majority vote of the Members.)

(SENATE)

ARIZONA STATE SENATE 57th Legislature, 2nd Regular Session 2026 SESSION TIMELINE

JANUARY 2026

- | | |
|---------------|--|
| Monday 1/12 | Session Begins |
| Thursday 1/15 | House 7-bill Introduction Limit Begins (5:00 p.m.) |
| Tuesday 1/20* | Senate Bill Request Deadline (5:00 p.m.) |

FEBRUARY 2026

- | | |
|--------------|---|
| Monday 2/2 | Senate Bill Introduction Deadline (5:00 p.m.) |
| Friday 2/6** | House Bill Request Deadline (5:00 p.m.) |
| Monday 2/9 | House Bill Introduction (5:00 p.m.) |
| Friday 2/20 | Last Day to Hear SBs in Senate Committees
Last Day to Hear HBs in House Committees |

MARCH 2026

- | | |
|-------------|---|
| Friday 3/27 | Last Day to Hear SBs in House Committees
Last Day to Hear HBs in Senate Committees |
|-------------|---|

APRIL 2026

- | | |
|--------------|---|
| Friday 4/17 | Last Day for Conference Committees (By Senate and House Rule) |
| Tuesday 4/21 | 100 th Day of Session |

* Deadline moved from Monday to Tuesday by the President due to Martin Luther King, Jr./Civil Rights Day
** Extended by the Speaker pursuant to Legislative Council Rule 28

Types of Legislative Committees: Standing Committees

(SENATE)

RULE 7 Committees

A. Standing Committees of the Senate shall consist of the following:

1. Appropriations
2. Director Nominations (DINO)
3. Education, Transportation and Technology
4. Federalism
5. Finance
6. Government
7. Health and Human Services
8. Judiciary and Elections
9. Military Affairs and Border Security
10. Natural Resources
11. Public Safety
12. Regulatory Affairs and Government Efficiency (RAGE Committee)
13. Rules

(HOUSE)

RULE 9

COMMITTEES & AGENDAS

A. All committees, except such as the House shall select, shall be appointed by the Speaker.

B. Standing Committees of the House shall consist of the following:

Appropriations

Commerce

Education

Federalism, Military Affairs & Elections

Government

Health & Human Services

International Trade

Judiciary

Land, Agriculture & Rural Affairs

(JUD)

(LARA/Animals)

HOUSE RULES

15

Natural Resources, Energy & Water

Public Safety & Law Enforcement

Regulatory Oversight

Rules

Science & Technology

Transportation & Infrastructure

Ways & Means

(NREW)

Types of Legislative Committees: Standing Committees



NEWS RELEASE

Arizona House of Representatives
Speaker Steve Montenegro (R-29)
1700 West Washington • Phoenix, Arizona • 85007

Monday, January 5, 2026
FOR IMMEDIATE RELEASE

Speaker Montenegro Announces New House Committees on AI & Innovation and Rural Economic Development

STATE CAPITOL, PHOENIX – Arizona House Speaker Steve Montenegro today announced the creation of two new House committees for the 57th Legislature, 2nd Regular Session, aimed at advancing responsible technology policy and strengthening Arizona's rural economy.

The new House Committee on Artificial Intelligence & Innovation, chaired by Representative Justin Wilmeth, and the House Committee on Rural Economic Development, chaired by Representative Teresa Martinez, will meet Thursdays at 9:00 a.m., beginning with the opening of the session on January 12.

Assigning Measures to Committees & Rules Committees

- Every Senate and House measure must be heard by at least one standing committee and in the Rules Committees in both chambers
- House Rule 8(L): “If a measure has multiple committee assignments, the first committee must consider the measure before the second committee. If the first committee fails the measure, the measure cannot be heard by the second committee. When the first committee reports the measure to the House, the Speaker places it on the House Calendar (Inactive Calendar). When the last committee to which the measure was referred reports to the House, it is the property of the Committee on Rules, which considers the measure.”
- Rules Committee: “The Committee on Rules shall consider the bill and proposed amendments thereto for **constitutionality and proper form** and the reasonable germaneness of any amendments.”
- House Rule 4(J): **Every bill, resolution and memorial** (hereinafter “measure”), except death resolutions and Senate bills to be substituted on Third Reading pursuant to Rule 7(C), **shall automatically be assigned to the Committee on Rules** at the time of assignment to another standing committee without action upon the part of the Speaker.
- Senate Rule 2(J): All proposed measures or other legislative matters shall **automatically be assigned to the Rules Committee** without action upon the part of the President.

Bill Assignments: Example

Bill History for HB4001

Sponsors:

Weninger (Prime) 

Short Title: alternative nicotine products; regulation.
House First Read: 02/09/2026

House Standing Details	Assigned Date	Committee	Report Date	Action	Vote
	02/09/2026	COM	02/17/2026	DPA	9-1-0-1-0-0
	02/09/2026	RULES	02/23/2026	C&P	6-0-0-2-0-0

Transmit to Senate: 03/16/2026

Senate First Read: 03/17/2026

Senate Standing Details	Assigned Date	Committee	Report Date	Action	Vote
	03/17/2026	HHS	03/18/2026	W/D	0-0-0-0
	03/18/2026	RAGE	03/25/2026	DPA	6-1-0-0
	03/17/2026	RULES	03/30/2026	PFC	0-0-0-0

Types of Legislative Committees: Interim & Statutory Committees

House Ethics Committee

PURPOSE: To propose and adopt during the first regular legislative session a code of ethics and conflict of interest requirements as part of rules and to issue advisory opinions interpreting the code of ethics, conflict of interest and financial disclosure requirements.

MEMBERSHIP:

House Five members of the House, not more than three from the same political party, appointed by the Speaker of the House of Representatives:
Neal Carter (Vice Chair), Patricia Contreras, Lupe Diaz (Chair), Gail Griffin, Christopher Mathis

Notes:

CONTACT: Tim Fleming

REPORT DATE: None

EXPIRATION DATE: None

STATUTORY CITE: A.R.S. 38-519; Laws 1983, Chapter 328; Laws 2004, Chapter 41

Joint Legislative Water Committee

PURPOSE: To review awards of \$50,000,000 or more from the long-term water augmentation fund established by Section 49-1302 and the Board shall provide the Joint Legislative Water Committee with the relevant information.

MEMBERSHIP:

House The Chairperson of the House of Representatives committee with jurisdiction over water issues:
Gail Griffin

The Minority Leader of the House of Representatives or the Minority Leader's designee:
Lupe Contreras

The ranking minority party member of the House of Representatives committee with jurisdiction over water issues:
Stephanie Stahl Hamilton

Senate The Chairperson of the Joint Legislative Budget Committee:
David C. Farnsworth

The Chairperson of the Senate committee with jurisdiction over water issues:
Thomas "T.J." Shope

The Minority Leader of the Senate or the Minority Leader's designee:
Priya Sundareshan

The President of the Senate or the President's designee:
Warren Petersen

The ranking minority party member of the Senate committee with jurisdiction over water issues:
Rosanna Gabaldón

Notes:

CONTACT: Sawyer Bessler, Senate Research Staff; Corbin Wright, House Research Staff

REPORT DATE: None

EXPIRATION DATE:

STATUTORY CITE: A.R.S. 49-1215; Laws 2022, Chapter 366, Section 17

The Legislative Entities Supporting the Legislature Behind the Scenes

Arizona Legislative Council

Joint Legislative Budget Committee (JLBC)

Arizona Legislative Council

- Nonpartisan attorneys
- Prepare all bills, memorials and resolutions and numerous amendments for consideration during each legislative session.
- Review every law passed by the Legislature, make clerical corrections and draft explanatory notes where appropriate before delivering for publication.
- Perform legal research at the request of legislators.
- Publish annual editions of the following reports: **Arizona Legislative Bill Drafting Manual**, the Annual Report on Defects in the Arizona Revised Statutes and State Constitution and the Digest of Laws.
- Perform the enrolling and engrossing of bills, memorials and resolutions.
- Provide information technology support for the House of Representatives, the Senate and the Joint Legislative Budget Committee.
- Maintain an Internet site for the Legislature. The site provides a variety of detailed information regarding the content and status of bills and the activities of legislative committees.
- Provide management and other support services for various legislative buildings and properties.

Arizona Legislative Council – Amendments (then v. now)

Fifty-sixth Legislature
First Regular Session

Finance
H.B. 2145

COMMITTEE ON FINANCE
SENATE AMENDMENTS TO H.B. 2145
(Reference to House engrossed bill)

- 1 Page 1, line 7, strike "ALL" insert "BOTH OF"
- 2 Line 14, strike "ALL" insert "BOTH"
- 3 Page 2, line 15, after "accommodations" insert "DURING THE OPERATING SEASON IN
- 4 WHICH GUESTS ARE PRESENT"
- 5 Line 38, strike "ON" insert "IN"
- 6 Strike page 3 insert:
- 7 "Sec. 3. Section 42-12002, Arizona Revised Statutes, is amended to
- 8 read:
- 9 42-12002. Class two property
- 10 For purposes of taxation, class two is established consisting of
- 11 three subclasses:

Senate Amendments to H.B. 4001

1 ANOTHER ENTITY. THE DEPARTMENT MAY REQUEST THAT THE MANUFACTURER PROVIDE
2 ANY ADDITIONAL DOCUMENTATION ~~{{THAT}}~~ THE DEPARTMENT DEEMS RELEVANT.
3 ~~{{H-}}~~ ~~{{P-}}~~ A PERSON THAT MANUFACTURES ALTERNATIVE NICOTINE
4 PRODUCTS FOR SALE IN THIS STATE WITHOUT A LICENSE AS REQUIRED BY THIS
5 SECTION IS GUILTY OF A CLASS 5 FELONY AND:
6 1. SHALL PAY A FINE OF AT LEAST \$10,000.
7 2. IS PROHIBITED FROM SELLING, GIVING~~{{, MANUFACTURING}}~~ OR
8 FURNISHING ALTERNATIVE NICOTINE PRODUCTS FOR A PERIOD OF ONE YEAR.
9 3. IS SUBJECT TO ANY OTHER PUNISHMENT DEEMED APPROPRIATE BY THE
10 ~~[DIRECTOR]~~ ~~[COURT]~~.
11 ~~{{Q. ALTERNATIVE NICOTINE PRODUCTS THAT ARE MANUFACTURED FOR SALE~~
12 ~~OR OFFERED FOR SALE IN VIOLATION OF THIS SECTION MAY BE DEEMED CONTRABAND~~
13 ~~AND SEIZED AS EVIDENCE IN A CRIMINAL PROCEEDING UNDER THIS SECTION. ON~~
14 ~~APPROPRIATION OF THE CRIMINAL PROCEEDING, THE COURT SHALL ORDER ALTERNATIVE~~
15 ~~NICOTINE PRODUCTS THAT ARE DEEMED CONTRABAND TO BE DESTROYED AS A TERM OF~~
16 ~~THE DISPOSITION IN THE CRIMINAL PROCEEDING.~~
17 ~~R. NOTWITHSTANDING ANY OTHER LAW, ALL RECEIPTS DERIVED FROM~~
18 ~~ALTERNATIVE NICOTINE PRODUCTS MANUFACTURING LICENSE APPLICATIONS ARE~~
19 ~~APPROPRIATED TO THE DEPARTMENT. THE DEPARTMENT SHALL DEPOSIT MONIES~~
20 ~~RECEIVED PURSUANT TO THIS SECTION IN THE LIQUOR LICENSES FUND ESTABLISHED~~
21 ~~BY SECTION 4-120. THE AMOUNT DEPOSITED IN THE LIQUOR LICENSES FUND~~
22 ~~PURSUANT TO THIS SECTION SHALL BE WITHOUT REGARD TO THE AMOUNT THAT IS~~
23 ~~APPROPRIATED TO THE DEPARTMENT BY THE LEGISLATURE.}}~~
24 ~~[4-403. Selling, delivering or giving of alternative nicotine~~
25 ~~products to underage persons; violations;~~
26 ~~classification~~
27 ~~A. EXCEPT AS PROVIDED IN SECTION 36-798.07, A RETAILER OR A~~
28 ~~RETAILER'S EMPLOYEE MAY NOT SELL ALTERNATIVE NICOTINE PRODUCTS TO A PERSON~~
29 ~~WHO IS UNDER TWENTY-ONE YEARS OF AGE.~~
30 ~~B. ON THE RECEIPT OF NOTICE OF A VIOLATION OF SUBSECTION A OF THIS~~
31 ~~SECTION, THE DIRECTOR SHALL PROVIDE NOTICE OF THE ALLEGED VIOLATION TO THE~~
32 ~~RETAILER WHO IS ALLEGED TO HAVE COMMITTED THE VIOLATION. AFTER A HEARING,~~
33 ~~IF A RETAILER IS FOUND TO HAVE COMMITTED A VIOLATION OF THIS SECTION, THE~~
34 ~~FOLLOWING PENALTIES APPLY:~~
35 ~~1. THE DIRECTOR SHALL ORDER A RETAILER THAT COMMITS A FIRST~~
36 ~~VIOLATION OF THIS SECTION TO ATTEND A DIRECTOR-APPROVED ALTERNATIVE~~
37 ~~NICOTINE PRODUCTS RETAILER EDUCATIONAL COURSE THAT HAS BEEN APPROVED BY~~
38 ~~THE DIRECTOR AND PAY A CIVIL PENALTY OF AT LEAST \$500 BUT NOT MORE THAN~~
39 ~~\$750.~~
40 ~~2. A RETAILER THAT COMMITS A SECOND VIOLATION OF THIS SECTION AT~~
41 ~~THE SAME LICENSED LOCATION WITHIN TWENTY-FOUR MONTHS IS GUILTY OF A CLASS~~
42 ~~3 MISDEMEANOR AND:~~
43 ~~(a) SHALL PAY A FINE OF AT LEAST \$2,000 BUT NOT MORE THAN \$3,000.~~
44 ~~(b) SHALL ATTEND A DIRECTOR-APPROVED ALTERNATIVE NICOTINE PRODUCTS~~
45 ~~RETAILER EDUCATIONAL COURSE.~~
46 ~~(c) IS SUBJECT TO ANY OTHER PUNISHMENT DEEMED APPROPRIATE BY THE~~
47 ~~DIRECTOR.~~
48 ~~3. A RETAILER THAT COMMITS A THIRD VIOLATION OF THIS SECTION AT THE~~
49 ~~SAME LICENSED LOCATION WITHIN TWENTY-FOUR MONTHS IS GUILTY OF A CLASS 1~~
50 ~~MISDEMEANOR AND:~~

- 29 -

(Legislature)
(Session)

(Committee)
S.B. ____

PROPOSED
SENATE AMENDMENTS TO S.B. ____
(Reference to printed bill)

Amendment instruction key:
[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.
[Green underlining in brackets] indicates text added to new session law or text restoring existing law.
[GREEN STRIKEOUT IN BRACKETS] indicates new text removed from statute or previously enacted session law.
[Green strikeout in brackets] indicates text removed from existing statute, previously enacted session law or new session law.
<<Green carets>> indicate a section added to the bill.
<<Green strikeout in carets>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:
2 Section 1. Section 41-1106, Arizona Revised Statutes, is
3 amended to read:
4 41-1106. Records; debate and testimony; definition
5 Each house of the legislature shall keep, for a period of
6 ~~three~~ [FIVE] [FOUR] years, an ~~audiotape~~ AUDIO RECORDING [, VIDEO
7 RECORDING] or verbatim transcription or other similar accurate
8 record of debate and testimony occurring in committee and on the
9 chamber floor. For purposes of this section "committee" [includes]
10 [MEANS] standing committees, subcommittees, conference committees,
11 interim committees and committees that are established by law or by
12 either presiding officer.
13 <<Sec. 2. Applicability
14 This act applies to only committees as defined in section
15 41-1106, Arizona Revised Statutes.>>
16 <<Sec. 2. Short title
17 This act may be cited as the "Technology Update Act".>>
18 Sec. 3. Effective date
19 This act is effective from and after [December 31, 2025] [June
20 30, 2026].
21 Enroll and engross to conform
22 Amend title to conform

(SPONSOR)

(document name)
(date)
(time)
(drafter's initials)

In-context amendments explanation video.

A note on “strikers” / “strike-everything amendment”

A "strike everything after the enacting clause" amendment (also referred to as a "strike everything" amendment or simply a "striker") proposes to delete the entire text of the existing bill and substitute new language, essentially making it a completely different bill, possibly on an entirely different subject. These amendments are sometimes used to allow legislators to circumvent the deadlines on introduction of new legislation, deal with an issue that arises after the deadline or revive a bill that has previously been defeated.

- Not Allowed on the Senate or House Floor
- Must Amend in a Committee Hearing (not allowed in Rules Committee)

A note on “strikers” and “vehicle bills”

Bill Status Inquiry

ARS

Blue Sheets / Concur

BSI Manual

Chaptered / Transmitted To

Committee Bills

Committee Members

Committee Minutes

Committee Overview

Constitution

Posting Sheets

Export to Document

Final Disposition

Keywords

Legislative Digest

Short / NOW / Pending Titles

Sponsors

Strike Everything Bills

Title Section

Veto Action

2026 - Fifty-seventh Legislature - Second Regular Session

Strike Everything Amendments

List of bills that have had a strike everything amendment proposed/adopted

AdoptedProposed

Adopted Amendments | 118 Bills

Bill Number	Body	Committee	De
HB2028	S	Judiciary and Elections	PC
HB2048	S	Health and Human Services	PC
HB2072	S	Regulatory Affairs and Government Efficiency	PC
HB2080	H	Government	PC
HB2083	H	Health & Human Services	PC
HB2111	S	Appropriations, Transportation and Technology	PC
HB2140	S	Finance	PC
HB2174	H	Commerce	PC

Fifty-seventh Legislature
Second Regular Session

Land, Agriculture & Rural Affairs
S.B. 1199

PROPOSED
HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1199
(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:
2 "Section 1. Section 3-1491, Arizona Revised Statutes, is amended to
3 read:
4 3-1491. Salt river horse herd; necessary interaction; written
5 authorization; violation; classification;
6 definition
7 A. A person shall not harass, shoot, injure, kill or slaughter a
8 horse that is part of the Salt river horse herd.
9 B. A person shall not interfere with, take, chase, capture or
10 euthanize a horse that is part of the Salt river horse herd without
11 written authorization from either the department or the county
12 sheriff. The department or the county sheriff may provide written
13 authorization pursuant to this subsection only for humane purposes.
14 C. If an incident occurs that requires interaction with the Salt
15 river horse herd in order to protect the safety or health of a horse that
16 is or horses that are part of the Salt river horse herd or the public, a
17 private or public entity may address the incident after obtaining written
18 authorization from either the department or the county sheriff.
19 D. If a horse has any brand or other mark that indicates ownership,
20 the department shall attempt to prove ownership of the horse or the county
21 sheriff shall contact the department to attempt to establish ownership of
22 the horse. If the department cannot prove ownership of the horse, the
23 department or the county sheriff may provide written authorization
24 pursuant to this section.
25 E. This state shall enter into an agreement pursuant to section
26 11-952 with the United States forest service to implement this article or
27 to address any issue relating to the Salt river horse herd. THE
28 DEPARTMENT SHALL POST THE AGREEMENT ON ITS WEBSITE.
29 F. This state may enter into an agreement with a private entity to
30 address any issue relating to the Salt river horse herd.

Bill Drafting Manual

THE
ARIZONA LEGISLATIVE
BILL DRAFTING MANUAL
2025 – 2026



THE
ARIZONA LEGISLATIVE
BILL DRAFTING MANUAL
2025–2026

GENERAL TABLE OF CONTENTS

	Page
SCOPE AND USE OF MANUAL	1
THE DRAFTING PROCESS	2
A BILL AND ITS PARTS.....	5
MEASURES OTHER THAN BILLS.....	20
COMMON BILL PROVISIONS.....	26
APPROPRIATIONS.....	70
GENERAL INSTRUCTIONS AS TO FORM AND STYLE	78
AMENDMENTS	109
IN-CONTEXT INSTRUCTION AMENDMENTS	116
APPENDIX A - SAMPLES.....	125
APPENDIX B - RULES AND DEADLINES	178
APPENDIX C - BILL DRAFT CHECKLIST.....	180
INDEX	181

Requests for Opinions (to Legislative Council or Attorney General)



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION	No. I24-009 (R24-011)
By KRIS MAYES ATTORNEY GENERAL	Re: The meaning of “medical emergency” under A.R.S. § 36-2321(7)
June 27, 2024	

To: The Honorable Eva Burch, State Senate, District 9;
The Honorable Christine Marsh, State Senate, District 4;
The Honorable Judy Schwiebert, House of Representatives, District 2; and
The Honorable Stephanie Stahl Hamilton, House of Representatives, District 21.

Question Presented

For purposes of providing medical care permitted by A.R.S. § 36-2322(A) and (B), when does a “medical emergency” exist, as that term is defined by A.R.S. § 36-2321(7)?

Summary Answer

To comply with the “medical emergency” exception in A.R.S. § 36-2322(A) and (B), as defined in A.R.S. § 36-2321(7), the treating physician must do two things. First, she must exercise clinical judgment. Courts have recognized that clinical judgment is a well-understood medical concept that involves a physician applying her personal knowledge, training, experience, and discernment to the facts before her in light of the patient’s unique circumstances and other medically relevant considerations. Second, the treating physician must determine in good faith that, based on her clinical judgment, either “a condition ... so complicates the medical condition

ARIZONA LEGISLATIVE COUNCIL

MEMO

May 4, 2021

TO: Representative Quang Nguyen
FROM: Ken Behringer, General Counsel
RE: Anti-abrogation Clause; S.B. 1382 (R-55-38)

BACKGROUND

Senate Bill 1382 would prohibit a qualified civil liability action. Arizona Revised Statutes (A.R.S.) section 12-721, subsection A (as would be added by Senate Bill 1382¹).

QUESTION

Would Senate Bill 1382 violate the Anti-abrogation Clause of the Arizona Constitution?

ANSWER

Senate Bill 1382 probably would not violate the Anti-abrogation clause of the Arizona Constitution.

DISCUSSION

Under Senate Bill 1382, a qualified civil liability action is an action against a manufacturer or seller of firearm, a component part of a firearm or ammunition (a qualified product) for damages resulting from the criminal or unlawful misuse of the qualified product. A.R.S. section 12-721, subsection D, paragraphs 4 and 5. The bill would specifically allow an action:

1. Against a person convicted of a violation of state or federal law for transferring a firearm to another person while knowing the other person would use the firearm to commit a felony.

¹ All references to A.R.S. section 12-721 are to the section as would be added by Senate Bill 1382.

Joint Legislative Budget Committee

- The primary powers and duties of the JLBC relate to ascertaining facts and making recommendations to the Legislature regarding all facets of the state budget, state revenues and expenditures, future fiscal needs, and the organization and functions of state government.
- JLBC appoints a Director who is responsible for providing staff support and sound technical analysis to the Committee. The JLBC Staff mission is as follows:
 - To provide the Arizona Legislature with sound research, analysis, forecasts and recommendations on government finances and public policies; and to provide the members with high quality work that is factual and delivered in a timely and professional manner, enabling the members to make informed public policy decisions that are in the best interests of the citizens of Arizona.
- In achieving this mission, the objectives and major products of the staff of the JLBC are as follows:
 - Analysis and recommendations for the state budget, which are presented in January of each year.
 - Technical, analytical, and preparatory support in the development of appropriations bills considered by the Legislature.
 - Periodic economic and state revenue forecasts.
 - Preparation of fiscal notes on legislation and ballot propositions that have a fiscal impact on the state or any of its political subdivisions.
 - An annual *Appropriations Report*, which is published shortly after the budget is completed and provides detail on the budget along with an explanation of legislative intent.
 - Support to the JLBC with respect to recommendations on business items placed on the committee's agenda such as transfers of appropriations pursuant to A.R.S. § 35-173.

JLBC Fiscal Note

BILL # HB 4001

SPONSOR: Weninger

PREPARED BY: Nate Belcher

TITLE: alternative nicotine products; regulation.

STATUS: As Amended by Senate RAGE

REVISED

Explanation of Revision

This revised note includes feedback from the Department of Liquor Licenses and Control (DLLC) and also includes a description of the Senate Regulatory Affairs and Government Efficiency (RAGE) Committee amendment.

Description

The bill would establish licensure requirements under the Department of Liquor Licenses and Control for businesses manufacturing or distributing alternative nicotine products and would require a minimum purchase age of 21 years old, among other sales regulations.

The "alternative nicotine products" newly regulated by HB 4001 are generally nicotine products that are able to be chewed, ingested or inhaled without combustion. This definition excludes any medical drugs or products regulated by the federal Food and Drug Administration (FDA).

Current state law regulates the sale of standard tobacco products (such as cigarettes and chewing tobacco) and noncombustible heated liquid tobacco-derived products (known as vapor products). HB 4001 removes various statutory references related to the sale of tobacco-derived vapor products and instead also classifies those as "alternative nicotine products" subject to DLLC regulation. The Senate RAGE Committee amended the bill to include alternative nicotine products in the existing statutes establishing penalties for the sale of tobacco to underage persons rather than codifying a separate set of penalties.

Estimated Impact

We estimate that the bill would increase the Department of Liquor Licenses and Control's spending from the Liquor Licenses Fund. DLLC estimates that enforcing the bill would cost about \$1.8 million one-time and \$3.6 million annually for costs associated with hiring 26 new full-time employees (FTEs) to enforce the bill. While the bill would require DLLC to inspect distributor and manufacturing facilities and enforce the retail sales age requirements, DLLC submitted insufficient information for us to validate the 26 FTE estimate.

The bill would also increase revenues to the Liquor Licenses Fund. However, this level of increased revenues cannot be determined, as the bill does not establish specific license fees. Ultimately the net change in DLLC revenues and spending would impact the Liquor Licenses Fund balance. This in turn would affect General Fund revenues. Statute requires the annual transfer of any Liquor Licenses Fund balance over \$700,000 to the General Fund.

Analysis

The bill has 4 potential fiscal impacts:

Constitutional Requirements for Certain Votes

Prop 105: Bills that Increase State Revenue (Ariz. Const. art. IX, section 22): supermajority 2/3 vote in each chamber

22. Vote required to increase state revenues; application; exceptions

(A) An act that provides for a net increase in state revenues, as described in subsection B is effective on the affirmative vote **of two-thirds of the members of each house** of the legislature. If the act receives such an affirmative vote, it becomes effective immediately on the signature of the governor as provided by article IV, part 1, section 1. If the governor vetoes the measure, it shall not become effective unless it is approved by an affirmative vote of three-fourths of the members of each house of the legislature.

(B) The requirements of this section apply to any act that provides for a net increase in state revenues in the form of:

1. The imposition of any new tax.
2. An increase in a tax rate or rates.
3. A reduction or elimination of a tax deduction, exemption, exclusion, credit or other tax exemption feature in computing tax liability.
4. An increase in a statutorily prescribed state fee or assessment or an increase in a statutorily prescribed maximum limit for an administratively set fee.
5. The imposition of any new state fee or assessment or the authorization of any new administratively set fee.
6. The elimination of an exemption from a statutorily prescribed state fee or assessment.
7. A change in the allocation among the state, counties or cities of Arizona transaction privilege, severance, jet fuel and use, rental occupancy, or other taxes.
8. Any combination of the elements described in paragraphs 1 through 7.

Prop 108: Voter Protection Act (Ariz. Const. art. IV, part 1, section 1(6)): 3/4 vote in each chamber

(6) (C) Legislature's power to amend initiative or referendum. The legislature shall not have the power to amend an initiative measure to approve a tax that is approved by sixty percent of the votes cast thereon, or to amend a referendum measure to approve a tax that is decided by sixty percent of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature, by a roll call of ayes and nays, vote to amend such measure. For all other initiatives and referendums, the legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon and shall not have the power to amend a referendum measure decided by a majority of the votes cast thereon, **unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature**, by a roll call of ayes and nays, **vote to amend such measure**.

Veto Override (Ariz. Const. art. V, section 7): supermajority 2/3 vote in each chamber

Vetoed 'Tamale Bill' remains undefeated after attempt to override

Katie Burkholder **Apr 25, 2023** Updated **Apr 26, 2023**

Gov. Katie Hobbs' veto of a bill that sought to legalize the sale of home-cooked foods will stand.

A vote to overturn her veto of the sale of "cottage foods" failed to pass the state House. The bill needed support from 40 of the 60 members in the chamber, but the push to overturn the veto only received support from 35.

The last override in Arizona was in 1981.

State law currently allows for the sale of some home-cooked goods, such as baked foods. But violating the law could lead to a \$500 fine and even jail time.

In her veto, Hobbs said the bill would cause an increase in food-borne illnesses as there's no way to ensure home kitchens meet health standards.



Questions? Thank you!

H' | HOLTZMAN VOGEL

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254 Ariz. 432
Supreme Court of Arizona.

STATE of Arizona, EX REL., ARIZONA
DEPARTMENT OF REVENUE, Plaintiff/Appellee,
v.
Peter A. TUNKEY, et al., Defendants/Appellants.

No. CV-22-0128-PR
|
Filed February 23, 2023

Synopsis

Background: Arizona Department of Revenue (ADOR) brought action against former managing member of taxpayer, a limited liability company (LLC), alleging that taxpayer failed to pay \$26,000 of transaction privilege taxes (TPT) and that former managing member was personally liable for unpaid TPT. Parties cross-moved for summary judgment. The Arizona Tax Court, No. TX2019-000451, [Danielle J. Viola, J.](#), denied former managing member's motion and granted Department's motion. Former managing member appealed. The Court of Appeals, [2022 WL 1146398](#), affirmed. Former managing member petitioned for review.

Holdings: The Supreme Court, [Timmer](#), V.C.J., held that:

unpaid TPT did not constitute “additional tax due” that triggered statute requiring ADOR to notify former managing member of assessment within four-year limitation period, and

ADOR's failure to establish through pre-lawsuit assessment that former managing member owed unpaid TPT did not preclude ADOR from bringing collection suit.

Affirmed.

[Bolick, J.](#), filed concurring opinion, in which [Beene, Montgomery](#) and [King, JJ.](#), joined.

Procedural Posture(s): Petition for Discretionary Review; On Appeal; Motion for Summary Judgment.

****813** Appeal from the Arizona Tax Court, The Honorable [Danielle J. Viola](#), Judge, No. TX2019-000451, **AFFIRMED**

Memorandum Decision of the Court of Appeals, Division One, No. 1 CA-TX 21-0006, **AFFIRMED**

Attorneys and Law Firms

Kristin K. Mayes, Arizona Attorney General, [Penny Taylor Moore](#) (argued), Assistant Attorney General, Phoenix, Attorneys for Arizona Department of Revenue

[Paul J. Valentine](#) (argued), [Jared W. Miller](#), Quarles & Brady LLP, Phoenix, Attorneys for Peter A. Tunkey, et al.

VICE CHIEF JUSTICE TIMMER authored the Opinion of the Court, in which CHIEF JUSTICE BRUTINEL and JUSTICES BOLICK, LOPEZ, BEENE, MONTGOMERY, and KING joined. JUSTICE BOLICK, joined by JUSTICES BEENE, MONTGOMERY, and KING authored a concurring opinion.

Opinion

VICE CHIEF JUSTICE TIMMER, Opinion of the Court:

***433** ¶1 This case follows in the wake of *Arizona Department of Revenue v. Action Marine, Inc.*, 218 Ariz. 141, 146–47 ¶¶ 28–29, 181 P.3d 188, 193–94 (2008), which interpreted A.R.S. § 42-5028 as imposing liability on responsible persons who fail to remit to the Arizona Department of Revenue (“ADOR”) money collected from a taxpayer-business's customers to cover transaction privilege taxes. The issue here is whether ADOR must assess this amount against the responsible person pursuant to A.R.S. § 42-1104(A) before filing a collection lawsuit. We conclude it does not.

BACKGROUND

¶2 The transaction privilege tax (“TPT”) “is an excise tax on the privilege or right to engage in an occupation or business.” *Action Marine*, 218 Ariz. at 142 ¶ 6, 181 P.3d at 189 (quoting *Ariz. Dep't of Revenue v. Mountain States Tel. & Tel. Co.*, 113 Ariz. 467, 468, 556 P.2d 1129, 1130 (1976)). It is not a sales tax but instead a tax on a business's gross receipts. *Id.* Although liability for the TPT falls on the business, it may charge customers a separately itemized amount to cover the tax. See *id.* ¶ 7; see also A.R.S. §§ 42-5002(A)(1), -5024. The business must remit to ADOR all money collected from customers for TPT, even if that amount exceeds what is owed.

Action Marine, 218 Ariz. at 142 ¶ 7, 181 P.3d at 189; § 42-5002(A)(1).

¶3 Matthew Kievit and Peter Tunkey formed KT McClintock, LLC (“KT”) in 2005 and served as managing members. KT did business as Silver Mine Subs, a franchised sandwich shop. As relevant here, KT collected money from customers to cover its TPT obligation during various months in 2010 and 2012. The parties do not dispute that KT filed TPT returns for the relevant periods and self-assessed the amounts owed; ADOR accepted those filings without disputing the amounts owed; and KT failed to remit about \$26,000 of those amounts to ADOR.

¶4 Through Tunkey, KT negotiated payment arrangements with ADOR and paid the *434 **814 TPT owed for 2010 and 2012, except for the \$26,000 at issue. Tunkey moved to Georgia in 2013 and stopped serving as a managing member for KT in 2015. ADOR never assessed taxes against Tunkey personally or notified him that he was personally liable for KT's unpaid TPTs.

¶5 In 2019, ADOR sued KT, Kievit, Tunkey, and the individual parties' spouses to recover unpaid TPTs. See A.R.S. § 42-1114(A) (authorizing ADOR to file suit to recover the amount of any taxes “owed by the taxpayer to the department that are due and unpaid”). The tax court entered default judgments against KT and the Kievits. Only ADOR's suit against Tunkey and his wife (collectively, “Tunkey”) is before us.

¶6 ADOR sought the \$26,000 in unpaid TPTs from Tunkey pursuant to § 42-5028. That statute imposes liability on a “person” for failing to remit to ADOR “any additional charge made to cover the tax.” § 42-5028. In *Action Marine*, this Court interpreted “additional charge” as meaning the entire amount collected from a business's customers to cover the TPTs. 218 Ariz. at 145 ¶ 23, 181 P.3d at 192. We also concluded that a “person” may include a taxpayer's corporate officers, directors, and other responsible persons having a duty to remit that money to ADOR. *Id.* at 146–47 ¶¶ 28–29, 181 P.3d at 193–94.

¶7 Eventually, ADOR and Tunkey filed cross-motions for summary judgment. Tunkey argued (1) ADOR failed to assess the unpaid TPTs against him personally within the four-year limitation period provided by § 42-1104(A), making ADOR's suit untimely; and (2) ADOR failed to establish that Tunkey was in fact a “responsible person” under § 42-5028.

ADOR asserted (1) it was not required to separately assess the TPTs against Tunkey, so § 42-1104 was inapplicable, and the ten-year limitation period provided by § 42-1114(C) applied, making ADOR's suit timely; and (2) Tunkey was a “responsible person” under § 42-5028.

¶8 The tax court denied Tunkey's motion, granted ADOR's motion, and entered judgment against Tunkey for the \$26,000 in unpaid TPTs. The court of appeals affirmed. *State ex rel. Ariz. Dep't of Revenue v. Tunkey*, No. 1 CA-TX 21-0006, 2022 WL 1146398, at *1 ¶ 1 (Ariz. App. Apr. 19, 2022) (mem. decision). We accepted review of Tunkey's petition because it presents an issue of recurring statewide importance. We have jurisdiction pursuant to article 6, section 5(3) of the Arizona Constitution.

DISCUSSION

I.

¶9 We are asked to decide a single issue. Tunkey does not ask us to revisit *Action Marine*'s interpretation of § 42-5028, dispute he is a “responsible person” under that provision, nor contest the \$26,000 calculation. Instead, he challenges only the tax court's ruling that ADOR was not required to timely assess the \$26,000 amount against him personally before filing suit. We review de novo the court's ruling “and its interpretation of Arizona's tax statutes.” See *SolarCity Corp. v. Ariz. Dep't of Revenue*, 243 Ariz. 477, 480 ¶ 8, 413 P.3d 678, 681 (2018).

II.

A.

¶10 Section 42-1104(A) provides, in relevant part, as follows:

For the taxes to which this article applies, every notice of every **additional tax due** shall be prepared on forms prescribed by the department and mailed within four years after the report or return is required to be filed or within four years after the report

or return is filed, whichever period expires later.

(Emphasis added.)

¶11 Tunkey argues that responsible-person liability under § 42-5028 is separate from taxpayer-business liability, and therefore the unpaid TPT charges sought from him constitute an “additional tax due” that triggered § 42-1104(A)’s notice requirement. Because § 42-1114(A) authorizes ADOR to collect only taxes “due and unpaid,” and ADOR failed to notify Tunkey of a tax assessment within the four-year limitation period, he contends the TPT charges were never “due” from him, and the tax court therefore erred by entering judgment for ADOR.

***435 **815** ¶12 We reject Tunkey’s argument for two reasons. First, § 42-1104(A) is inapplicable because ADOR seeks only to collect the amount self-assessed by KT. That statute concerns only an “additional tax due,” which plainly refers to unreported or underreported taxes. See § 42-1104(A). Specifically, the statute presupposes the taxpayer failed to report liability for these taxes in a “report or return.” See *id.* Indeed, in prescribing exceptions to § 42-1104(A), subsection (B) refers to the required notice as a “deficiency assessment.” § 42-1104(B). And the audit and deficiency calculation procedures culminating in the deficiency assessment notice apply only to unreported or underreported tax liability. A.R.S. § 42-1108(A) (authorizing ADOR to conduct audits within § 42-1104’s time periods if a taxpayer fails to file a return or ADOR is not satisfied with the return or payment amount “to determine the correct amount of tax”). Here, KT self-assessed the amounts owed for TPT charges in a return, making that amount immediately due. See Ariz. Dep’t of Revenue General Tax Ruling 04-1 at 2 (2004) (“GTR 04-1”) (stating taxes become due on the date a tax return establishes liability). ADOR accepted KT’s assessment and sued only to collect those amounts. Consequently, § 42-1104(A) did not require ADOR to notify KT or Tunkey of “additional taxes due” because none existed.

¶13 Second, because the “additional charge[s]” Tunkey owes under § 42-5028 are the same as those self-assessed by KT, they do not constitute an unreported “additional tax due” under § 42-1104(A). Section 42-5028 itself states that the “additional charge” is one “made to cover the [TPT].” See *Action Marine*, 218 Ariz. at 145 ¶ 23, 181 P.3d at 192. Similarly, § 42-5002(A)(1) requires a business that

“imposes an added charge to cover the [TPT]” to remit the collected charges to ADOR. Rather than establishing that the unpaid “additional charge” is an “additional tax due” under § 42-1104(A), as Tunkey argues, § 42-5028 simply imposes concurrent liability on Tunkey for the money collected from KT’s customers to cover the TPTs.

B.

¶14 Tunkey relies on *Action Marine*’s characterization of liability under § 42-5028 as “non-derivative” of taxpayer-business liability to support the contention that the charges owed by KT and Tunkey are different. See 218 Ariz. at 146–47 ¶ 28, 181 P.3d at 193–94. But the Court made this characterization to explain why a responsible person under § 42-5028 is liable only for an unremitted “additional charge” and not interest, costs, or penalties, which are not mentioned in that provision, as would be the case for liability based on a derivative, alter ego theory. *Id.*; see also *Specialty Cos. Grp., LLC v. Meritage Homes of Ariz., Inc.*, 251 Ariz. 365, 366 ¶ 1, 492 P.3d 308, 309 (2021) (characterizing alter ego claims as “derivative in nature”). Viewed in this context, the Court did not use “non-derivative” as meaning that an “additional charge” under § 42-5028 is something other than the amounts charged to a taxpayer-business’s customers to cover TPTs and consequently owed by that taxpayer. See § 42-5002(A)(1). Indeed, partial remittance of these charges by the taxpayer-business would reduce the amount owed by responsible persons under § 42-5028. The charges owed to ADOR by Tunkey and KT, excepting penalties, costs, and interest, are identical.

C.

¶15 Relatedly, we reject Tunkey’s chicken-and-egg assertion that § 42-1114(A) does not authorize collection of TPT charges “due and unpaid” here because ADOR failed to establish through a pre-lawsuit assessment that Tunkey owed this money. The TPT charges were “due and unpaid” under § 42-1114(A) because KT self-assessed the collected charges but did not remit that money to ADOR, see GTR 04-1 at 2, and § 42-5028 imposed liability for that money on Tunkey as a responsible person. The lawsuit itself served as the mechanism for establishing Tunkey’s liability; there is no statutory requirement to assess TPT charges against Tunkey to establish liability under § 42-5028. And although, as Tunkey contends, the lack of assessment meant he could

not file an administrative appeal, he does not assert that this circumstance prejudiced his rights. See *436 **816 A.R.S. § 42-1251(A) (authorizing administrative appeals after notice of assessment).

D.

¶16 Our interpretation of the interplay between § 42-1104(A) and § 42-5028 is not inconsistent with Arizona's business law, as Tunkey argues. See A.R.S. § 29-3304(A) (providing that members of a limited liability company are not personally liable for the company's debts or liability). Liability imposed by § 42-5028 results from a person's failure to fulfill a duty to remit TPT charges collected from a taxpayer-business's customers and not from a person's role as managing member of a limited liability company. See *Action Marine*, 218 Ariz. at 147 ¶ 29, 181 P.3d at 194. Indeed, a person without an ownership interest in the company can be liable under § 42-5028. See *id.* at 146–47 ¶¶ 28–29, 181 P.3d at 193–94 (concluding “person” may include corporate officers, directors, or other responsible persons).

E.

¶17 Tunkey argues we should be guided by the court of appeals' decision in *Video Stop, Inc. v. Arizona Department of Economic Security*, 189 Ariz. 1, 938 P.2d 50 (App. 1996), which concerned successor-employer liability for unpaid unemployment taxes. See A.R.S. § 23-733(D) (imposing successor liability). There, the court held that A.R.S. § 23-743(A) requires the Arizona Department of Economic Security to “determine” within a three-year period any delinquency amount and issue “a collection notice and a statement of unpaid predecessor taxes” before the department can sue to collect those taxes from a successor-employer. *Video Stop*, 189 Ariz. at 4, 938 P.2d at 53. Because the department did not provide that notice to the successor-employer there, the department was time-barred from pursuing its collection action. *Id.*

¶18 *Video Stop* does not support interpreting § 42-1104 as requiring ADOR to notify Tunkey of the “additional tax due.” First, that provision, unlike § 23-743(A), does not require ADOR to “determine” uncontested, self-assessed tax liability. See Part II(A). Second, *Video Stop* did not state that § 23-743(A) requires separate notice to a successor-employer if the predecessor was notified, making that case

even less analogous to the one here. The department in *Video Stop* failed to give notice to anyone within the three-year limitation period. *Video Stop*, 189 Ariz. at 2, 938 P.2d at 51. Presumably, if the predecessor-employer had been timely notified of the amount due, *Video Stop* would have permitted the department's suit. Cf. § 23-733(E) (obligating the department to fulfill the successor-employer's request to specify the amount due from the predecessor-employer at the time of acquisition).

F.

¶19 The non-Arizona cases Tunkey cites do not persuade us to reach a different conclusion. The relevant statutes in those cases either differ significantly from § 42-1104(A) by specifically requiring assessments against responsible persons, see *Ceccarelli v. Levin*, 127 Ohio St.3d 231, 938 N.E.2d 342, 344 ¶ 8 (2010), or the courts interpreted their provisions in a manner not supported by our statute's wording, see *Jones v. United States*, 60 F.3d 584, 589 (9th Cir. 1995); *Bonedaddy's of Lee Branch, LLC v. City of Birmingham*, 192 So. 3d 1151, 1160–61 (Ala. 2015); *Garland v. Dir. of Revenue*, 961 S.W.2d 824, 828–29 (Mo. 1998); *Basch v. N.Y. State Tax Comm'n*, 134 A.D.2d 786, 788, 521 N.Y.S.2d 840 (N.Y. App. Div. 1987).

G.

¶20 Finally, although we are sympathetic to Tunkey's assertion that permitting ADOR to sue under § 42-1114(A) to establish a responsible person's liability under § 42-5028 could be unfair if evidence pertaining to liability has been lost before expiration of the ten-year limitation period for these claims, we are not persuaded to change our interpretation of § 42-1104(A). This is a policy argument for the legislature to address in deciding whether responsible persons should be separately assessed within a specified timeframe before imposing liability on them under § 42-5028. Regardless, we note that absent evidence of responsible-person liability, ADOR likely would be unable to prevail under § 42-5028. See A.R.S. § 42-1255 (placing *437 **817 burden of proof on ADOR). And notably, Tunkey does not assert that evidence here was lost.

CONCLUSION

¶21 We affirm the court of appeals' decision and the tax court's judgment. Because Tunkey is not the prevailing party, we deny his request for attorney fees under [A.R.S. § 12-348](#).

JUSTICE BOLICK, joined by JUSTICES BEENE, MONTGOMERY, and KING authored a concurring opinion.

JUSTICE BOLICK, joined by JUSTICES BEENE, MONTGOMERY, and KING, concurring.

¶22 We join entirely the Court's opinion resolving the narrow issue presented to us. We write separately to urge that, when appropriate in a future case and consistent with stare decisis principles, we should entertain reconsideration of [Arizona Department of Revenue v. Action Marine](#), 218 Ariz. 141, 181 P.3d 188 (2008), the jurisprudential lodestar in this area of law that potentially exposes TPT liability to persons who are not placed on clear statutory notice that they may be personally responsible for it.

A.

¶23 [Action Marine](#)'s troubling holding owes, at least in part, to the conceptual inconsistency in the way our Court approaches statutory interpretation. In [Action Marine](#), the Court stated that "[o]ur primary goal" in statutory interpretation "is to 'discern and give effect to legislative intent,' " 218 Ariz. at 143 ¶ 10, 181 P.3d at 190 (citation omitted), a formulation we have repeated in many subsequent cases. See, e.g., [Premier Physicians Grp., PLLC v. Navarro](#), 240 Ariz. 193, 195 ¶ 9, 377 P.3d 988, 990 (2016); [State v. Jurden](#), 239 Ariz. 526, 530 ¶ 15, 373 P.3d 543, 547 (2016); [Rasor v. Northwest Hosp., LLC](#), 243 Ariz. 160, 164 ¶ 20, 403 P.3d 572, 576 (2017). In other cases, by contrast, we have stated that "[s]tatutory interpretation requires us to determine the meaning of the words the legislature chose to use," [S. Ariz. Home Builders Ass'n v. Town of Marana](#), 522 P.3d 671, 676 ¶ 31 (Ariz. 2023), according to their original public meaning and broader statutory context. [Matthews v. Indus. Comm'n](#), 520 P.3d 168, 174 ¶ 29 (Ariz. 2022). We will refer to the first formulation of statutory interpretation as "legislative intent" and the second as "plain meaning."

¶24 These two methodologies sound superficially similar and in most cases lead to identical and proper outcomes. But the majority and dissenting opinions in [Action Marine](#) illustrate that the divergent approaches can produce different outcomes and underscore why we should cogently and consistently

apply a plain meaning approach to statutory interpretation going forward.

¶25 The legislative intent approach views the words of a statute as a means of determining what the legislature intended.¹ Indeed, in some cases we have remarked that the "statute's text is the best evidence of that intent" [Jenkins v. Hale](#), 218 Ariz. 561, 563 ¶ 10, 190 P.3d 175, 177 (2008); accord [SolarCity Corp. v. Ariz. Dep't of Revenue](#), 243 Ariz. 477, 480 ¶ 8, 413 P.3d 678, 681 (2018) ("The best indicator of that intent is the statute's plain language").

¶26 With due respect to opinions that employed or cited such language, the words of a statute are not "evidence" of anything. They are the law. Our oath as judges does not send us on a cosmic search for legislative intent. It requires us to "support the ... Constitution and laws of the State of Arizona." [A.R.S. § 38-231\(E\)](#); accord [Ariz. Const. art. 6, § 26](#).

¶27 Legislative intent is at best amorphous and at worst illusory. In most cases, the words of a statute are the only thing to which the legislature agreed. Legislators may have multiple intentions in enacting particular words, and often those words are changed by later legislatures. The quest is inherently subjective and therefore corrosive of the rule ***438 **818** of law, for it licenses judges to credit not what the legislature said through the words it enacted but what it meant to say. It also invites imprecision in legislative drafting if we appear to be at the ready to rescue a poorly drafted statute with a sharpened blue pencil. If the legislature agrees on findings, purposes, or definitions, it becomes our duty to ascertain statutory meaning through those prisms. See, e.g., [S. Ariz. Home Builders Ass'n](#), 522 P.3d at 676 ¶ 31 (applying a narrow construction as commanded by statutory language). And as a secondary interpretative device, legislative history can often help illuminate statutory meaning. See, e.g., [Rasor](#), 243 Ariz. at 164 ¶ 20, 403 P.3d at 576 ("Where the meaning is unclear from language and context, we may employ secondary tools, such as considering legislative history"). But legislative intent properly understood is only a means to discern statutory meaning and never an object in itself. See, e.g., [Conroy v. Aniskoff](#), 507 U.S. 511, 519, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993) (Scalia, J., concurring) ("We are governed by laws, not by the intentions of legislators."). We exceed our limited constitutional authority when we displace plain meaning with legislative intent.

¶28 The evolution in Arizona jurisprudence of the legislative intent approach to statutory interpretation is curious. Our

territorial Court emphatically rejected it, recognizing that “it is the duty of all courts to confine themselves to the words of the Legislature—nothing adding thereto; nothing demitting.” *Flowing Wells Co. v. Culin*, 11 Ariz. 425, 429, 95 P. 111 (1908). “The court has no authority to extend a law beyond the fair and reasonable meaning of its terms, because of some supposed policy of the law, or because the Legislature did not use proper words to express its meaning.” *Id.*

¶29 A decade later, the Court observed that legislative intent, as expressly declared by the legislature, “should be the key to the door of what follows.” *Deyo v. Ariz. Grading & Constr. Co.*, 18 Ariz. 149, 153, 157 P. 371 (1916). It explained that “[a]ny unhappy or careless use of words ... should not be construed so as to defeat the *avowed intention* of the law-making body.” *Id.* (emphasis added).

¶30 Citing *Deyo* but extending the rule far beyond its reach, the Court expressly repudiated a plain meaning approach to statutory interpretation in *State v. McEuen*, 42 Ariz. 385, 392–93, 26 P.2d 1005 (1933). In its place, the Court adopted two rules of statutory interpretation. “The first and most important principle ... is that the intent of the legislature is to be ascertained and followed.” *Id.* at 392, 26 P.2d 1005. “The second ... is that statutes shall be liberally construed to effect their objects and to promote justice.” *Id.* (citing Ariz. Rev. Code § 3038 (1928)). But see *S. Ariz. Home Builders Ass’n*, 522 P.3d at 676 ¶ 31 (rejecting this approach). “These principles of interpretation take precedence over all others,” the Court instructed, “the remaining rules being merely ancillary and used to assist in the proper application of the two above set forth.” *McEuen*, 42 Ariz. at 392, 26 P.2d 1005.

¶31 This open-ended expression of legislative interpretation invites judicial mischief. The standard is subjective and skews toward a broad interpretation of the statute at interest to “promote justice” regardless of the statute’s objective. The temptation to correct perceived legislative error or expand statutes beyond their plain meaning can lead the Court to transgress legislative power.

¶32 We have surely retreated from the expansive interpretative role assumed for the Court in *McEuen*. See, e.g., *Roberts v. State*, 253 Ariz. 259, 266 ¶ 20, 512 P.3d 1007, 1014 (2022) (holding that “courts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself,” and “will not inflate, expand, stretch or extend a statute to matters

not falling within its expressed provisions” (quoting *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91 (1965))). But other decisions, exemplified by *Action Marine*, suggest we have not yet fully returned to the wellspring of our proper role enunciated in *Flowing Wells*. Instead, we have struck an amorphous middle ground that is consistent in its inconsistency. We owe it to the parties and advocates who come before us to tell them what we are looking *439 **819 for when interpreting a statute, and we should hew to our constitutional boundaries by choosing plain meaning over legislative intent when the two diverge.

B.

¶33 By contrast, the entirety of the majority opinion in *Action Marine* illustrates a search for legislative intent. See 218 Ariz. at 143–46, ¶¶ 12, 13, 16, 18, 25, 27, 181 P.3d at 190–93 (depicting what the legislature “meant” or “intended”). The Court looked in part to what it considered an analogous provision² and to interpretation of similar statutes from different states. *Id.* at 144–45 ¶ 18, 181 P.3d at 191–92. The majority concluded that notwithstanding its failure to include corporate officers within the definition of “persons,” “by enacting § 42-5028, the legislature meant to bring Arizona within the national trend of imposing personal liability on those individuals who fail to remit such taxes.” *Id.* Thus, personal liability could extend to an “accountant, corporate officer, or other person charged with remitting the added charge to the taxing authority.” *Id.* at 146 ¶ 26, 181 P.3d at 193. Drawing upon practice from other jurisdictions, the Court remanded to the trial court to determine whether the person had a duty to remit the taxes—that is, “control over, responsibility for, or supervision of the money collected.” *Id.* at 147 ¶ 29, 181 P.3d at 194.

¶34 The dissenting justices observed that while the majority opinion “has much to commend it as a matter of public policy,” its conclusion “is not inexorably compelled by the text of the relevant statutes.” *Id.* at 147 ¶¶ 32–33, 181 P.3d at 194 (Hurwitz, J., dissenting). The dissenters noted that A.R.S. § 42-5002(A)(1) encompasses a “person who imposes an added charge,” which “can only be the business that imposes the [TPT] charge,” so that for purposes of liability, “‘person’ ... can refer only to the putative taxpayer—whether a corporation, individual, or other entity.” *Id.* at 148 ¶ 35, 181 P.3d at 195. The dissent concluded that “before we in effect pierce the corporate veil and impose substantial liability on these individuals in the name of good public policy, I would

require that the legislature more clearly enunciate its direction that we do so.” *Id.* at 149 ¶ 40, 181 P.3d at 196.³

¶35 It is axiomatic that we must interpret statutes, whenever possible, to avoid an unconstitutional result. *State v. Arevalo*, 249 Ariz. 370, 373 ¶ 9, 470 P.3d 644, 647 (2020) (stating the presumptions and construction as to constitutionality). Due process requires that statutes “provide clear notice of obligations so that taxpayers may comply and order their affairs accordingly.” *BSI Holdings, LLC v. Ariz. Dep’t of Transp.*, 244 Ariz. 17, 22 ¶ 25, 417 P.3d 782, 787 (2018). For precisely this reason, we construe ambiguous tax statutes in favor of the taxpayer. *See, e.g., City of Phx. v. Orbitz Worldwide Inc.*, 247 Ariz. 234, 241 ¶ 22, 448 P.3d 275, 282 (2019); *Vangilder v. Ariz. Dep’t of Revenue*, 252 Ariz. 481, 488 ¶ 26, 505 P.3d 274, 281 (2022). The corporate officer in *Action Marine* was not placed on notice of potential liability by the plain meaning of § 42-5028 but was exposed to such liability only by stitching together disparate statutes and

interpretations *440 **820 of different provisions from other jurisdictions.

¶36 It is premature to reconsider *Action Marine* as the issue was not briefed. Should we do so in the future we must take into account applicable stare decisis principles. *See, e.g., Lowing v. Allstate Ins. Co.*, 176 Ariz. 101, 107, 859 P.2d 724, 730 (1993) (describing stare decisis as “a doctrine of persuasion” that honors prior decisions unless, in addition to other considerations, they are “clearly erroneous or manifestly wrong”). Nor did the Tunkeys dispute their personal liability for taxes owed pursuant to *Action Marine*, contesting only the process employed by ADOR to collect back taxes. Because the Court has correctly ruled on that question, any potential reconsideration of *Action Marine* must await a future case.

All Citations

254 Ariz. 432, 90 Arizona Cases Digest 29, 524 P.3d 812

Footnotes

- 1 To be sure, we have sometimes book-ended that approach by admonishing that “ ‘[w]hen the plain text of a statute is clear and unambiguous,’ it controls unless an absurdity or constitutional violation would result.” *Cox v. Ponce*, 251 Ariz. 302, 307 ¶ 18, 491 P.3d 1109, 1114 (2021). But we do not always note that caveat, and the Court did not do so in *Action Marine*.
- 2 That provision, pertaining to income taxes, provides that “[a]ny person required to collect, truthfully account for and pay over any [withheld] tax imposed by this title who fails to do so is, in addition to other penalties provided by law, personally liable for the total amount of the tax not collected or accounted for and paid over.” A.R.S. § 43-435. The *Action Marine* majority reasoned that the inclusion of this provision in the same bill suggested that the legislature similarly intended a broader meaning of “person” in § 42-5028. 218 Ariz. at 144 ¶ 15, 181 P.3d at 191. To the contrary, we have consistently viewed different language in different constitutional and statutory provisions to have different meanings. *See, e.g., Burns v. Ariz. Pub. Serv. Co.*, 254 Ariz. 24, 31 ¶ 28, 517 P.3d 624, 631 (2022); *Rochlin v. State*, 112 Ariz. 171, 176, 540 P.2d 643, 648 (1975); *see generally* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012) (“[A] material variation in terms suggests a variation in meaning.”). That would seem especially true where a different scope of a term is used in different provisions in the same bill.
- 3 In addition, there may be cases where parties may be even further removed than the corporate officer in *Action Marine*, such as where the entity is a limited liability company. *See* A.R.S. § 29-3304(A) (insulating limited liability company members or managers from the company’s debts and obligations).

163 Arizona Cases Digest 42
Supreme Court of Arizona.

STATE of Arizona, Petitioner,

v.

Hon. Eric E. GORDON, Judge of the Superior
Court of the State of Arizona, IN AND FOR the
COUNTY OF MOHAVE, Respondent Judge,
Gregory James Owen, Real Party in Interest.

No. CR-24-0064-PR

|

Filed December 12, 2025

Synopsis

Background: After bench trial for charge under enhanced penalty statute for civil traffic violations, defendant was convicted in the Lake Havasu Consolidated Court of causing death by violating red-light statute. Defendant appealed. The Superior Court, Mohave County, No. CR202300497, [Eric E. Gordon, J.](#), reversed and directed a verdict of acquittal. State filed special action petition. The Court of Appeals, [257 Ariz. 95, 544 P.3d 673](#), vacated the Superior Court's decision and remanded to the Consolidated Court. Defendant's petition for review was granted.

Holdings: The Supreme Court, [Montgomery, J.](#), held that:

enhanced penalty statute does not apply to fatal accident that occurs before offending vehicle enters intersection against red light, regardless of whether accident consists of single collision or first in series of events, and

defendant's violation of red-light statute did not satisfy enhanced penalty statute's "results in" requirement for causation, where fatal accident occurred before defendant's motor home entered intersection against red light.

Opinion of Court of Appeals vacated; Superior Court's order affirmed.

[Bolick, J.](#), filed a dissenting opinion, in which [Pelander, Retired Justice](#), sitting by designation, joined.

Procedural Posture(s): Appellate Review.

Special Action from the Lake Havasu Consolidated Court, No. M0844TR2022000209. **REVERSED**

Appeal from the Superior Court in Mohave County, The Honorable [Eric E. Gordon](#), Judge, No. CR202300497. **AFFIRMED**

Opinion of the Court of Appeals, Division One, [257 Ariz. 95, 544 P.3d 673 \(App. 2024\)](#). **VACATED**

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JUSTICE MONTGOMERY authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER, VICE CHIEF JUSTICE LOPEZ, and JUSTICES BEENE and KING joined. JUSTICE BOLICK, joined by JUSTICE PELANDER (Retired),* dissented.

Opinion

JUSTICE MONTGOMERY, Opinion of the Court:

***217 ¶1** Gregory James Owen rear-ended a Jeep stopped at a red light, killing one of the Jeep's passengers. After rear-ending the Jeep, Owen's vehicle continued through the red light and into the intersection. Consequently, the State charged Owen with violating the enhanced penalty statute, [A.R.S. § 28-672](#), predicated on a violation of the red-light statute, [§ 28-645\(A\)\(3\)\(a\)](#).

¶2 The enhanced penalty statute imposes a criminal penalty for violating one of several enumerated civil traffic statutes if "the violation results in an accident causing serious physical injury or death to another person." [A.R.S. § 28-672\(A\)](#). One

of those statutes is the red-light statute, which provides that “vehicular traffic facing a steady red signal alone shall stop before entering the intersection and shall remain standing until an indication to proceed is shown.”¹ See § 28-645(A)(3)(a).

¶3 In this case, we must determine whether the enhanced penalty statute applies to a fatal accident that occurs before the offending vehicle enters an intersection against a red light. We hold that because a red-light violation can only be committed once the vehicle enters an intersection, the enhanced penalty statute cannot apply to a fatal accident that occurs before an intersection, whether the accident consists of a single collision or the first in a series of events.

FACTS & PROCEDURAL BACKGROUND

¶4 Owen was driving a motorhome on SR 95 in Lake Havasu City when he rear-ended a Jeep Grand Cherokee that was stopped at a red light at the intersection of SR 95 and Acoma Blvd.² The impact propelled the Jeep into and through the other side of the intersection, killing one of the passengers. Owen's motorhome also continued through the intersection while facing a red light. The State charged Owen with causing death by a moving violation under the enhanced penalty statute based on a red-light violation.

¶5 Following a bench trial, the municipal court observed in a minute order disposing of the case “that in using the term ‘accident’ the [L]egislature intended to mean that series of events that constitute an accident.” The court therefore concluded that the “series of events that constitute the ‘accident’ ... includes and can be attributed to the defendant's violation of A.R.S. 28-645(A)(3)(a).” The court consequently found Owen guilty as charged.

¶6 Owen appealed the verdict to the superior court, arguing that he did not commit a red-light violation that resulted in the victim's death because “the accident happened before the intersection, and the predicate moving violation can only happen upon entering an intersection.” The superior court found that Owen did commit a moving violation because he ran a red light.³ However, the court also found, as a matter of law, that, *218 because the accident occurred before Owen ran the red light, he was not guilty of violating the enhanced penalty statute. Accordingly, the superior court reversed the

municipal court's finding of guilt and directed a verdict of acquittal.

¶7 The State then filed a special action petition with the court of appeals, challenging the superior court's interpretation of the red-light and enhanced penalty statutes. Echoing the municipal court, the court of appeals reasoned that the use of the term “accident” in the enhanced penalty statute encompasses a series of events broader than a single collision. *State v. Gordon*, 257 Ariz. 95, 99 ¶ 15, 544 P.3d 673, 677 (App. 2024). Consistent with this reasoning and in reliance on *State v. Powers*, 200 Ariz. 123, 126 ¶9, 23 P.3d 668, 671 (App. 2001), and other out-of-state authorities, the court offered the following broad interpretation of the term “accident”: “when determining whether an accident resulted from a red-light violation, a court must consider an accident as a continuous event in which the traffic violation causes an event that results in death or injury.” *Gordon*, 257 Ariz. at 99–100 ¶¶ 15–16, 544 P.3d at 677–78.

¶8 Accordingly, the court reasoned that when “a driver fails to stop and remain standing at a red light and then hits another vehicle, immediately propelling both vehicles into the intersection, the entire event—from initial collision to when the vehicles ultimately cease movement—is an accident that resulted from the driver's failure to stop at the red light.” *Id.* at 100 ¶ 19, 544 P.3d at 678. The court thus concluded that imposition of the enhanced penalty does not require a driver to run a red light before the initial collision so long as the accident comprises one continuous event that results from a driver failing to stop at a red light. *Id.* ¶ 21. Consequently, the court vacated the superior court's decision and remanded the case to the municipal court for further proceedings. *Id.*

¶9 We granted Owen's petition for review because whether a driver must enter an intersection to commit a red-light violation before an accident for the enhanced penalty statute to apply is an issue of statewide importance. We have jurisdiction pursuant to article 6, section 5(3) of the Arizona Constitution.

DISCUSSION

¶10 Owen argues that the enhanced penalty statute requires “both a causal link and a certain temporal relationship” with the red-light statute, such that it requires a red-light violation “before the accident and before the resulting injury or death.” Owen thus contends that he is not guilty of violating the

enhanced penalty statute because he committed a red-light violation only after he collided with the Jeep.

¶11 The State disagrees, asserting first that the enhanced penalty statute uses the word “accident” instead of “collision,” which is a broader term covering the entire event that begins when Owen struck the Jeep and ends when the vehicles came to rest. The State therefore concludes that because “the required conduct is the violation of the red-light statute and the required result is the accident causing serious physical injury or death,” the enhanced penalty statute’s causation requirement is satisfied.

¶12 We review the interpretation of statutes de novo. *Cao v. PFP Dorsey Invs., LLC*, 257 Ariz. 109, 113 ¶ 15, 545 P.3d 459, 463 (2024). “Our task in statutory construction is to effectuate the text if it is clear and unambiguous.” *In re Drummond*, 257 Ariz. 15, 18 ¶ 5, 543 P.3d 1022, 1025 (2024) (quoting *BSI Holdings, LLC v. Ariz. Dep’t of Transp.*, 244 Ariz. 17, 19 ¶ 9, 417 P.3d 782, 784 (2018)). To effectuate the text “we interpret statutes according to their plain language,” *id.*, giving “words ‘their ordinary meaning unless it appears from the context or otherwise that a different meaning is intended.’” *State v. Luviano*, 255 Ariz. 225, 228 ¶ 10, 530 P.3d 388, 391 (2023) (quoting *Ariz. ex rel. Brnovich v. Maricopa Cnty. Cmty. Coll. Dist. Bd.*, 243 Ariz. 539, 541 ¶ 7, 416 P.3d 803, 805 (2018)). And “[w]here unambiguous, we apply the express terms of a ... statutory provision without resorting to secondary methods of construction.” *Mussi v. Hobbs*, 255 Ariz. 395, 398 ¶ 13, 532 P.3d 1131, 1134 (2023) (quoting *219 *Arizonans for Second Chances, Rehab., & Pub. Safety v. Hobbs*, 249 Ariz. 396, 406 ¶ 28, 471 P.3d 607, 617 (2020)).

¶13 We are also mindful that the provisions of a penal statute “must be construed according to the fair meaning of their terms to promote justice and effect the objects of the law, including the purposes stated in § 13-101.” A.R.S. § 13-104. One of the stated purposes set forth in A.R.S. § 13-101(2) is “[t]o give fair warning of the nature of the conduct proscribed” We turn to consider what constitutes a red-light violation.

A. Arizona’s Red-Light Statute

¶14 Owen asserts that any red-light violation requires a driver’s failure to “stop before entering the intersection and ... remain standing.” The State counters that a driver can commit a red-light violation without ever entering the intersection, as does the court of appeals, *Gordon*, 257 Ariz. at 100 ¶ 21, 544 P.3d at 678, and the dissent, *infra* ¶ 43.

¶15 As noted, the red-light statute requires: (1) a driver facing a red-light to “stop”; (2) “before entering the intersection”; and (3) “remain standing until an indication to proceed is shown.” § 28-645(A)(3)(a) (Emphasis added.) Thus, a red-light violation can only occur in one of two ways: (1) when a driver’s vehicle enters an intersection facing a steady, red signal without stopping; or (2) after having come to a stop before an intersection with a red light, the driver enters the intersection against the red light. In either event, the driver must enter the intersection to commit a violation. See *Flashberg v. Krebs*, 8 Ariz. App. 254, 256, 445 P.2d 456 (1968) (stating that a materially identical prior version of § 28-645(A)(3)(a) “imposes the duty to stop for a red light before entering an intersection”)⁴; see also *Lemieux v. Superior Court*, 132 Ariz. 214, 215, 644 P.2d 1300, 1301 (1982) (noting that liability under a materially identical prior version of § 28-645(A)(3)(a) “turns on the precise location of the [driver’s] vehicle at the moment the light turned red”).⁵ Moreover, the Legislature has literally drawn a line to demarcate at what point a violation occurs by defining an intersection as “the area embraced within the prolongation or connection of the lateral curb lines” A.R.S. § 28-601(8).⁶

¶16 Accepting the State’s argument would void the requirement to stop “before entering the intersection.” Likewise, the dissent’s overemphasis on “stop” as the “actus reus” negates the intersection element. *Infra* ¶ 45. And we must “give meaning to [e]ach word, phrase, clause, and sentence [of a statute] so that no part will be void, inert, redundant, or trivial.” *Mussi*, 255 Ariz. at 398 ¶ 13, 532 P.3d at 1134 (first alteration in original) (quoting *City of Phoenix v. Yates*, 69 Ariz. 68, 72, 208 P.2d 1147 (1949)).

¶17 Thus, in the matter before us, Owen could not commit a red-light violation until *after* his vehicle crossed the connection of the lateral curb lines comprising the intersection of SR 95 and Acoma Blvd. We next consider the circumstances in which the enhanced penalty statute applies to an accident.

B. Arizona’s Enhanced Penalty Statute

¶18 Owen argues that because the accident occurred before he went through the red light, any red-light violation did not result in an accident. The State asserts—as the court of appeals, *Gordon*, 257 Ariz. at 99 ¶ 15, 544 P.3d at 677, and the dissent, *infra* ¶ 49, likewise reason—that the accident here, for purposes of imposing an enhanced penalty,

constituted an entire series of events commencing with the initial impact and continuing through the intersection. Thus, the State further argues that “[t]he contact with the victim’s vehicle and defendant’s vehicle was a simultaneous event with failing to stop for a red light and barreling through the entire intersection.” The State therefore concludes *220 that “Owen’s failure to stop at a red light and remain standing directly caused both vehicles to go through the entire intersection and cause the death of [the Jeep’s passenger].”

¶19 An enhanced penalty for a civil traffic violation only applies if: (1) a driver violates a specified statute; (2) that “violation results in an accident”; and (3) that accident “caus[es] serious physical injury or death to another person.” § 28-672(A)(1). As noted by the court of appeals, the Legislature did not define “results in.” *Gordon*, 257 Ariz. at 100 ¶ 18, 544 P.3d at 678. Accordingly, we may look to a dictionary to “define a word’s natural and obvious meaning.” See *State v. Jones*, 188 Ariz. 388, 392, 937 P.2d 310, 314 (1997). And in this case, because “results in” is a phrasal verb that carries the same general meaning as its verb, we consider the definition of “result.” See, e.g., Bryan A. Garner, *The Chicago Guide to Grammar, Usage, and Punctuation* 82 (2016).

¶20 Webster’s New World College Dictionary (4th ed. 2002) defines “result” as “to happen or issue as a consequence or effect.”⁷ An accident is thus a consequence of, or the effect of, a moving violation, which makes the violation a cause of the resulting accident. *Cause*, Black’s Law Dictionary (8th ed. 2004). The enhanced penalty statute, therefore, establishes a relationship between a moving violation and an accident that constitutes “[a] sequence of causally connected events.” *Causation*, The Cambridge Dictionary of Philosophy (3d ed. 2015) (discussing event causation, involving “the act of bringing about an effect, which may be an event”). Accordingly, the plain terms of the enhanced penalty statute require a sequence of events: first, a moving violation, and then, an accident, regardless of whether the accident consists of a single event or a series of events.

¶21 The State therefore errs in arguing that an accident that occurs simultaneously with a violation can satisfy the enhanced penalty statute’s requirements. Such a conclusion negates the necessary causal relationship by conflating a sequence of two events into one continuous or simultaneous event. See A.R.S. § 13-203 (providing that “[c]onduct is the cause of a result when” it is the but-for cause of a result and “[t]he relationship between the conduct and result

satisfies any additional causal requirements imposed by the statute defining the offense.”).⁸ This error is illustrated with a comparison to our robbery statute, A.R.S. § 13-1902.

¶22 Section 13-1902(A) provides:

A person commits robbery if *in the course of* taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.

(Emphasis added.) Section 13-1901(2) further provides that “[i]n the course of committing” includes any of the defendant’s acts beginning with the initiation and extending through the flight from a robbery.” In contrast, there is no language in the enhanced penalty statute to suggest that it is sufficient for a moving violation to begin and extend through an accident, or vice versa. The moving violation and accident events are independent and must proceed sequentially for the enhanced penalty statute to apply. Nonetheless, the court of appeals and the dissent share the State’s conclusion with similar reasoning and with misplaced reliance on inapposite cases.

¶23 As noted, the court of appeals relied on *Powers* to define an accident as consisting of a series of events. *221 *Gordon* 257 Ariz. at 99 ¶ 15, 544 P.3d at 677. *Powers* involved a driver who accidentally struck a mother and her infant daughter, killing the mother and seriously injuring the daughter, and then driving away. *Powers*, 200 Ariz. at 125 ¶ 2, 23 P.3d at 670. The question before the court was whether the driver could be charged with one or two counts of leaving the scene of an accident. *Id.* ¶ 3. The driver challenged the second count as multiplicitous, which would violate the Double Jeopardy Clause, because there was only one accident scene. *Id.* ¶ 5. The State countered that there were two separate accidents, one involving the mother and the second involving the infant. *Id.* at 126 ¶ 7, 23 P.3d at 671. The court concluded that “[t]he plain and ordinary meanings of the terms ‘accident’ and ‘scene of the accident’ do not depend on the number of victims. As commonly understood, only one accident scene

exists even though accidents often involve multiple victims and impacts.” *Id.* ¶ 9.⁹

¶24 Given the Double Jeopardy context and the crux of the analysis, it is clear that the court was engaged in determining the appropriate unit of prosecution. *See, e.g., State v. Moninger*, 258 Ariz. 18, 22 ¶ 12, 552 P.3d 519, 523 (2024) (“Whether conduct is divisible into separate and distinct violations is informed by the scope of the relevant statute’s allowable unit of prosecution.”). Thus, *Powers*’ consideration of what constitutes an accident is inapposite to this case because the unit of prosecution is not at issue, let alone the number of victims or impacts.¹⁰ Additionally, the court of appeals’ misplaced focus on “accident” leads to a conclusion that conflates the predicate event—a red-light violation—with the resulting event, the fatal accident. As discussed, the enhanced penalty statute requires a red-light violation to precede a fatal accident.

¶25 With respect to the dissent’s analysis and conclusion, it contradicts our statutory interpretation jurisprudence, overlooks the successive nature of the causal relationship between a red-light violation and a fatal accident, and misapprehends the application of victim rights.

¶26 First, the dissent seeks to combine the red-light and enhanced penalty statutes to create a general safety measure “so that the language of § 28-645(A)(3)(a) must be read in the context of the two provisions together.” *Infra* ¶ 40. Respectfully, the fact that the red-light statute is enumerated in the enhanced penalty statute necessarily requires that the two be read together. Regardless, as the dissent acknowledges, the enhanced penalty statute cannot change the meaning of the red-light statute. *Infra* ¶ 41. Nonetheless, the dissent asserts that the meaning of both statutes “should be assessed through the lens—the context—of the overall object of the combined statutes,” which is “to prevent serious or fatal injuries by requiring vehicles to stop before the intersection at a red light.” *Id.* However, we have previously analyzed legislative action regarding the enhanced penalty statute and concluded that “it is clear that the [L]egislature’s primary focus was on addressing non-driver traffic fatalities.” *State v. Patel*, 251 Ariz. 131, 139 ¶ 36, 486 P.3d 188, 196 (2021). Furthermore, “[i]t is a universal rule that courts will not enlarge, stretch, expand, or extend a statute to matters not falling within its express provisions.” *State ex rel. Morrison v. Anway*, 87 Ariz. 206, 209, 349 P.2d 774 (1960); *see also Mussi*, 255 Ariz. at 402 ¶ 34, 532 P.3d at 1138 (“It is a basic principle that courts will not read into a

statute something which is not within the manifest intention of the [L]egislature as indicated by the statute itself.” (quoting *Town of Scottsdale v. State ex rel. Pickrell*, 98 Ariz. 382, 386, 405 P.2d 871 (1965))). This takes us to the second error.

¶27 Our colleagues’ invocation of *Brogdon v. State*, 299 Ga.App. 547, 683 S.E.2d 99 (2009), as well as the court of appeals’ approving citation, is problematic for two reasons. First, the *Brogdon* court utilized a method of statutory interpretation inconsistent *222 with this Court’s jurisprudence. And second, the *Brogdon* court effectively rewrote the statute in question, an approach inconsistent with this Court’s jurisprudence.

¶28 In *Brogdon*, the Georgia Court of Appeals stated that “[i]n construing statutes, we look to the literal language of the statute, the rules of statutory construction and rules of reason and logic, *the most important of which is to construe the statute so as to give effect to the legislature’s intent. Where the literal language does not square with reason or intent, then the literal must yield.*” *Id.* at 104 (emphasis added) (cleaned up).

¶29 Looking to the text, utilizing canons of construction, and employing rules of reason and logic is all consistent with our jurisprudence. And at first glance, it may seem our approach to applying the plain meaning of a statute—the “literal language” in the parlance of *Brogdon*—is in accord with the *Brogdon* court. *Bilke v. State*, 206 Ariz. 462, 464 ¶ 11, 80 P.3d 269, 271 (2003) (noting that we apply the plain meaning of a statute “unless [it] would lead to impossible or absurd results”). However, *Brogdon*’s approach permits a court to ignore the plain meaning of the text if it perceives a departure from legislative intent. In other words, *Brogdon* engages in discerning legislative intent and *then* considers the text. That is not our method. We do not look beyond the text of a statute to discern a legislative purpose absent ambiguity because the plain meaning of the text itself reflects the intent of the Legislature. *S. Arizona Home Builders Ass’n v. Town of Marana*, 254 Ariz. 281, 286 ¶ 31, 522 P.3d 671, 676 (2023) (“Statutory interpretation requires us to determine the meaning of the words the [L]egislature chose to use.”); *Farris v. Advantage Cap. Corp.*, 217 Ariz. 1, 2 ¶ 5, 170 P.3d 250, 251 (2007) (“A statute’s plain language is the best indicator of legislative intent, and we will not ‘engage in other means of statutory interpretation’ unless a statute is ambiguous.” (quoting *Parrot v. DaimlerChrysler Corp.*, 212 Ariz. 255, 257 ¶ 7, 130 P.3d 530, 532 (2006))); *see also State ex rel. Arizona Dep’t of Revenue v. Tunkey*, 254

Ariz. 432, 437 ¶¶ 23–24, 524 P.3d 812, 817 (2023) (Bolick, Beene, Montgomery, and King JJ., concurring) (rejecting an approach to statutory interpretation whose “primary goal ... is to discern and give effect to legislative intent” instead of seeking to “cogently and consistently apply a plain meaning approach” in order to avoid divergent outcomes). The *Brogdon* court's approach, and that of the dissent, further illustrates how this approach can run afoul of other principles of interpretation. *Tunkey*, 254 *Ariz.* at 437 ¶ 24, 524 P.3d at 817.

¶30 Applying its stated method of statutory interpretation, the *Brogdon* court interpreted its red-light statute¹¹ to “require[] that a driver facing a red traffic light stop behind the stop line or crosswalk *and also behind those vehicles stopped in observance of the traffic light.*” 683 S.E.2d at 104. (Emphasis added.) In reaching this result, *Brogdon* added language to its statute as the dissent does to ours. *Infra* ¶ 46. But “it is not the function of the courts to rewrite statutes.” *City of Phoenix v. Butler*, 110 *Ariz.* 160, 162, 515 P.2d 1180, 1182 (1973). “Moreover, we recognize that a judicial expansion of statutory language can violate a defendant's due process right to fair warning.” *Powers*, 200 *Ariz.* at 126 ¶ 8, 23 P.3d at 671. And if we were to adopt *Brogdon*'s logic and that of our dissenting colleagues, then a red-light violation could occur anytime a vehicle rear-ended another one anywhere before a red light, regardless of how far it occurred before the intersection. Say, for example, the 80th car from a red light in a traffic jam rear-ends the 79th car. The dissent's logic would result in a red-light violation in this situation, even though they were a quarter mile from the intersection. *See infra* ¶ 46 (asserting that “ ‘[b]efore the intersection can be three inches, ten feet, thirty feet, or some other distance.’”).

*223 ¶31 Finally, the third error concerns the errant invocation of the Victims' Bill of Rights. Restitution is certainly a constitutionally guaranteed right. *See Ariz. Const.* art. 2, § 2.1(A)(8); *Patel*, 251 *Ariz.* at 134 ¶ 11, 486 P.3d at 191. But for restitution to be due here, Owen must be “convicted of the criminal conduct that caused the victim's loss or injury.” *Art. 2, § 2.1(A)(8).*

¶32 However, Owen's red-light violation did not result in the accident because the accident occurred prior to Owen entering the intersection. Instead, the accident was the result of—a consequence of—Owen's failure to stop before his vehicle collided with the Jeep, which is a violation of § 28-701(A).¹² However, the Legislature did not include a violation of § 28-701(A) in the enhanced penalty statute. Therefore, Owen

does not stand convicted of criminal conduct for which restitution could be ordered.

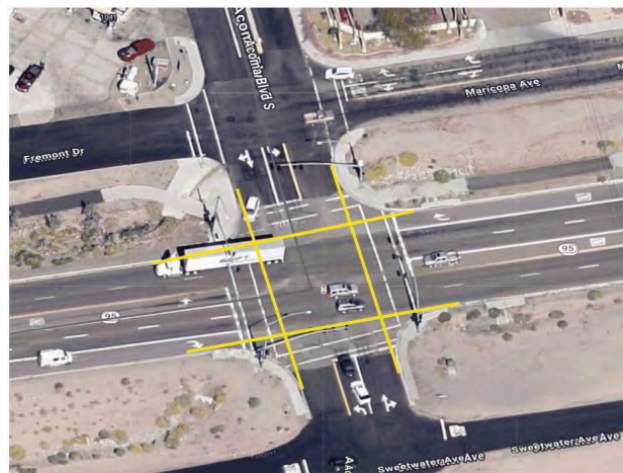
¶33 The circumstances here reflect an outcome the Legislature may wish to address. *See Patel*, 251 *Ariz.* at 140 ¶ 37, 486 P.3d at 197 (noting legislative action to address a perceived statutory “loophole” involving a driver who ran a red light and killed a pedestrian). Regardless, the fact that the plain meaning of the enhanced penalty statute does not achieve the dissent's preferred resolution does not make our application of its plain meaning absurd. *Infra* ¶ 58.

CONCLUSION

¶34 For the reasons stated, we vacate the court of appeals' opinion and affirm the superior court's order reversing the municipal court's judgment of conviction and directing a verdict of acquittal.

JUSTICE BOLICK, joined by JUSTICE PELANDER (Retired),* dissented.

APPENDIX



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Owen's vehicle and the Jeep moved right to left through the intersection. *See supra* ¶ 2.

BOLICK, J., joined by PELANDER, J. (Retired), dissenting:

¶35 On January 14, 2022, Gregory James Owen was driving his motorhome trying to *224 make it through a yellow light before it turned red. He failed to get there in time as the light turned red before his arrival. Had his vehicle entered the intersection on the red light and then smashed into other vehicles thereby causing serious physical injury or death, he would have been subject to an enhanced criminal penalty.

¶36 But in regard to the criminal offense, under the majority's view, Owen was lucky. Because standing between him and the intersection was a Jeep Grand Cherokee that had properly stopped for the red light. As the trial court found, Owen's motor home "barrel[ed] into the victim's vehicle ... forcing both of the vehicles through the red light and finally coming to a stop on the other side of the intersection." The Jeep's backseat passenger/victim was killed. But Owen, according to the majority here, was *not* subject to the enhanced criminal statute because the initial crash occurred *before* Owen's motor home hurtled into the intersection.

¶37 If this seems a discordant, improbable result, that is because the enhanced penalty statute does not split hairs in this fashion; and to the extent it is ambiguous, it is legally absurd to interpret it in the fashion the majority does here. For that reason, we would affirm the court of appeals' unanimous holding that the relevant statutes "do[] not require a vehicle to have entered the intersection before causing the accident," *State v. Gordon*, 257 Ariz. 95, 97 ¶ 2, 544 P.3d 673, 675 (App. 2024), and uphold Owen's conviction.

¶38 The enhanced criminal penalty statute applies if a motorist commits one of several enumerated moving violations "and the violation results in an accident causing serious physical injury or death to another person." A.R.S. § 28-672(A). The predicate statute at issue here is A.R.S. § 28-645(A)(3)(a), which provides in relevant part that "vehicular traffic facing a steady red signal alone shall stop before entering the intersection and shall remain standing until an indication to proceed is shown."

¶39 In interpreting statutes, if the point of the statute is obvious from its text, we are admonished to effectuate it as best we can with fidelity to the text. This is referred to as the "presumption against ineffectiveness" canon, which instructs that "[a] textually permissible interpretation that furthers rather than obstructs the [statute]'s purpose should be favored." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 63 (2012) ("This canon follows inevitably from the facts that (1) interpretation

always depends on context, (2) context always includes evident purpose, and (3) evident purpose always includes effectiveness."); *see also In re Chalmers*, 259 Ariz. 493, —, 571 P.3d 885, 889 ¶ 18 (2025) (citing *State v. Serrato*, — Ariz. —, —, 568 P.3d 756, 760 ¶ 16 (2025)).

¶40 The majority essentially interprets § 28-645(A)(3)(a) in isolation as a red-light-running statute, so that if a vehicle manages to skid to a stop before entering the intersection on a light that has turned red, or slams into legally stopped vehicles that prevent it from entering the intersection, technically no violation has occurred. But once the statute is conjoined with § 28-672(A), the combination is clearly a safety measure, so that the language of § 28-645(A)(3)(a) must be read in the context of the two provisions together.

¶41 That is not to say, at all and to the contrary, that the second statute changes the meaning of the first, but rather that the meaning of both should be assessed through the lens—the context—of the overall object of the combined statutes. *Chalmers*, — Ariz. at — n. 2, 571 P.3d at 889 ¶ 16 n.2 (setting forth *in pari materia* doctrine). Plainly, that object is to prevent serious or fatal injuries by requiring vehicles to stop before the intersection at a red light. As we explain below, the conclusion that there is no enhanced penalty where death is precipitated by an accident that initially occurs before the intersection and is continued through the intersection—that is, where the offending driver has not stopped for a red light before the intersection and death or serious injury occurs after the vehicles proceed through the intersection—is at best a hypertechnical one that defeats the statutes' clear purpose. Given that a plain-meaning approach would lead to a different result, we should favor that interpretation.

*225 ¶42 Construing § 28-645(A)(3)(a), the majority aptly observes that it requires "(1) a driver facing a red-light to 'stop'; (2) 'before entering the intersection'; and (3) 'remain standing until an indication to proceed is shown.' " *Supra* ¶ 15 (emphasis in original). That is exactly right. It should be clear that if these three elements are satisfied, as they are here, the statute is violated; and if that violation causes an accident that results in death or serious injury, an enhanced penalty accrues.

¶43 But the majority rewrites the statute to add a fourth element, holding that "the driver must enter the intersection to commit a violation." *Supra* ¶ 15. Had the Legislature intended such meaning, it could have said "vehicular traffic may not enter an intersection on a red light," or words to that effect.

Had it done so, we would be obliged to enforce that language, whatever the consequence. But it did not.

¶44 This added fourth element, in the majority's view, is the crucial element, concluding that “a red-light violation can only be committed once the vehicle enters an intersection.” *Supra* ¶ 3. Thus, the fact that “Gregory James Owen rear-ended a Jeep stopped at a red light, killing one of the Jeep's passengers,” *supra* ¶ 1, does not, in the majority's view, amount to violating a statute instructing that on a red light, a driver “shall stop before entering the intersection.” *Supra* ¶ 2 (citing § 28-645(A)(3)(a)).

¶45 In contrast to the majority, in our view, the statute's operative term is *stop*. That is the actus reus of the violation. In its three elements, the statute tells us what, where, and when. The “when” is a solid red light. The “what” is to stop. And the “where” is *before the intersection*.¹³ Under this plain reading, the entry of the vehicle into the intersection is not an implicit (much less dispositive) element of the crime, but merely proof positive that the crime was committed. Indeed, by shearing off the antecedent “before” from “the intersection,” the majority renders that crucial term devoid of meaning, which the majority aptly instructs is an inappropriate way to read a statute. *Supra* ¶ 16.

¶46 “Before the intersection” can be three inches, ten feet, thirty feet, or some other distance. That necessarily depends on whether vehicles are already stopped at the light.¹⁴ See *Brogdon v. State*, 299 Ga.App. 547, 683 S.E.2d 99, 104 (2009) (construing similar statutory language and concluding that “a reasonable reading of the statute requires that a driver facing a red traffic light stop behind the stop line or crosswalk and also behind those vehicles stopped in observance of the traffic light”).¹⁵ Even Owen's counsel conceded at oral argument that the proper place to stop at a red light is behind a vehicle that *226 has already stopped, which surely reflects common knowledge.¹⁶

¶47 Nor, as the majority concedes, is the fact that the accident was a continuous series of events significant. We agree that the term “results in” suggests that the combination of the requisite moving violation and an accident triggers an enhanced penalty “regardless of whether the accident consists of a single event or a series of events.” *Supra* ¶ 20. Given that concession, we are not sure how the majority can find no violation here even under its expansive reading of the

statutory elements, given that Owen's vehicle did not come to an eventual stop until after the intersection.

¶48 Clearly, Owen failed to stop at the red light before the intersection. Indeed, the municipal court, superior court, and court of appeals all agreed that Owen violated § 28-645(A)(3)(a). As the trial court found, the Jeep's driver slowed her car to a stop when the light turned red. By contrast, Owen made a fatal miscalculation about being able to beat the light. Owen plowed his motorhome into the Jeep at more than thirty miles per hour. Both vehicles then hurtled through the intersection, leading ultimately to the Jeep passenger's death. By the statute's plain language, the fact that the catastrophe began a car's length before the intersection does not absolve Owen of the enhanced penalty.

¶49 Indeed, the majority unpersuasively suggests an “accident” connotes a split-second (or split-millisecond) moment of impact. See *supra* ¶¶ 1, 20–22. That would be a “collision,” which is not the term used in the statute. Accidents, by contrast, are often unfolding events, such as a chain-reaction crash. See *Gordon*, 257 Ariz. at 99 ¶¶ 14–15, 544 P.3d at 677 (collecting case law and dictionary definitions to that effect). Here, as the trial court found, the vehicles traveled in tandem after the initial collision through the intersection until they came to a stop on the other side of the intersection. Surely this type of accident is encompassed within the scope of the statutes.

¶50 Similarly, the majority excises from § 28-645(A)(3)(a) the passage “and shall remain standing until an indication to proceed has been shown.” How does a vehicle “remain standing” if the statutory command is violated only upon entering the intersection? This Court has repeatedly held that we disfavor statutory readings that render words superfluous. *Chalmers*, — Ariz. at —, 571 P.3d at 889 ¶ 18 (citing *Serrato*, 259 Ariz. at —, 568 P.3d at 760 ¶ 16). Read as a whole, the statute requires vehicles to stop before entering the intersection and remain standing before the light turns green. Owen failed to heed that requirement.

¶51 Nor does the causation requirement in the enhanced penalty statute change the result. Owen's violation of § 28-645(A)(3)(a)—his failure to stop at the red light before the intersection—was clearly the but-for cause of the accident that killed the Jeep's passenger. See *supra* ¶ 20. No independent or intervening circumstances or factors affected the outcome. *Causation*, Black's Law Dictionary (12th ed. 2024) (“The causing or producing of an effect.”).

¶52 The majority resorts to statutory interpretation rules to guide its analysis. *Supra* ¶ 13. Specifically, it cites [A.R.S. § 13-104](#), which instructs that penal statutes “must be construed according to the fair meaning of their terms and to promote justice and effect the objects of the law, including the purposes stated in § 13-101.” That statute in turn states that one purpose is to “give fair warning of the nature of the conduct proscribed.” [A.R.S. § 13-101\(2\)](#).

¶53 But fair warning of what? The statutes on their face give fair warning that a driver who fails to stop before an intersection on a red light and causes death or serious injury will be held to account. The obvious point of the statute is to prevent harm for failing to stop. It is not apparent what warning is omitted from, and what unfair prejudice is inflicted upon, a person who fails to stop for ***227** a red light before the intersection and in the process strikes a lawfully stopped vehicle and causes death or serious injury. Such a plain reading, it seems to us, promotes justice and effects the objects of the law.

¶54 The majority overlooks at least four other purposes stated by [§ 13-101](#), all of which, in our view, are served by the plain meaning of the statute: “To proscribe conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests” (§ 101(1)); “To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each” (§ 101(4)); “To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized” (§ 101(5)); and “To impose just and deserved punishment on those whose conduct threatens the public peace” (§ 101(6)). A reading of the statute that absolves Owen of full accountability for his actions fails all those objectives.

¶55 Moreover, the Constitution guarantees victims the right to justice and due process. [Ariz. Const. art. 2, § 2.1\(A\)](#). As Owen was charged under the enhanced penalty statute, decedent's family acquired victim status. See *State v. Patel*, 251 Ariz. 131, 133 ¶ 3, 486 P.3d 188, 190 (2021); *State v. Hamilton*, 249 Ariz. 303, 306 ¶ 6, 468 P.3d 1264, 1267 (App. 2020). The enhanced penalty statute also provides for victim restitution. [A.R.S. § 28-672\(G\)](#). Of course, the right to restitution evaporates under the majority's reading of the statute.

¶56 In that regard, it is the Jeep's driver who did not have fair warning of the statute's scope, as altered by the majority here. Had she seen Owen's motorhome barreling toward the stopped Jeep in her rear-view mirror, and tried to avoid an accident by entering the intersection against the red light with the exact same result (an accident leading to the passenger's death), perversely she would have preserved the family's restitution rights, because then, in the majority's view, Owen would have committed the predicate crime leading to the enhanced penalty.

¶57 But only if she was able to move the *entire* vehicle into the intersection before the crash. Had an inch of the rear bumper not yet entered the intersection, then in the majority's eyes the accident would have occurred before the intersection and Owen would not have violated [§ 28-645\(A\)\(3\)\(a\)](#). Why would the Legislature possibly have enacted a law to penalize the first result but not the second? Indeed, it would seem logical that plowing into a car stopped for a red light would constitute a *worse* infraction than entering the intersection on a red light, because (1) the driver seeing a stopped car would be on notice that the light was red or changing to red (here, it was red); and (2) hitting a stopped car waiting for the red light to change would definitely, not merely probably, cause serious damage. It is inconceivable that the Legislature would assign an enhanced penalty to a driver that hurtled into an intersection on a red light, thereby causing death or serious injury, but absolve a driver who did exactly that while simultaneously propelling through the intersection a vehicle that was stopped for the red light.

¶58 Which leads to our final argument. It is difficult to clear the threshold into legal absurdity, but as illustrated by the foregoing example, the statute as the majority construes it does so. “A result is absurd if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion.” *State v. Estrada*, 201 Ariz. 247, 251 ¶ 17, 34 P.3d 356, 360 (2001) (quoting *Perini Land Dev. Co. v. Pima County*, 170 Ariz. 380, 383, 825 P.2d 1, 4 (1992)) (internal quotation marks omitted). The cited case in turn provides that “[i]f enforcing the clear language of the constitution results in an absurd situation, the [C]ourt may look behind the bare words of the provision to discern its intended effect.” *Perini*, 170 Ariz. at 383, 825 P.2d at 4. If two plausible statutory interpretations exist, the Court should choose the one that makes sense. See *Scalia & Garner*, at 234 (“Some absurd outcomes can be avoided without doing real violence to the text.”). Our colleagues obviously believe their statutory

interpretation is correct; but if they think “before entering the intersection” can plausibly mean a command to stop at a red light before the intersection, they should interpret it in that *228 manner to avoid an absurd and manifestly unjust result.

¶59 Surely after this case the Legislature can, if it wishes, further clarify what we consider an already clear statute. But even if it does, it will be cold comfort to the victim family,

which in our view was clearly within the intended protective scope of the enhanced penalty statute.

¶60 For all the foregoing reasons, and with great respect to our colleagues, we dissent.

All Citations

163 Arizona Cases Digest 42, 581 P.3d 215

Footnotes

- * Justice Maria Elena Cruz is recused from this matter. Pursuant to [article 6, section 3 of the Arizona Constitution](#), Justice John Pelander (Retired) was designated to sit in this matter.
- 1 “A person who violates [§ 28-645(A)(3)(a)] is subject to a civil penalty” [A.R.S. § 28-1521](#).
- 2 We have included an overhead photo of the intersection in question as an Appendix. See [Ariz. R. Evid. 201](#); see also, e.g., [State v. Phillips](#), 102 Ariz. 377, 380, 430 P.2d 139, 142 (1967) (confirming that courts may take judicial notice of a geographic fact).
- 3 Owen contends that “the municipal court and superior court erroneously concluded that Owen violated the red-light statute.” This issue is not before us.
- 4 In 1968, [§ 28-645\(A\)\(3\)\(a\)](#) provided that: “Vehicular traffic facing the signal shall stop before entering the cross walk on the near side of the intersection or, if there is no cross walk, then before entering the intersection, and shall remain standing until green or ‘Go’ is shown alone”
- 5 In 1982, [§ 28-645\(A\)\(3\)\(a\)](#) stated that: “Vehicular traffic facing a steady red signal alone shall stop before entering the intersection, and shall remain standing until an indication to proceed is shown”
- 6 We have identified the intersection in the Appendix in yellow as defined by the statute.
- 7 We cite to the 4th edition of *Webster's New World College Dictionary* because it is close in time to the enactment of the version of [§ 28-672](#) before us, see 2006 Ariz. Sess. Laws ch. 297 § 1 (2nd Reg. Sess.), and it focuses on the actual use of language and includes terms and usage that first appeared in the United States. ix (Michael Agnes, Ed. in Chief, 4th ed. 2002). Furthermore, “[l]inguistic evidence is collected on a daily basis in the form of citations of words and expressions used in print and speech.” *Id.*
- 8 [Section 13-203](#) applies to our construction of the enhanced penalty statute pursuant to § 13-102(D): “Except as otherwise expressly provided, or unless the context otherwise requires, the provisions of this title shall govern the construction of and punishment for any offense defined outside this title.”
- 9 On review before this Court, we noted that “[n]othing in the statute's language refers to accident victims—the focus is on the scene of an accident.” [State v. Powers](#), 200 Ariz. 363, 364 ¶ 8, 26 P.3d 1134, 1135 (2001).
- 10 The same is true for the court of appeals' citations to [Commonwealth v. Satterfield](#), 667 Pa. 424, 255 A.3d 438 (2021), and [Nield v. State](#), 677 N.E.2d 79 (Ind.App. 1997).

11 Ga. Code Ann. § 40-6-21(a)(3)(A) (2014), the statute at issue in *Brogdon*, provides:

Traffic, except pedestrians, facing a steady CIRCULAR RED signal alone shall stop at a clearly marked stop line or, if there is no stop line, before entering the crosswalk on the near side of the intersection or, if there is no crosswalk, before entering the intersection, and shall remain standing until an indication to proceed is shown.

12 Consequently, the dissent's claim that our interpretation "absolves Owen of full accountability" is incorrect. *Infra* ¶ 48. It is up to the State to charge the appropriate offense.

13 The majority correctly notes that a statute defines "intersection." *Supra* ¶ 15 (quoting A.R.S. § 28-601(8) (defining intersection as "the area embraced within the prolongation or connection of the lateral curb lines"). That is of no particular moment here, except to designate where a motorist must fail to stop (before entering it) in order for the requisite crime to be committed.

14 To support its contrary reading of the statute, the majority cites *Lemieux v. Superior Court*, 132 Ariz. 214, 644 P.2d 1300 (1982). *Supra* ¶ 15. There the Court stated that "[t]he issue presented in this special action is if persons who have been previously hypnotized concerning the matters of the litigation will be permitted to testify at a civil trial." *Lemieux*, 132 Ariz. at 215, 644 P.2d at 1301. The Court's focus on that singular issue renders its brief summary of a prior version of § 28-645(A)(3)(a) the very definition of dictum.

15 The majority criticizes the dissent for citing *Brogdon*, even though it is the most on-point case the parties cited, both in terms of an analogous statute and facts (although *Brogdon*, unlike *Owen*, eventually stopped before the intersection due to the chain reaction of stopped vehicles). The majority disavows *Brogdon* because it says that where the literal statutory language does not square with reason or intent, then the literal must yield. *Supra* ¶¶ 27–30. By contrast, this Court applies the plain meaning of statutory language rather than searching for legislative intent, see *State v. Tunkey*, 254 Ariz. 432, 438 ¶¶ 30–32, 524 P.3d 812, 818 (2023) (Bolick, J., joined by Beene, Montgomery, and King, JJ., concurring), and we are glad that the entire Court here embraces that approach. This dissenting opinion is entirely textualist in its approach. Thus, though we too do not embrace the one portion of *Brogdon* on which the majority focuses, we agree with the *Brogdon* court that it engaged in "a reasonable reading of the statute," and we are presented with no equally on-point authority that reaches a contrary result.

16 Owen's counsel indicated, and the majority here asserts, *supra* ¶ 32, that Owen might have violated a different statute, such as excessive speed or following too closely. Perhaps so. But Owen may well have violated multiple laws. Under a correct interpretation of § 28-645(A)(3)(a), he is guilty of failing to stop before the intersection on a red light, which makes him eligible for an enhanced criminal penalty under § 28-672(A). That is what the State charged and proved.

169 Arizona Cases Digest 16
Supreme Court of Arizona.

9W HALO OPCO, LP, Plaintiff/Appellant,

v.

ARIZONA DEPARTMENT OF
REVENUE, Defendant/Appellee.

No. CV-24-0288-PR

|

Filed March 3, 2026

Synopsis

Background: Taxpayer, which rented healthcare textiles to customers and laundered and disinfected them for reuse, appealed from a decision of the Department of Revenue denying a portion of taxpayer's claim for state and city use tax refunds pursuant to statute providing a tangible personal property use tax exemption for machinery and equipment used directly in, among other things, processing operations. Taxpayer moved for summary judgment and Department and city cross-moved for summary judgment. The Arizona Tax Court, No. TX2020-000967, [Erik Thorson](#), J., awarded summary judgment to Department. Taxpayer appealed, and the Court of Appeals, Division One, [Furuya](#), J., [2024 WL 4702300](#), affirmed. Taxpayer petitioned for review, which was granted.

Holdings: The Supreme Court, [Lopez](#), V.C.J., held that:

a “processing operation” under the exemption statute is a series of integrated actions or methods that prepares a product for the market or converts a product into marketable form;

statute did not permit consideration of a taxpayer's downstream transactions;

statute based entitlement to the exemption on whether the particular activity or process involving the machinery or equipment, rather than the business as a whole, constituted an exempted operation, abrogating [Meredith Corp. v. State Tax Comm'n](#), 23 Ariz. App. 152, 531 P.2d 197, and [Ariz. Dep't of Revenue v. Blue Line Distrib., Inc.](#), 202 Ariz. 266, 43 P.3d 214; and

machinery and equipment used by taxpayer to launder and disinfect healthcare textiles were entitled to the use tax exemption.

Court of Appeals opinion vacated. Tax Court judgment reversed and remanded.

Procedural Posture(s): Petition for Discretionary Review; On Appeal; Review of Administrative Decision; Motion for Summary Judgment; Motion for Attorney's Fees.

Appeal from the Arizona Tax Court, The Honorable [Erik Thorson](#),¹ Judge, No. TX2020-000967. **REVERSED AND REMANDED**

Memorandum Decision of the Court of Appeals, Division One No. 1 CA-TX-23-0003, Filed November 7, 2024. **VACATED**

Attorneys and Law Firms

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VICE CHIEF JUSTICE LOPEZ authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER and JUSTICES BOLICK, BEENE, MONTGOMERY, KING and CRUZ joined.

Opinion

VICE CHIEF JUSTICE LOPEZ, Opinion of the Court:

*516 ¶1 A.R.S. § 42-5159(B)(1) exempts from taxation “[m]achinery, or equipment, used directly in manufacturing,

processing, fabricating, job printing, refining or metallurgical operations.” We consider the meaning of “processing operations” in this tangible personal property use tax exemption statute. We hold that the “processing operations” use exemption applies to machinery or equipment that a taxed entity uses to change the marketability of a product. Here, because the industrial healthcare textile laundry facility changes the marketability of the textiles it markets, it qualifies for the [§ 42-5159\(B\)\(1\)](#) use exemption as a “processing operation.”

¶2 We also consider whether the downstream transactions of a taxpayer's business—whether it sells or rents a product—are relevant to the taxpayer's eligibility for [§ 42-5159\(B\)\(1\)](#)'s use exemption as a “processing operation.” We hold that downstream transactions are irrelevant to the “processing operation” inquiry, which only examines distinct operations within the entire business.

BACKGROUND

¶3 Plaintiff-Appellant, 9W Halo OPCO, LP, d/b/a Angelica Textile Services, LP (“Angelica”), rents reusable healthcare textiles—such as bedsheets, patient gowns, and surgical scrubs—to hospitals, outpatient facilities, and long-term care centers in Arizona. Angelica's facility processes 30 million pounds of healthcare textiles a year. Used healthcare textiles are routinely contaminated with viruses and bacteria, such as *E. coli*, and cannot be re-used in patient care unless they are specially laundered and sterilized. Angelica cannot even offer new textiles to healthcare facilities for use before processing them because it must remove any bacteria introduced during the manufacturing process. *517 Angelica's operation is subject to federal and local regulations concerning healthcare textiles.

¶4 Angelica uses a variety of washing and drying equipment to clean and disinfect the textiles. After a pre-wash, the textiles undergo a twelve-module cleaning cycle, which requires injection of up to eight different chemicals in precise amounts that vary by textile type. The application of chemicals during the cleaning process changes the composition of the textiles by removing all potential contaminants from the textile fibers.

¶5 From 2014 to 2018, Angelica purchased equipment and chemicals to use in its textile laundering and disinfecting process and remitted State and City of Phoenix

(“City”) use taxes for these purchases. In 2018, Angelica submitted claims for use tax refunds based, in part, on [§ 42-5159\(B\)\(1\)](#) and Phoenix City Code §§ 14-110(a)(1) and 14-660(g). After initially denying Angelica's refund claim, Defendant-Appellee, the Arizona Department of Revenue (“Department”), revised its assessment in 2020 and denied roughly half of the requested refund.² Angelica appealed the Department's decision to the Arizona Tax Court and subsequently moved for summary judgment.

¶6 In its tax-court motion, Angelica argued that the purchased laundry equipment qualified for a use tax exemption because it is used in a “processing operation” under [§ 42-5159\(B\)\(1\)](#). The Department, joined by the City, cross-motivated for summary judgment, alleging that Angelica's “linen rental business” did not qualify as a tax-exempt “processing operation” because Angelica does not change raw materials into finished products. The tax court upheld the Department's decision and granted it summary judgment. In its ruling, the tax court reasoned that it “must look at Angelica's business as a whole” to determine whether it qualified for the use tax exemption under [§ 42-5159\(B\)\(1\)](#). Angelica appealed the tax court's decision.

¶7 The court of appeals affirmed the tax court's ruling, reasoning that the commonly understood meaning of “processing” is the “preparation for market” or “to convert [a product] into marketable form.” *9W Halo OPCO, LP v. Ariz. Dep't of Revenue*, No. 1 CA-TX 23-0003, 2024 WL 4702300, at *4 ¶ 23 (Ariz. App. 2024) (mem. decision). The court found that Angelica's business model—namely, renting healthcare textiles and repeatedly processing the same articles for rental—did not satisfy the court's definition of “processing.” *Id.* at *5 ¶¶ 26–28.

¶8 Angelica petitioned this Court for review. We granted review to resolve a recurring issue of statewide importance: how [§ 42-5159\(B\)\(1\)](#)'s use tax exemption for “processing operations” applies to businesses in Arizona. We have jurisdiction under [article 6, section 5\(3\) of the Arizona Constitution](#).

DISCUSSION

¶9 Summary judgment is appropriate if there are no genuine issues of material fact, and one party is entitled to judgment as a matter of law. *Ariz. R. Civ. P. 56(a)*. “[W]e review a grant of summary judgment de novo,” viewing the facts in a light most

favorable to the party against whom judgment was granted. *Dabush v. Seacret Direct LLC*, 250 Ariz. 264, 267 ¶ 10, 478 P.3d 695 (2021).

¶10 The parties do not dispute the material facts concerning the technical operation of Angelica's business. Instead, they dispute whether § 42-5159(B)(1)'s use exemption applies to Angelica's operation. We review questions of statutory interpretation de novo. *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 ¶ 13, 545 P.3d 892, 897 (2024).

I.

¶11 We must resolve the parties' dispute over two threshold statutory interpretative issues before we define "processing" under § 42-5159(B)(1): whether the court of appeals *518 erred by (1) adopting the "commonly understood meaning" of "processing" in 1989, and (2) invoking the doctrine of legislative acquiescence. *9W Halo*, 2024 WL 4702300, at *4 ¶¶ 22–23.

A.

¶12 The court of appeals moored its interpretation of § 42-5159(B)(1) to *Meredith Corp. v. State Tax Comm'n*, 23 Ariz. App. 152, 153, 531 P.2d 197 (1975), which held that courts must apply the statute in a manner "consistent with the ordinary man's understanding of what constitutes a 'processing operation', rather than a scientific or technical interpretation." See *9W Halo*, 2024 WL 4702300, at *4 ¶ 22. Notably, the court's interpretation mirrors the Legislature's directive that "processing" and similar terms in the statute "refer[] to and include[] those operations commonly understood within their ordinary meaning." § 42-5159(B)(1) (emphasis added); *9W Halo*, 2024 WL 4702300, at *4 ¶ 20.

¶13 Angelica, undeterred by this, contends that *State ex rel. Ariz. Dep't of Revenue v. Capitol Castings, Inc.*, 207 Ariz. 445, 88 P.3d 159 (2004), requires courts to interpret the use exemption statute using flexible and industry-specific definitions. In *Capital Castings*, this Court considered whether § 42-5159(B)(1) applied to particular equipment used to manufacture grinding balls for the mining industry. 207 Ariz. at 446 ¶¶ 1–2, 88 P.3d at 160. We instructed courts to "apply flexible and commonly used definitions of machinery and equipment within the relevant industry." *Id.* at 450 ¶24, 88 P.3d at 164 (emphasis added). But the "flexible"

and "industry" qualifiers from *Capital Castings* only apply when defining machinery and equipment. By contrast, the statute expressly commands that "processing" be defined as it is commonly understood within its ordinary meaning. § 42-5159(B)(1) ("The term[] ... 'processing' ... as used in this paragraph refer[s] to and include[s] those operations commonly understood within their ordinary meaning.").

¶14 The court of appeals correctly followed the Legislature's instruction to use the "ordinary meaning" of "processing." This approach also aligns with this Court's directive that, in tax cases, it is important to "gain the[] fair meaning" of the statute's words to avoid gathering "new objects of taxation by strained construction or implication." *Ariz. State Tax Comm'n v. Staggs Realty Corp.*, 85 Ariz. 294, 297, 337 P.2d 281 (1959).

B.

¶15 Angelica also argues that the court of appeals misapplied the "legislative acquiescence" doctrine. The doctrine's main principle is that "the legislature, when it passes a statute, knows the existing laws." *Daou v. Harris*, 139 Ariz. 353, 357, 678 P.2d 934, 938(1984). But the application of the doctrine is limited to "instances in which the [L]egislature has considered and declined to reject the relevant judicial interpretation." *Delgado v. Manor Care of Tucson AZ, LLC*, 242 Ariz. 309, 314 ¶ 24, 395 P.3d 698, 703 (2017) (internal quotations omitted) (quoting *Sw. Paint & Varnish Co. v. Ariz. Dep't of Env't Quality*, 194 Ariz. 22, 25 ¶ 21, 976 P.2d 872, 875 (1999)). The doctrine applies only "where a statute which has been construed by a court of last resort is reenacted in the same or substantially the same terms." *Madrigal v. Indus. Comm'n*, 69 Ariz. 138, 144, 210 P.2d 967 (1949); see also *Calvert v. Farmers Ins. Co. of Ariz.*, 144 Ariz. 291, 297, 697 P.2d 684, 690 (1985) (noting that the Arizona Supreme Court is the court of last resort in the state).

¶16 Angelica claims that the court of appeals misapplied the legislative acquiescence doctrine by observing that "the [L]egislature is aware of the state of the law when it adopts or amends a statute," immediately after citing *G.B. Inv. Co. v. Ariz. Dept. of Revenue*, No. 629-88-S (Ariz. Bd. of Tax App. June 20, 1989), to determine the meaning of "processing" at the time § 42-5159's precursor was adopted. *9W Halo*, 2024 WL 4702300, at *3–4 ¶¶ 19–21. We disagree. Although the doctrine of legislative acquiescence is inapplicable here because the Arizona Board of Tax Appeals is not the court

of last resort, we are not convinced that the court of appeals' passing reference to the Legislature ever invoked the doctrine at all.

II.

*519 ¶17 Having resolved the preliminary interpretive issues, we turn to the parties' first primary dispute—the meaning of “processing operation” under § 42-5159(B)(1).

A.

¶18 “When interpreting statutes, we begin with the text.” *Franklin v. CSAA Gen. Ins. Co.*, 255 Ariz. 409, 411 ¶ 8, 532 P.3d 1145, 1147 (2023). The best indication of legislative intent is a statute's plain language, which, when clear, “we apply [] unless an absurd or unconstitutional result would follow.” *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, 195 ¶ 9, 377 P.3d 988, 990 (2016). If the text is “reasonably susceptible to differing interpretations,” it is ambiguous, and this Court turns to “secondary factors, such as the statute's context, subject matter, historical background, effects and consequences, and spirit and purpose.” *Id.*

¶19 We strictly construe tax exemption statutes and presume against exemptions. *Tucson Transit Auth., Inc. v. Nelson*, 107 Ariz. 246, 252, 485 P.2d 816, 822 (1971). However, tax exemptions “should not be so strictly construed as to defeat or destroy the legislative intent and purpose.” *Capitol Castings, Inc.*, 207 Ariz. at 447 ¶ 10, 88 P.3d at 161 (citation modified). With these principles in mind, we turn to the statute.

¶20 Section 42-5159(B)(1) provides a tangible personal property use tax exemption for:

Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms “manufacturing”, “processing”, “fabricating”, “job printing”, “refining” and “metallurgical” as used in this paragraph refer to and include those operations commonly

understood within their ordinary meaning.

Section 42-5159(B)(1)'s purpose is “to stimulate business investment in Arizona in order to improve the state's economy and increase revenue from other taxes, such as income and property taxes.” *Capitol Castings, Inc.*, 207 Ariz. at 448 ¶ 13, 88 P.3d at 162.

¶21 Before § 42-5159(B)(1)'s enactment, in *Moore v. Farmers Mut. Mfg. & Ginning Co.*, we defined “processing” as “to subject (especially raw material) to a process of manufacturing, development, preparation for the market, etc[.]; to convert into marketable form.” 51 Ariz. 378, 382, 77 P.2d 209 (1938) (quoting Webster's New International Dictionary) (internal quotations omitted). Here, the court of appeals adopted *Moore*'s definition. 9W Halo, 2024 WL 4702300, at *4 ¶ 24. The Department contends that *Moore* renders raw material a requirement of any “processing operation.” We are unpersuaded. When adopting its “processing” definition, *Moore* clarified that it was the one that “obviously applies to an operation like the ginning of cotton”—a raw material—the “processing” at issue in the case. *Moore*, 51 Ariz. at 382, 77 P.2d 209. We do not interpret *Moore* to require raw material as an element of “processing” under the statute.

¶22 Furthermore, *Moore* interpreted different statutes, as applied to cotton ginning, and its definition's parenthetical reference to “especially raw material” does not exclude processing of other material.³ To be sure, *Moore* provides relevant context for the historical meaning of “processing.” But we are unconvinced that the Legislature intended to limit “processing” to raw materials when it enacted § 42-5159(B)(1) nearly thirty years later.

B.

¶23 If a statute does not define a term, we “may consider dictionaries and written publications to discern the word's *520 common meaning and usage, respectively, at the time the legislature enacted the statute.” *Garibay v. Johnson*, 259 Ariz. 248, 255 ¶ 24, 565 P.3d 236, 243 (2025). Here, as noted, the Legislature clarified that “processing” refers to “those operations commonly understood within their ordinary meaning.” See § 42-5159(B)(1) (emphasis added). Thus, the statute expressly requires that “operation” and “processing”

be read together as “processing operation.” Accordingly, we turn to dictionary definitions to determine the common and ordinary meaning of a “processing operation,” *see Garibay*, 259 Ariz. at 255 ¶ 24, 565 P.3d at 243, before examining our relevant jurisprudence.

1.

¶24 We begin by surveying dictionary definitions. The Legislature first enacted the precursor to § 42-5159(B)(1) in 1967 and reenacted the statute in its current form in 1989. *Compare* 1967 Ariz. Sess. Laws, ch. 2, § 3 (3d Special Session) *with* 1989 Ariz. Sess. Laws, ch. 132, § 35. Accordingly, we consider definitions from 1967 and 1989, as well as the intervening period.

¶25 Standard dictionary definitions of “process” included “a series of actions or operations conducing to an end” in 1967, and “a systematic series of actions directed to some end” in 1989. *Process*, Webster's Seventh New Collegiate Dictionary (1967); *Process*, Webster's Encyclopedic Unabridged Dictionary of the English Language (1989). In 1989, “process” was also described as “a series of progressive and interdependent steps by which an end is obtained.” *Process*, Webster's Encyclopedic Unabridged Dictionary of the English Language (1989). Ultimately, the standard dictionary definitions emphasize “a series of actions” directed to an end.

¶26 The relevant legal definitions of “process” are consistent with this finding. In 1967, Black's Law defined “process” as “a series of actions, motions or occurrences; progressive act or transaction; continuous operation; method, mode or operation, whereby a result or effect is produced; ... a chemical process” *Process*, Black's Law Dictionary (4th ed. 1968) (the 4th edition was revised in 1968 and current in 1967). By 1989, Black's Law had expanded the definition of “process” to include a “means to prepare for market or to convert into marketable form.” *Process*, Black's Law Dictionary (5th ed. 1979) (citing *Emp. Sec. Comm'n of Ariz. v. Bruce Church, Inc.*, 109 Ariz. 183, 507 P.2d 108 (1973)). Both Black's Law definitions include the phrases “a series of actions” and a “method, mode or operation, whereby a result ... is produced.” *Compare Process*, Black's Law Dictionary (4th ed. 1968) *with Process*, Black's Law Dictionary (5th ed. 1979).

2.

¶27 We next consider our jurisprudence defining “processing.” This Court first defined “processing” in 1938 in *Moore*. The *Moore* definition adopted a meaning similar to the dictionary definitions, including “preparation for the market” and “convert into marketable form.” *Moore*, 51 Ariz. at 382, 77 P.2d 209. Thirty-five years after *Moore*, we considered the term “processing” in a different statute and noted, consistent with standard dictionary and Black's Law definitions, that “a process has been defined as a mode, method or operation, whereby a result is produced.” *Bruce Church, Inc.*, 109 Ariz. at 186, 507 P.2d at 111. In *Bruce Church*, we also observed that “process” had “been defined as to prepare for market or to convert into marketable form.” *Id.* In fact, Black's Law cited *Bruce Church* for one definition of “process” in its fifth edition—the edition in effect in 1989. *See Process*, Black's Law Dictionary (5th ed. 1979).

¶28 In 1977, the court of appeals expanded the interpretive focus under the statutory precursor to § 42-5159(B)(1) to “include those items which are essential to [the exempt] operation and which make it an integrated system.” *Duval Sierrita Corp. v. Ariz. Dep't of Revenue*, 116 Ariz. 200, 206, 568 P.2d 1098, 1104 (App. 1977). *Duval Sierrita's* “integrated system” concept establishes a baseline for defining the scope of the exempt “operation” under § 42-5159(B)(1).

¶29 To delineate the parameters of a qualifying processing operation's integrated system, *521 we turn to our jurisprudence. In *Moore*, we held that cotton ginning was “processing” because it was a required step to “prepar[e] [the product] for the market.” *Moore*, 51 Ariz. at 383, 77 P.2d 209. Thus, *Moore* instructs that a “processing operation” is a necessary component of product development. *See id.*; *see also AlSCO, Inc. v. Tennessee Dep't of Revenue*, No. M2022-01019-COA-R3-CV, 2023 WL 5737452, at *9 (Tenn. Ct. App. 2023) (holding that an industrial-laundry sanitization process qualified for a use tax exemption because it “result[s] in the textiles undergoing a change in state or form” from soiled to sanitized). *Capital Castings* is in accord. In that case, we opined that the inquiry into whether machinery is used directly in processing operations must include whether equipment touched, manipulated, affected, or added value to raw material or a work in process. 207 Ariz. at 451 ¶ 25, 88 P.3d at 163. Moreover, we clarified that equipment used in post-production activities did not fall within the scope of a processing operation. *See id.* Thus, the use tax exemption

hinges on whether the machinery or equipment was integral to the transformation of a product. *See Moore*, 51 Ariz. at 382, 77 P.2d 209 (providing, as an example of processing, the “sorting and repacking” of fruits and vegetables); *Bruce Church*, 109 Ariz. at 187, 507 P.2d at 112 (noting that “[c]ooling of a perishable product” constitutes “preparation for market,” a key component of processing).

C.

¶30 We can synthesize the relevant dictionary definitions of “processing” and “operation” and our jurisprudence interpreting § 42-5159(B)(1), its predecessor, and similar statutes into a single, operative definition that reflects the commonly understood and ordinary meaning of these statutory terms. A “processing operation” under § 42-5159(B)(1) is “a series of integrated actions or methods that prepares a product for the market or converts a product into marketable form.” *See Moore*, 51 Ariz. at 382, 77 P.2d 209; *Process*, Black’s Law Dictionary (5th ed. 1979); *Bruce Church*, 109 Ariz. at 186, 507 P.2d at 111; *see also Ariz. Dep’t of Revenue v. Sonee Heat Treating Corp.*, 178 Ariz. 278, 279, 872 P.2d 682, 683 (Tax Ct. 1994) (“Processing means a series of actions or operations conducing to an end” (internal quotations omitted)). “Series of integrated actions or methods” defines the “operation,” while “prepares a product for the market or converts a product into marketable form” defines “processing.”

¶31 This definition is faithful to the Legislature’s directive to utilize the ordinary meaning of “processing operation,” synthesizes relevant dictionary definitions and our jurisprudence interpreting the term, and adheres to the “common understanding” of the statute. Moreover, the definition aligns with the Legislature’s purpose to prioritize the application of the use tax exemption to industries and entities that contribute to the market and the state economy. *See Capitol Castings, Inc.*, 207 Ariz. at 448 ¶ 13, 88 P.3d at 111 (“Our interpretation of the statute therefore should further, not frustrate, the policy of encouraging investment and spurring economic development.”).

III.

¶32 We now consider the parties’ second primary dispute—whether Angelica qualifies for the use tax exemption as a “processing operation” under § 42-5159(B)(1).

A.

¶33 We first address whether § 42-5159(B)(1) requires or permits consideration of a business’s downstream transactions. The court of appeals gave dispositive, disqualifying force to Angelica’s business model of renting healthcare textiles to its customers and retrieving and reprocessing them for future rental. *9W Halo*, 2024 WL 4702300, at *5 ¶¶ 26–29. Indeed, the court described Angelica as a mere “laundry.” *Id.* ¶ 29. The court reasoned that “preparation for market” does not include renting a product to customers for later retrieval and reprocessing. *Id.* ¶ 28. We disagree. The exemption statute does not contemplate, let alone require, that a taxpayer’s downstream business transactions involve the sale of a product to qualify as a “processing operation.” Thus, the court *522 of appeals’ reasoning is unsupported by the statute’s text.

B.

¶34 We next consider whether § 42-5159(B)(1)’s use tax exemption is based on a business’s entire “operation.” The Department argues that “operation” refers to an entire business. In support, the Department contends that § 42-5159(G)(1)(b), which defines “manufacturing” as “the performance *as a business* of an integrated series of operations,” evidences the fungibility of the terms “operation” and “business” within the statutory scheme. § 42-5159(G)(1)(b) (emphasis added). We are unpersuaded. Even if “business” and “operation” may be used interchangeably in other contexts, they are not synonymous under § 42-5159(B)(1). The Department’s argument to the contrary fails for two reasons. First, the (G)(1)(b) definition is limited to paragraph (G)(1). *See § 42-5159(G)(1)* (“For the purposes of *this paragraph*: ‘[m]anufacturing’ means” (emphasis added)). Second, (G)(1) addresses a tax exemption for “the purchase price of electricity, natural gas or liquefied petroleum gas by: [a] qualified manufacturing or smelting *business*.” *See id.* (emphasis added). In other words, the (G)(1)(b) definition the Department invokes expressly applies to a manufacturing or smelting *business* rather than an *operation* and creates a different, inapplicable tax exemption.

¶35 Our conclusion that “business” and “operation” are not perfect synonyms in the use tax scheme is not novel. In *Bruce Church*, we implicitly acknowledged that “operation” is not

necessarily synonymous with “business” when we observed that “[c]ooling of a perishable product ... [and] sizing [and] sorting, etc. [] all [are] operations.” 109 Ariz. at 187, 507 P.2d at 112. By deeming each discrete step an “operation,” *Bruce Church* supports our conclusion that the term “operation” is, in some instances, narrower than “business” and may describe a single process within a business.

¶36 This interpretation of “operation” also aligns with relevant court of appeals opinions interpreting the use exemption statute. See, e.g., *Duval Sierrita*, 116 Ariz. at 206, 568 P.2d at 1104 (explaining that the “boundaries of the exempt operation must be drawn taking into consideration the *entire operation* as it is ‘commonly understood’” (emphasis added)). The reference to the “entire operation” in *Duval Sierrita* was to conveyors, pipelines, and pumps that were “used directly” in mining and metallurgical operations. *Id.* at 205, 568 P.2d at 1103. Thus, “entire operation” was narrowly construed to include each *individual* operation, not the taxpayer’s *entire business* operation. See *id.* at 206, 568 P.2d at 1104 (“The statute only exempts certain operations and obviously these operations have a beginning and an end. For example, the mining company which mines its ore in Arizona and ships that ore by rail to Texas for smelting has completed the mining operation when the ore is loaded and the smelting company has not begun its metallurgical operation until that ore arrives in Texas.”).

¶37 Courts have misconstrued *Duval Sierrita*’s “entire operation” phrase, resulting in jurisprudential misadventure in interpreting and applying § 42-5159(B)(1) and its predecessor. In *Duval Sierrita*’s wake, the court of appeals in *Meredith* pronounced that, in determining whether the use tax exemption applied, “the question to be resolved is not whether the equipment processes, but whether the recording, storage and later the transmission of a television signal through the use of the equipment is a ‘processing operation.’ ” 23 Ariz. App. at 153, 531 P.2d 197. Concluding the exemption did not apply, the court reasoned that “the ordinary man would think of cotton or food as being processed and automobiles or toys as being manufactured ... [but] he would think of a television picture as being *broadcast* and electricity as being generated.” *Id.* (emphasis added). Thus, *Meredith* expanded the “entire operation” concept to include the common man’s understanding of both the end product and the business as a whole.

¶38 On *Meredith*’s heels, the court of appeals in *Ariz. Dep’t of Revenue v. Blue Line Distrib., Inc.* held that “the [use] exemption depends on *whether a [] business* is commonly understood to be a manufacturing or processing operation.” *523 202 Ariz. 266, 267 ¶ 9, 43 P.3d 214, 215 (App. 2002) (emphasis added). *Blue Line* reasoned that “manufacturing operation” and “processing operation” generally “refer [] to *such businesses* as commercial glassworks, sausage makers, grain mills, leather goods factories, slaughterhouses, tanneries, and the like.” *Id.* at 268 ¶ 10, 43 P.3d 214 (emphasis added). *Blue Line* effectively cabined the “processing operation” use exemption to a taxpayer’s entire *business* operation—an interpretation inconsistent with the structure and text of the use exemption statute. For this reason, we disavow *Blue Line*. We also reject *Meredith*’s analysis to the extent it suggests courts should analyze an entire business operation, rather than the singular operations within a business.

¶39 The statutory text prescribes a narrow focus on individual operations, rather than the transactions or nature of a business as a whole. Section 42-5159 exempts only “machinery” or “equipment” that is “*used directly in ... processing ... operations.*” (Emphasis added.) The statute asks what *operation* the equipment is used *in*, rather than the type of business *for* which the equipment is used.

¶40 An example illustrates this point. Section 42-5159(B)(1) provides a use tax exemption for “‘[m]etallurgical operations’ [which] include[] leaching, milling, precipitating, smelting and refining.” Section 42-5159(B)(2) provides a use tax exemption for machinery or equipment used directly in mining. A business could engage in one or more of these activities. *Duval Sierrita* observed that a mining company which mines and ships ore completes the mining operation upon shipment, while a smelting company does not begin its metallurgical operation until it receives the ore. 116 Ariz. at 206, 568 P.2d at 1104. In that scenario, each activity would qualify for the use exemption under the statute. But what if a single company, say a jeweler, purchased the mining and smelting operations? Would each operation still qualify for the use tax exemption, or would the company be precluded from exemptions based on the characterization of its entire business as a jeweler? Of course, the answer is that the business would be entitled to use exemptions for both mining and smelting because the exemption is based on individual *operations*, rather than the classification of the business as a whole.

C.

¶41 Having defined a “processing operation” under § 42-5159(B)(1) as “a series of integrated actions or methods that prepares a product for the market or converts a product into marketable form,” we must establish a framework for determining whether a processing operation qualifies for the use tax exemption. To that end, we devise a two-step inquiry, which asks whether: (1) an operation prepares a product for the market or converts it into marketable form, and (2) the operation uses machinery or equipment in a series of integrated actions or methods during the preparation of the product. If both questions are answered in the affirmative, the operation constitutes “processing” and qualifies for a use tax exemption under the statute. However, only machinery or equipment that touches, manipulates, affects, or adds value to a product qualifies for the exemption. See *Capitol Castings, Inc.*, 207 Ariz. at 451 ¶ 25, 88 P.3d at 163.

D.

¶42 Angelica qualifies as a “processing operation” under § 42-5159(B)(1) because its textile laundering and disinfecting process involves a series of integrated actions or methods that prepares a product for the market or converts a product into marketable form. First, the products in Angelica's operation—healthcare textiles, new or used—are not marketable for their intended use prior to the laundering and disinfecting process. The fact that the textiles Angelica acquires may be marketable for some other purpose before it processes them for the healthcare market is irrelevant. See *Bruce Church*, 109 Ariz. at 187, 507 P.2d at 112 (“The recognized test is not whether a fruit or vegetable may be ready to eat at some given stage of the process, but the proper test is whether the process is incident to the preparation of the product for the market selected by the farmer.”). Second, the twelve-module operation involves a series of integrated actions that transform the healthcare *524 textiles into a marketable form. Accordingly, the machinery or equipment that touches, manipulates, affects, or adds value to the healthcare textiles during Angelica's cleaning process qualifies for the use tax

exemption. See *Capitol Castings, Inc.*, 207 Ariz. at 451 ¶ 25, 88 P.3d at 163. The fact that Angelica's processing operation prepares its product for market rental rather than sale is irrelevant under the statute.

E.

¶43 Our definition of “processing operation” yields an analytical framework that is true to § 42-5159(B)(1)'s text and purpose. It limits the use tax exemption to the machinery and equipment used directly in an operation involving a series of integrated actions or methods that prepares a product for the market or converts a product into marketable form. And it refocuses the scope of the exemption inquiry on the processing operation rather than the entire business.

¶44 We acknowledge the Department's concern about the limits of our interpretation of § 42-5159(B)(1), including whether a restaurant or a neighborhood laundromat may be entitled to a use tax exemption as a processing operation. But our interpretation reflects the statute's inherent reach and scope, and our holding recognizing the use exemption for Angelica's federal and local-regulated, industrial medical textile laundering and disinfecting operation is limited to its facts. We leave for another day other businesses' eligibility for the statute's use tax exemption.

CONCLUSION

¶45 We vacate the court of appeals' decision, reverse the tax court's summary judgment ruling in favor of the Department, and remand to the tax court for further proceedings consistent with this Opinion.

¶46 We also deny Angelica's request for an award of attorney fees pursuant to A.R.S. § 12-348(B)(1) without prejudice to renewing its request when the case is resolved.

All Citations

169 Arizona Cases Digest 16, 584 P.3d 514

Footnotes

- 1 The name of the Judge has been changed pursuant to Maricopa County Superior Court Order Changing Name of Adult issued December 2, 2024.
- 2 The Department also denied part of Angelica's claim under P.C.C. §§ 14-110(a)(1), -660(g). Although the City Code uses the term "income-producing capital equipment," the sections adopt a use tax exemption identical to [§ 42-5159\(B\)\(1\)](#). Compare P.C.C. §§ 14-110(a)(1), -660(g) with A.R.S. [§ 42-5159\(B\)\(1\)](#). Both the tax court and the court of appeals focused solely on the application of [§ 42-5159\(B\)\(1\)](#), the issue currently before this Court.
- 3 "Especial" means "not general" and "distinguished among others of the same class as exceptional in degree." *Especial*, Webster's Collegiate Dictionary (5th ed. 1936) (a dictionary based on Webster's New International Dictionary, the reference cited in [Moore](#) for the definition of "process"). As used in [Moore](#), "especially" means "in reference to one person or thing in particular" as distinguished from others. *Especial*, Webster's Universal Dictionary of the English Language (1937). While synonymous with words like "particularly" and "mainly," the term "especially" does not mean "exclusively." See [id.](#); *Especial*, Webster's Collegiate Dictionary (5th ed. 1936) (synonyms include "peculiar" and "uncommon").

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167 Arizona Cases Digest 11
Supreme Court of Arizona.

STATE of Arizona, Petitioner,

v.

Hon. James E. MARNER, Judge of the Superior
Court of the State of Arizona, IN AND FOR
the COUNTY OF PIMA, Respondent Judge,
and
Hanees Mohamed Haniffa, Real Party in Interest.

No. CR-24-0300-PR

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Filed January 30, 2026

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As Amended on Reconsideration February 26, 2026

Synopsis

Background: The state petitioned for special action seeking review of ruling by the Superior Court, Pima County, No. CR20240488001, [James E. Marner](#), J., that granted defendant's motion to dismiss allegation, in indictment on charge of luring a minor for sexual exploitation, of dangerous crime against children. The Court of Appeals, Division Two, [258 Ariz. 512, 560 P.3d 338](#), denied relief. The Supreme Court granted review.

Holdings: On reconsideration, the Supreme Court, [Cruz](#), J., held that:

statute criminalizing luring a minor for sexual exploitation does not require an actual minor victim to be lured before it may be invoked, and

Dangerous Crime Against Children sentencing enhancement can apply when the “minor” victim is fictitious; abrogating [Wright v. Gates](#), [243 Ariz. 118, 402 P.3d 1003](#).

Court of Appeals vacated; trial court reversed and remanded.

[Bolick](#), J., issued dissenting opinion.

Procedural Posture(s): Appellate Review; Pre-Trial Hearing Motion.

Special Action from the Superior Court in Pima County, The Honorable [James E. Marner](#), Judge No. CR20240488-001.
REVERSED AND REMANDED

Opinion of the Court of Appeals, Division Two, [258 Ariz. 512, 560 P.3d 338 \(App. 2024\)](#). **VACATED**

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JUSTICE CRUZ authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER, VICE CHIEF JUSTICE LOPEZ and JUSTICES BEENE, MONTGOMERY and KING joined. JUSTICE BOLICK dissented.

Opinion

JUSTICE CRUZ, Opinion of the Court:

***55 ¶1** We are asked to decide whether a conviction for luring a minor for sexual exploitation under Arizona's Criminal Code qualifies for a Dangerous Crime Against Children (“DCAC”) sentencing enhancement when the “minor” victim is fictitious rather than an actual child. We hold that neither [A.R.S. § 13-3554\(C\)](#), nor § 13-705, require an actual minor be the victim of a defendant's luring for purposes of a DCAC sentencing enhancement.

BACKGROUND¹

¶2 The defendant, Hanees Haniffa, corresponded with an undercover officer posing as a minor girl under fifteen years old and offered or solicited sexual conduct. As a result, Haniffa was indicted pursuant to [A.R.S. § 13-3554](#) for one count of luring a minor for sexual exploitation. The State sought enhanced sentencing pursuant to [A.R.S. § 13-705](#), alleging Haniffa committed a dangerous crime against a child when he lured an undercover police officer posing as a child online. Haniffa moved to dismiss the DCAC allegation, arguing that the sentencing enhancement statute required an actual minor victim be lured, rather than a fictitious one. The superior court agreed, thereby granting Haniffa's motion and dismissing the State's DCAC allegation.

¶3 The State then petitioned the court of appeals for special action review of the dismissal. The court of appeals accepted special action jurisdiction and, in a split opinion, affirmed the superior court's dismissal of the sentencing enhancement. [State v. Marner](#), 258 Ariz. 512, 519 ¶ 23, 560 P.3d 338, 345 (App. 2024).

¶4 We granted review because application of the DCAC sentencing statute is a recurring issue of statewide importance. We have jurisdiction pursuant to [article 6, section 5\(3\) of the Arizona Constitution](#) and [A.R.S. § 12-120.24](#).

DISCUSSION

¶5 We review questions of statutory interpretation de novo. [Wright v. Gates](#), 243 Ariz. 118, 120 ¶ 7, 402 P.3d 1003, 1005 (2017). “When interpreting statutes, this Court starts with the text.” [State v. Serrato](#), 259 Ariz. 493, 568 P.3d 756, 759 ¶ 9 (2025). “We interpret statutory language in view of the entire text, considering the context and related statutes on the same subject.” [Nicaise v. Sundaram](#), 245 Ariz. 566, 568 ¶ 11, 432 P.3d 925, 927 (2019). If a statute's text is clear and unambiguous, it controls unless it results in an absurdity or a constitutional violation. [4QTKIDZ, LLC v. HNT Holdings, LLC](#), 253 Ariz. 382, 385 ¶ 5, 513 P.3d 1106, 1009 (2022) (quoting [Sell v. Gama](#), 231 Ariz. 323, 327 ¶ 16, 295 P.3d 421, 425 (2013)). However, “[i]f the statutory language is ambiguous—if ‘it can be reasonably read in two ways’—we may use alternative methods of statutory construction, including examining the rule's historical background, its spirit

and purpose, and the effects and consequences of competing interpretations.” [Planned Parenthood Ariz., Inc. v. Mayes](#), 257 Ariz. 137, 142 ¶ 17, 545 P.3d 892, 897 (2024) (quoting [State v. Salazar-Mercado](#), 234 Ariz. 590, 592 ¶ 5, 325 P.3d 996, 998 (2014)).

I. Luring A Minor For Sexual Exploitation

¶6 [Section 13-3554](#) provides that:

*56 A. A person commits luring a minor for sexual exploitation by offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor.

B. It is not a defense to a prosecution for a violation of this section that the other person is not a minor.

C. Luring a minor for sexual exploitation is a class 3 felony, and if the minor is under fifteen years of age it is punishable pursuant to [§ 13-705](#). A person who is convicted of a violation of this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [§ 31-233](#), subsection A or B until the sentence imposed by the court has been served or commuted.

¶7 The court of appeals’ majority reasoned that the luring statute requires that the minor victim under the age of fifteen be an actual minor and not a fictitious one. [Marner](#), 258 Ariz. at 518–19 ¶ 22, 560 P.3d at 344–45. Because the “minor” in this case was an adult police officer posing as a child online, that court affirmed the dismissal of the DCAC enhancement. *Id.* at 519 ¶ 22, 560 P.3d at 345.

¶8 The majority further reasoned the analysis should begin and end with [§ 13-3554](#):

Because the language of [§ 13-3554\(C\)](#) is plain and unambiguous, because its language instructs us that [§ 13-705](#) plays no role in sentencing unless the victim is an actual minor under the age of fifteen, and because the person Haniffa allegedly lured here was not an actual minor, we need not resort to other methods of statutory interpretation or harmonization to

determine the applicability of § 13-705 to the instant case.

Id. at 516 ¶ 12, 560 P.3d at 342.

¶9 The court concluded that under § 13-3554, subsection (B) modified subsection (A), but not subsection (C). *Id.* at 515–16 ¶ 10, 560 P.3d at 341–42. Thus, while subsection (A)’s reference to “a minor” includes a fictitious minor by operation of subsection (B) and allows prosecution for luring a minor, subsection (C) nevertheless restricts application of § 13-705 to cases involving an “actual” minor under fifteen years of age. *Id.* That is to say, the court concluded that subsection (C)’s reference to “the minor” is not intended to reference “a minor” mentioned earlier in the same statute’s subsection (A). *Id.* at 515 ¶ 9, 560 P.3d at 341.

¶10 Relying on *State v. Regenold*, 227 Ariz. 224, 255 P.3d 1028 (App. 2011), and *State v. Villegas*, 227 Ariz. 344, 258 P.3d 162 (App. 2011), the court of appeals’ majority interpreted § 13-3554(B) as allowing defendants to be convicted of luring a fictitious minor, but interpreted § 13-3554(C) as requiring the defendant to target an actual minor under the age of fifteen before the DCAC enhancement may apply. *Id.* ¶ 8.

¶11 In *Regenold*, the court of appeals held that the “use of the word ‘minor’ in § 13-3554(C) refers to an actual child, not a fictitious person.” 227 Ariz. at 226 ¶ 7, 255 P.3d at 1030. In *Villegas*, the court of appeals determined that “the plain language of §§ 13-705 and 13-3554 precludes application of the DCAC sentence enhancement when, as here, the victim is not under the age of fifteen.” 227 Ariz. at 345 ¶ 3, 258 P.3d at 163. Both cases interpreted versions of § 13-3554 that predate intervening legislative action.

¶12 In 2017, this Court analyzed the then-existing version of A.R.S. § 13-705 to conclude that “enhanced DCAC sentencing does not apply when a defendant commits a crime against a fictitious child.” *Wright*, 243 Ariz. at 119 ¶ 1, 402 P.3d at 1004. The Court suggested that, if it wished to apply enhanced punishment for offenses committed against fictitious minors, the Legislature could include additional language in § 13-705. *Id.* at 122 ¶ 17, 402 P.3d at 1007 (stating that “if the [L]egislature intended to include fictitious children within the DCAC sentencing scheme, it would have included language such as ‘a person posing as a minor under the age of fifteen’ ”). We did not suggest amendments to

§ 13-3554. Shortly after, in 2018, the Arizona Legislature amended A.R.S. § 13-705 to add language that foreclosed the fictitious minor defense in the sentencing context. 2018 Ariz. Sess. Laws ch. 181, § 1 (2d Reg. Sess.) (H.B. 2244).

*57 ¶13 At that time, § 13-3554(A) did not distinguish between fictitious and actual minors. Although subsections (B) and (C) were not amended, the amendment to § 13-705—which added that “[i]t is not a defense to a dangerous crime against children that the minor is a person posing as a minor or is otherwise fictitious”—had the effect of clarifying and reinforcing the fact that the fictitious minor defense was not available at sentencing for a conviction of luring a minor. A.R.S. § 13-705(S). Then, in 2022, the Legislature amended subsection (C) by making persons convicted under that statute ineligible for suspension of sentence, probation, pardon, or any release from confinement except as otherwise authorized. 2022 Ariz. Sess. Laws ch. 197, § 7 (2d Reg. Sess.) (H.B. 2696).

¶14 Lastly, in 2025, the Legislature amended the definition of DCAC to include crimes committed “against a person posing as a minor if the defendant knew or had reason to know that the purported minor was under fifteen years of age.” § 13-705(T)(1); 2025 Ariz. Sess. Laws ch. 75, § 1 (1st Reg. Sess.) (S.B. 1585). The timing of this legislative enactment is such that this latest amendment does not apply to the instant case. See *State v. Gonzales*, 141 Ariz. 512, 513, 687 P.2d 1267, 1268 (1984) (holding that a statute “will not govern events that occurred before its effective date” unless the statute states otherwise).² But the amendment, taken together with the statutory history, supports our conclusion that § 13-3554 applies to crimes committed against fictitious minors, and there is no provision seeking to offer leniency to persons convicted of luring a minor when the minor is an undercover law enforcement officer.

¶15 The court of appeals’ dissent disagreed with the majority’s interpretation of § 13-3554. As it observed, nothing in subsection (C) expressly requires the minor to be real—and neither does subsection (A), the provision that creates the offense. *Marner*, 258 Ariz. at 520 ¶ 32, 560 P.3d at 346 (Gard, J., dissenting). To the contrary, subsection (A) applies to fictitious minors through subsection (B) when the latter declares that “it is not a defense to a prosecution ... that the other person is not a minor.” This is critical to our analysis because subsection (C) uses the phrase “the minor,” which refers to the same subject identified in subsection (A) as “a minor.” In other words, (B) modifies the entire statute and the

placement of (B) after (A) rather than (C) is an insufficient textual clue that subsection (B) only modifies subsection (A). If the Legislature intended to bifurcate guilt and sentencing in such a short statute, as the court of appeals' majority suggests, it could have made its intent explicit, or it could have easily crafted more textual clues to that effect.

¶16 Additionally, the prosecution of a matter continues until final judgment, which occurs after sentencing, and a defendant “defends” against sentencing allegations. Sentencing is a critical stage of the criminal prosecution at which the defendant continues to defend against the State, through presence, counsel, mitigation, and allocution. *See State v. Fettis*, 136 Ariz. 58, 59–60, 664 P.2d 208, 209 (1983) (defendant must be present to exercise allocution); *State v. Nelson*, 122 Ariz. 1, 2, 592 P.2d 1267, 1268 (1979) (allocution is a protected right); *State v. Amaya-Ruiz*, 166 Ariz. 152, 174, 800 P.2d 1260, 1282 (1990) (sentencing is a “critical stage of the proceedings”); *State v. Anderson*, 169 Ariz. 381, 382, 819 P.2d 967, 968 (App. 1991) (defendant has right to be present at oral sentencing). Once fictitiousness is declared legally irrelevant for purposes of a luring conviction, it cannot then be asserted as a defense to sentencing under the DCAC statute. Otherwise, fictitiousness would operate as a partial defense, which § 13-3554 expressly forbids. Thus, subsection (B) forecloses fictitiousness as a defense to a prosecution under subsection (A) and to a sentencing enhancement under (C).

¶17 As we discussed in *Smith v. Melson, Inc.*, “[u]nlike the indefinite article ‘a,’ ‘the’ is a definite article used in reference to a particular thing.” 135 Ariz. 119, 121, 659 P.2d 1264, 1266 (1983). When § 13-3554(C) *58 refers to “the minor,” it references the subject already introduced in § 13-3554(A). Pursuant to § 13-3554(B), “a minor” under § 13-3554(A) may be fictitious. Therefore, “the minor” in subsection (C) refers to the same minor who may be fictitious.

¶18 Further, “[w]e do not interpret a statute's plain text hyper literally to determine whether it is unambiguous.” *Serrato*, 568 P.3d at 760 ¶ 15. But we have recognized that even subtle distinctions in statutory phrasing can reveal important actor-object structures. *Id.* ¶ 17. In *Serrato*, we emphasized the significance of the Legislature's choice to use “a person” for the actor and “human being” for the victim. *Id.* There, as here, context reveals that the statutory terms describe different roles. Subsection (A) defines luring in terms of the actor, or “a person,” targeting “a minor,” whether real or fictitious under subsection (B); subsection (C) references that same minor to

determine eligibility for enhanced sentencing. *See* A.R.S. § 13-3554.

¶19 Ambiguity in a statute exists only “if there is uncertainty about the meaning or interpretation of a statute's terms.” *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 268, 872 P.2d 668, 672 (1994). The words in a statute are not evidence of a legislator's intent, rather they are law that judges apply through the prisms the Legislature sets out. *State ex rel. Ariz. Dep't of Revenue v. Tunkey*, 254 Ariz. 432, 437–38 ¶¶ 26–27, 524 P.3d 812, 817–18 (2023) (Bolick, J., concurring). In *Hayes*, the Court considered two reasonable interpretations of a statute's grant of exclusive jurisdiction where the meaning of the statute created uncertainty and ambiguity. 178 Ariz. at 268, 872 P.2d at 672. But § 13-3554 is different. It does not create the same uncertainty and ambiguity because, in subsection (B), the Legislature expressly provided that the fact a minor is fictitious is not a defense to prosecution for luring a minor for sexual exploitation. As the concurring opinion in *Tunkey* states, judges are bound by the language the Legislature sets out, because judges follow the text the Legislature provides. 254 Ariz. at 437–38 ¶¶ 27–32, 524 P.3d at 817–18. Thus, this Court looks to the language used by the Legislature in the entire section of § 13-3554 to determine whether the statute refers to the same type of minor throughout (actual and fictitious) or two different types (actual and fictitious as to subsection (A), but only actual as to subsection (C)).

¶20 Section 13-3554(B) provides that “[i]t is not a defense to a ... violation of *this section* that the other person is not a minor.” A.R.S. § 13-3554(B) (emphasis added). “This section” refers to all of § 13-3554, encompassing both subsection (A) and subsection (C). In other words, subsection (B) confirms that fictitious minors count for all purposes under § 13-3554—including sentencing under subsection (C). Although the Legislature could have limited that clarification to subsection (A) only, and to the exclusion of subsection (C), it did not. Courts may not read in limitations that the Legislature did not write. *See In re M.N.*, 259 Ariz. 120, 563 P.3d 136, 141 ¶ 28 (2025) (“It is a basic principle that courts will not read into a statute something which is not within the manifest intention of the [L]egislature as indicated by the statute itself.”) (quoting *Mussi v. Hobbs*, 255 Ariz. 395, 402 ¶ 34, 532 P.3d 1131, 1138 (2023)).

¶21 We also reject the court of appeals' and Haniffa's reliance on the general statutory definition of “minor” to argue that § 13-3554 requires an actual minor. Section 13-3554 does not define the term “minor,” but § 1-215(21)

defines a minor as “a person under eighteen years of age.” Section 1-215 also states the definition applies “unless the context otherwise requires.” Here, context requires us to apply a different definition because the Legislature explicitly acknowledged that fictitious minors count as “minors” under § 13-3554(B). That interpretive choice should continue throughout the statute—including subsection (C). Indeed, even the definitional section for this statutory chapter—§ 13-3551(6)—uses the same “unless the context otherwise requires” disclaimer, reinforcing the idea that context within each section can and should inform the meaning of the word “minor.”

¶22 The court of appeals, itself, has previously decided that the meaning of a word should be read consistently throughout a statute. In *Obregon v. Indus. Comm'n*, 217 Ariz. 612, 613 ¶ 1, 177 P.3d 873, 874 (App. 2008), the court determined the proper interpretation of A.R.S. § 23-1028(A). The phrase “compensation, benefit, or payment” appeared three times in § 23-1028(A). *Id.* at 616 ¶ 21, 177 P.3d at 877. The court concluded the phrase should be given the same meaning each time. *Id.* Like the phrase in *Obregon*, the word “minor” appears five separate times in this statute. Unless language within the statute so requires, we will also give each usage of the word the same meaning throughout a section of the statute. *Fann v. State*, 251 Ariz. 425, 442 ¶ 60, 493 P.3d 246, 263 (2021) (“[W]e presume a word or phrase bears the same meaning throughout a text.”); *State ex rel. Indus. Comm'n v. Pressley*, 74 Ariz. 412, 421, 250 P.2d 992, 998 (1952) (“[T]here is a natural presumption that identical words used in different parts of the same act are intended to have the same meaning.”). Here, § 13-3554(B) provides that it is not a defense to a luring charge that the other person is not a minor. As stated, neither party disputes that subsection (B) modifies subsection (A). If (A)’s reference to “a minor” includes a fictitious minor, (C)’s reference to “the minor” must have the same meaning. Therefore, like subsection (A), subsection (C) allows for sentencing enhancement under § 13-705 for luring a minor, whether actual or fictitious.

¶23 Our analysis in *State ex rel. Polk v. Campbell*, 239 Ariz. 405, 372 P.3d 929 (2016), is also instructive. There, we considered the child sex trafficking statute, which stated that it “is not a defense to a prosecution” if the victim in question was a fictitious child who the defendant knew or should have known was a minor. *Id.* at 406 ¶ 6, 372 P.3d at 929. Like in this case, the issue in *Polk* was whether the statute’s sentencing enhancements applied in cases involving fictitious minors. *Id.* at 405–06 ¶ 1, 372 P.3d at 930. Just as Haniffa

argues now, the *Polk* defendant argued that we should apply the common meaning of “minor” to render the sentencing provisions inapplicable when an officer posed as a minor. *Id.* at 407 ¶ 8, 372 P.3d at 931. But we held that “[c]onsidering § 13-3212’s history and reading the statute in its entirety convinces us that [rather than applying exclusively to a person under the age of eighteen years,] the [L]egislature intended to use a different definition of ‘minor’ in § 13-3212(D) and (G).” *Id.* ¶ 9. The same logic applies in this case.

¶24 As a final point, we are aware of our duty to construe language “according to fair meaning ... to promote justice and effect the objects of the law, including the [purpose]” which prohibits “conduct that unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests.” A.R.S. §§ 13-101(1), -104. Here, subsection (B) is explicit in its mandate removing the fact of a fictitious minor as a barrier to prosecution. A reading consistent with § 13-104 requires that this Court read the prohibition in subsection (B) as applicable to both subsections (A) and (C). Section 13-3554 promotes protection against the threat of substantial harm to minors and the public. Conduct that seeks to exploit minors, including fictitious ones, undoubtedly causes or threatens the interests contemplated in § 13-101(1). The purpose of § 13-3554 is not implicitly or explicitly limited in its application to subsection (A). That purpose is applicable throughout the entire section of the statute.

¶25 The spirit and purpose of the statute penalizing the luring of children for sexual exploitation targets predators who prey on minors and those whose efforts are intercepted by undercover law enforcement officers. As charged, the defendant here set out to intentionally harm a minor. He should not escape enhanced sentencing intended to deter and punish harm against minors merely because his intended victim was, unbeknownst to him, a law enforcement officer. Section 13-3554(B) makes clear that the purpose of § 13-3554 is to protect minors from all predators, including those who foolishly and unwittingly expose themselves to detection by law enforcement sting operations. Therefore, consistent with Arizona statutory policy, we give the entirety of § 13-3554 an interpretation that is consistent with the prosecution and availability of heightened punishment when the minor is actual or fictitious under both subsections (A) and (C).

*60 ¶26 We hold A.R.S. § 13-3554(C) does not require an actual minor victim to be lured before § 13-705 may be invoked. Because *Regenold*, 227 Ariz. 224, 255 P.3d 1028, and *Villegas*, 227 Ariz. 344, 258 P.3d 162, interpreted

prior versions of § 13-3554, which the Legislature has since amended, we find them inapplicable here.

II. Dangerous Crimes Against Children; Sentencing

¶27 We next consider whether § 13-705 requires an actual minor victim for purposes of DCAC sentencing enhancement.

¶28 The relevant portions of § 13-705 (2022) state:

R. A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.

S. It is not a defense to a dangerous crime against children that the minor is a person posing as a minor or is otherwise fictitious if the defendant knew or had reason to know the purported minor was under fifteen years of age.

T. For the purposes of this section:

1. “Dangerous crime against children” means any of the following that is committed against a minor who is under fifteen years of age:

...

(s) Luring a minor for sexual exploitation.

¶29 Haniffa argues, and the court of appeals’ majority agreed, that regardless of the express language of A.R.S. § 13-705(S), the DCAC sentencing enhancement for the offenses listed under § 13-705(T) applies only when an actual minor is the victim.

¶30 “In construing a specific provision,” courts “look to the statute as a whole and we may also consider statutes that are *in pari materia*—of the same subject or general purpose—for guidance and to give effect to all of the provisions involved.” *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7, 398 P.3d 574 (2017). When those methods fail to produce an interpretation, the Court examines “secondary interpretation methods, including the statute’s subject matter, historical background, effects and consequences, as well as its spirit and purpose to aid with interpretation.” *In re Drummond*, 257 Ariz. 15, 18 ¶ 5, 543 P.3d 1022 (2024).

¶31 Haniffa points to *Wright*, 243 Ariz. at 119 ¶ 1, 402 P.3d 1003, to support the conclusion that the offenses listed in § 13-705(T) are deemed DCAC only when the victim is an

actual minor. In *Wright*, we noted that by “referring to ‘a’ minor who ‘is’ under fifteen, the statute ostensibly refers to an actual person.” *Id.* at 121 ¶ 13, 402 P.3d 1003. We reasoned that if the Legislature intended to include fictitious children within the DCAC sentencing scheme, it would have included specific language to that effect, as it has done in other statutes. *Id.* at 122 ¶ 17, 402 P.3d 1003. We suggested a “roadmap” for how to amend § 13-705 for the DCAC enhancements to apply to fictitious minors. *Id.* First, the Legislature could alter the definition of “dangerous crime against children” in now-subsection (T)(1) to include “a person posing as a minor under the age of fifteen.” *Id.* Second, by comparing § 13-705 to the child prostitution statute in *Polk*, we also suggested that the Legislature could enact a provision providing that it was no defense to a DCAC offense that the involved minor was fictitious. *Id.*

¶32 In 2018, the Legislature added subsection (S). 2018 Ariz. Sess. Laws ch. 181, § 1 (2d Reg. Sess.) (H.B. 2244). The court of appeals and both parties agree that the Legislature enacted § 13-705(S) in response to this Court’s decision in *Wright. Marner*, 258 Ariz. at 517 ¶ 17, 560 P.3d 338.³ But they disagree as to its meaning. Court of Appeals’ Judge Eckerstrom concluded that given the legislative history and placement of subsection (S) immediately after subsection (R), subsection (S) modified only subsection (R), and was an express attempt to limit its effect *61 to the prosecution of preparatory offenses, like those in *Wright. Marner*, 258 Ariz. at 518 ¶ 19, 560 P.3d 338. However, this interpretation means the DCAC sentencing enhancement would only apply to preparatory offenses, thus punishing preparatory offenses more harshly than completed offenses that do not involve real minors. We are unconvinced that the Legislature would seek this end.

¶33 The dissent, on the other hand, concluded that subsection (S) modifies all the applicable provisions of § 13-705, including subsection (T). *Marner*, 258 Ariz. at 522 ¶ 41, 560 P.3d 338 (Gard, J., dissenting). The dissenting judge and Haniffa contend that this reading of subsection (S) would contradict *Wright*’s reading of § 13-705(T). *Id.* at 522 ¶ 40, 560 P.3d 338. That is correct. However, we note that *Wright* interpreted the statute before enactment of § 13-705(S).

¶34 We presume the Legislature is aware of Supreme Court decisions and existing case law interpreting the language of a statute. *Daou v. Harris*, 139 Ariz. 353, 357, 678 P.2d 934 (1984); *See State v. Superior Court of Pima Cnty.*, 104 Ariz. 440, 442, 454 P.2d 982 (1969). *Wright* and subsequent

amendments to § 13-705 support this presumption. Indeed, after we provided suggestions to the Legislature regarding § 13-705 in *Wright*, the Legislature amended § 13-705 to align with our analysis. The Legislature clarified that for DCAC offenses it is not a defense that there was not an actual minor. A.R.S. § 13-705(S). Then it listed the offenses that are considered dangerous crimes against children. A.R.S. § 13-705(T)(1). Although the amendment was not precisely as suggested in *Wright*, it is not required to be, as the judicial branch merely interprets the meaning of laws. It is the Legislature's prerogative to choose whether to change the law and how to do so.

¶35 In *SolarCity Corp. v. Ariz. Dep't of Revenue*, we observed that statutory interpretation requires us to look to the plain language of the statute. 243 Ariz. 477, 480 ¶ 8, 413 P.3d 678 (2018). We noted that, in doing so, we “read [statutes] in context with other statutes relating to the same subject or having the same general purpose.” *Id.*

¶36 The court of appeals' conclusion that subsection (S) of § 13-705 only modifies subsection (R) of § 13-705 is inconsistent with our interpretive approach in *SolarCity Corp.* Like the statutes in *SolarCity Corp.*, § 13-705(S), (T)(1) and § 13-3554 are read in context together and relate to the same subject with the same general purpose—the elimination of the requirement of an actual minor as a defense. Therefore, they must be read to mean that an actual minor victim is not necessary for DCAC sentencing to apply under § 13-705.

¶37 “Statutes that are *in pari materia*—[like §§ 13-3554 and 13-705]—are construed together as though they constitute one law.” *State ex rel. Dep't of Econ. Sec. v. Hayden*, 210 Ariz. 522, 523 ¶ 7, 115 P.3d 116 (2005). Haniffa's argument that the absence of an actual minor prevents application of § 13-705 sentencing enhancements is unpersuasive. When §§ 13-3554 and 13-705 are read together as one law and considered via their logical relations, subsections (B) (of § 13-3554) and (S) (of § 13-705) independently establish that the luring of a fictitious minor is not a defense. These two statutes together illuminate the Legislature's objective: eliminate the fictitious minor defense.

¶38 In *Serrato*, this Court declined to “speculate about the meaning of language the [L]egislature chose not to enact.” *Serrato*, 568 P.3d at 763 ¶ 32. This is because pre-enactment history is a notoriously “unsure and unreliable guide” to statutory meaning. *City of Flagstaff v. Mangum*, 164 Ariz. 395, 401, 793 P.2d 548 (1990). Here, the reason for the

Legislature's decision to enact subsection (S), rather than adding that language into the definition in subsection (T), is unclear. As the court of appeals dissent notes, it is equally plausible that the Legislature chose the broader, categorical fix in subsection (S). *Marner*, 258 Ariz. at 516 ¶ 12, 560 P.3d 338. As we did in *Serrato*, we also decline to speculate here. Accordingly, to the extent *Wright* limited application of any portion of A.R.S. § 13-705 to actual minors only, thereby excluding fictitious minors, given the subsequent addition of subsection (S), we disavow it.

*62 ¶39 We note that the 2025 amendment to § 13-705(T)(1) added language expressly stating that a DCAC includes an offense committed against “a person posing as a minor if the defendant knew or had reason to know that the purported minor was under fifteen years of age.” The legislative amendment tracks this Court's guidance in *Wright*. See 243 Ariz. at 122 ¶ 17, 402 P.3d 1003. Although this amendment is part of § 13-705's statutory history, it does not mark a shift in legislative policy. It reinforces what the Legislature already made clear in 2018: DCAC enhancements apply even when the minor is fictitious. The 2025 amendment aligns subsection (T)(1) with the broader sentencing framework, especially § 13-705(S), and corrects the court of appeals' misunderstanding one year earlier in *Marner*.

¶40 Our conclusion that the amendments adding subsection (S) and language to (T)(1) are duplicative does not implicate the surplusage canon where the Legislature is likely attempting to correct an erroneous court of appeals' interpretation of the initial amendment. If subsection (S) and the 2025 amendments to (T)(1) are duplicative, it is likely because the Legislature was trying to navigate the hurdles our appellate courts had placed before it.

¶41 The court of appeals majority found that applying § 13-705(S) to the entire statute would conflict with § 13-705(T). We disagree. In *Nicaise*, we held that “[a] cardinal principle of statutory interpretation is to give meaning ... to every word and provision so that no word or provision is rendered superfluous.” 245 Ariz. at 568 ¶ 11, 432 P.3d 925. To find that § 13-705(S) conflicts with subsection (T), as the court of appeals suggests, is to assume that one of these provisions is superfluous. If subsection (T) was to require an actual minor, there is no scenario in which subsection (S) applies to the plethora of offenses in subsection (T). Following *Nicaise*, we conclude that the Legislature did not render subsection (S) superfluous. The addition of subsection (S) is not conflicting; rather, it is an addition which equally

applies to subsection (T). Thus, the sentencing enhancement applies even when the minor is fictitious.

¶42 Haniffa argues we should apply the rule of lenity. The rule of lenity dictates that any doubts be resolved in favor of the defendant. *Serrato*, 568 P.3d. at 763 ¶ 33. We decline to do so. We only apply the rule of lenity if after all reasonable tools of interpretation have been applied, a reasonable doubt persists. *Id.* Thus, “absent ambiguity, the rule of lenity does not apply.” *Id.* (quoting *State v. Fink*, 256 Ariz. 387, 389 ¶ 9, 539 P.3d 543 (App. 2023)). We conclude the meaning of §§ 13-3554 and 13-705 are unambiguous by construing the statutory text in its broader context, including related statutes, and considering relevant statutory history. Because §§ 13-3554 and 13-705 are unambiguous in context, we need not apply this “construction principle of last resort.” See *id.* (quoting *State v. Bon*, 236 Ariz. 249, 253 ¶ 13, 338 P.3d 989 (App. 2014)).

¶43 Haniffa also argues that the State's reading of § 13-705(S) would produce absurd results by automatically subjecting every offense listed in subsection (T) to enhanced DCAC sentencing—even if the offense was incomplete, involved no real minor, or lacked key elements. But as the Attorney General's amicus brief explains, this misstates the statute's effect. Section 13-705(S) does not modify the elements of the underlying offenses; it removes the fictitious-minor defense at sentencing *after* a valid conviction. Whether a defendant can be convicted of an offense involving a fictitious minor depends on the elements of the specific crime—not on § 13-705(S), which only governs enhancements once those elements are met. Accordingly, neither lenity nor absurdity alters the analysis, and the statutory text and history confirm the Legislature's intent.

¶44 Although § 13-705(S) does not modify the elements of the underlying offense, it does heavily correlate to § 13-3554(B). As noted by the court of appeals' dissent, reading and analyzing statutes, like these two, offers “a comprehensive statutory scheme governing” both the prosecution of and sentencing for luring. *Columbus Life Ins. Co. v. Wilmington Tr. N.A.*, 255 Ariz. 382, 385 ¶ 15, 532 P.3d 757 (2023). We agree. Sections 13-3554(B) and 13-705(S) both provide that it is not a defense that the minor involved is *63 fictitious. To be clear, these statutes are different: § 13-3554(B) applies to the prosecution and § 13-705(S) applies to the sentencing. Subsection 13-705(S) does not add an element to prosecution, as Haniffa argues. However, they are both part of the regulatory scheme governing the consequences for the luring of minors. They both provide that the charge and enhanced

sentencing apply even when the minor is fictitious. Finally, they both apply to the entire section of their respective statutes, not only to discrete subsections, as Haniffa suggests.

¶45 Finally, we note that public policy considerations support our holdings today. Effecting harsh punishment on persons who intend to prey on minors but fail to do so based on factual impossibility is a rational goal of criminal deterrence and is consistent with the Legislature's foundational public policy concerning criminal law. See § 13-101(1), (5) (stating the public policy of the state is “[t]o proscribe conduct that ... causes or threatens substantial harm to individual or public interests” and to ensure public safety by preventing offenses “through the deterrent influence of the sentences authorized”).

¶46 While DCAC statutes historically focused on harm to actual children, the Legislature has consistently expanded child-protection crimes to include threat-based and risk-based offenses. Luring exemplifies this shift: it criminalizes conduct at the solicitation stage, before physical harm occurs. Once the Legislature made luring a listed DCAC offense (§ 13-705(T)(1)(a)(xix)), the relevant “harm” became the creation of imminent risk to children as a class, not injury to a particular child.

CONCLUSION

¶47 We hold that neither § 13-3554 nor § 13-705 require an actual minor victim for the deployment of DCAC sentencing enhancement. We vacate the court of appeals' opinion. We reverse the superior court's ruling dismissing the DCAC allegation against Haniffa on a charge of luring a minor for sexual exploitation under § 13-3554(C), and remand for further proceedings consistent with this opinion.

JUSTICE BOLICK dissented.

BOLICK, J., dissenting.

¶48 The issue before us is whether A.R.S. § 13-3554(C) authorizes enhanced punishment for the crime of luring a minor for sexual exploitation when the subject of the offense was a fictitious minor under fifteen years old.⁴ The majority is correct that the statutes outlined in title 13, chapter 35.1, and A.R.S. § 13-705 constitute a comprehensive statutory scheme. *Supra* ¶ 44. However, it is a scheme that consistently

bifurcates the elements of the crime and the punishment. As the fictitious minor provision applies by its terms only to the prosecution and not to the enhanced penalty under § 13-705, I would hold that § 13-3554(C) requires the State to prove beyond a reasonable doubt that the subject of the offense was an actual minor under fifteen years old to enhance the defendant's sentence.

A. The Defendant's Subjective Belief That “The Other Person Is A Minor” (§ 13-3554(A)) Is Immaterial To The Jury's Bifurcated Finding That “The Minor Is Under Fifteen Years Of Age” (§ 13-3554(C)).

¶49 For a jury to convict a defendant of luring, the State must prove beyond a reasonable doubt that: (1) the defendant “offer[ed] or solicit[ed] sexual conduct with *another person*”; and (2) the defendant “kn[ew] or ha[d] reason to know that *the other person* is a minor.” § 13-3554(A) (emphasis added). The “minor” is the “person” who is the subject of the offense, whom the defendant perceives as younger than eighteen years old. See A.R.S. § 1-215(21) (defining “minor” as “a person under eighteen years of age”).

¶50 The subject's purported age is relevant to whether the defendant acted with the requisite mens rea. See § 13-3554(A). But the subject's actual age is not an element of the offense because a jury may convict a defendant *64 of luring regardless of the subject's age. See § 13-3554(B). Thus, the defendant need not commit the offense against an actual minor victim. So long as the defendant believes “that the other person is a minor,” a jury can find the defendant guilty of luring. See § 13-3554(A).

¶51 At issue in this case is § 13-3554(C), which relates to the trial court's sentencing decision. Subsection (C) consists of two parts: (1) “[l]uring a minor for sexual exploitation is a class 3 felony”; and (2) “if the minor is under fifteen years of age it is punishable pursuant to § 13-705.” The first clause supplies the offense classification. It conveys the severity of the offense and provides guidance for a trial court to determine the penalties that it may impose upon a defendant. See A.R.S. §§ 13-701 to -720 (prescribing the penalties for various offenses based on the offense classification).

¶52 The second clause is a proviso that conditions the offense's sentence classification, subjecting the defendant to enhanced punishment “if the minor is under fifteen years of age.” If the enhancement applies, “the degree of the felony is irrelevant” because the Dangerous Crime

Against Children (“DCAC”) statute would “replace the usual sentencing scheme.” See *State v. Williams*, 175 Ariz. 98, 102, 854 P.2d 131 (1993).

¶53 As a matter of structure, context, and plain meaning, subsection (B)'s expansion of “minor” to include fictitious minors applies only to subsection (A), not subsection (C). If subsection (B) applied to both, it would be odd to sandwich it between the two rather than following both. By its express terms, it relates to a “defense to prosecution,” which pertains to subsection (A), which establishes the elements of the crime that must be proven at trial, not to the sentence prescribed in subsection (C). Subsections (A) and (B) both refer generically to a “minor,” whereas the enhanced penalty of subsection (C) refers to a minor of a specific age (a minor who “is under fifteen years of age”). The enhanced sentence referred to in subsection (C) falls within the ambit of “dangerous crimes *against children*,” referring expressly to the victim, not a fictitious victim. For all those reasons, applying subsection (B) to the enhanced penalty provision in subsection (C) promotes statutory discord rather than harmony, and it surely does not provide fair notice of the range of possible sentences.

¶54 The determination of whether “the minor is under fifteen years of age” is an aggravating circumstance because it “increases the maximum penalty” for the crime and, as such, it “must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.” See *Apprendi v. New Jersey*, 530 U.S. 466, 476, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000) (quoting *Jones v. United States*, 526 U.S. 227, 243 n.6, 119 S.Ct. 1215, 143 L.Ed.2d 311 (1999)); see also § 13-701(C) (restricting a trial court's application of the DCAC enhancement pursuant to § 13-705 unless a jury first finds the aggravating circumstance beyond a reasonable doubt). The DCAC enhancement requires additional findings that are *bifurcated* from the elements of the offense because “the verdict alone does not authorize the sentence.” See *Blakely v. Washington*, 542 U.S. 296, 305 & n.8, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004); § 13-701(C). Thus, the finding that “the other person is a minor” in subsection (A) is separate from the finding that “the minor is under fifteen years of age” in subsection (C).

¶55 And unlike subsection (A), subsection (C) does not incorporate the defendant's subjective belief about the minor's age to determine whether the enhancement applies. The statutory scheme does not require proof that the defendant knew the victim's purported age to apply the DCAC enhancement. See *State v. Sepahi*, 206 Ariz. 321, 323 ¶ 12, 78

P.3d 732 (2003) (“[T]he defendant need not know the victim’s age to be subject to sentencing under [the DCAC statute], but rather ... ‘only that the victim must be the person against whom the crime is directed.’ ” (quoting *Williams*, 175 Ariz. at 103, 854 P.2d 131)); *State v. Villegas*, 227 Ariz. 344, 345 ¶ 3, 258 P.3d 162 (App. 2011) (“Our [S]upreme [C]ourt has made clear that a defendant’s knowledge or subjective belief of the victim’s age is irrelevant in determining whether the enhancement should apply—the only germane consideration is whether the defendant directed his or her conduct at a person under the age of fifteen.” (citing *65 *Sepahi*, 206 Ariz. at 324 ¶¶ 17, 19, 78 P.3d 732)). Hence, the subject’s actual age is a prerequisite if the State seeks to enhance a defendant’s luring sentence under subsection (C).

¶56 Moreover, the DCAC statute is victim-oriented. See *Wright v. Gates*, 243 Ariz. 118, 121 ¶ 16, 402 P.3d 1003 (2017) (finding that the DCAC statute seeks “to provide enhanced punishment for offenders who harmed actual—not fictitious—children”); *State v. Wagstaff*, 164 Ariz. 485, 490–91, 794 P.2d 118 (1990) (“The [L]egislature’s purpose in enacting the Dangerous Crimes Against Children Act” was to “[p]rotect[] the children of Arizona and punish[] severely those who prey on them.” (emphasis added)). Adopting the argument that an adult officer constitutes a “minor” belies the plain meaning of subsection (C) and could result in illogical consequences. For example, under the majority’s view, a trial court may enhance a defendant’s luring sentence pursuant to the DCAC statute if the subject of the offense was an adult officer posing as a fourteen-year-old, but not if the officer instead posed as a fifteen-year-old. See *supra* ¶¶ 25–26.

¶57 The respective sentencing schemes also illustrate a need to read subsection (C) with particularity. The presumptive sentence of a Class 3 felony for a first-time offender is three and a half years. A.R.S. § 13-702(D). Under the DCAC statute, the presumptive sentence of an adult convicted of luring a minor for sexual exploitation (as a first-time DCAC offender) is ten years. § 13-705(G). Neither simple luring nor DCAC luring is eligible for early release, with few exceptions. §§ 13-705(G), -3554(C). Given the comparative consequences, we should insist that if the Legislature wishes to impose a much more severe penalty even when the object of the crime is not an actual minor, it must do so with specificity, not opacity.

¶58 Indeed, resolving ambiguity in the State’s favor violates both constitutional and statutory norms. The rule of lenity requires a reading of the statute in the defendant’s favor given

that subsection (C) fails to specify that defendants convicted of targeting fictitious minors are subject to the enhancement. As Justice Scalia remarked for the Court in *United States v. Santos*, 553 U.S. 507, 514, 128 S.Ct. 2020, 170 L.Ed.2d 912 (2008), “[u]nder a long line of our decisions, the tie must go to the defendant.... This venerable rule ... vindicates the fundamental principle that no citizen should be ... subjected to punishment that is not clearly prescribed.” The laborious statutory analysis required here, as reflected by both the majority and dissenting opinions, illustrates well that the punishment here is not clearly prescribed.

¶59 Arizona law is to the same effect. As a majority of this Court recently observed, “the provisions of a penal statute ‘must be construed according to the fair meaning of their terms to promote justice and effect the objects of the law, including the purposes stated in § 13-101.’ ” *State v. Gordon*, CR-24-0064-PR, slip op. at 3 ¶ 13, 2025 WL 3626835 (Ariz. Dec. 12, 2025) (citing A.R.S. § 13-104). The Court cited § 13-101(2), which states that the “public policy of this state and the general purposes of the provisions of this title are ... [t]o give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction.” § 13-101(2) (emphasis added). As I view the statute at issue here as much more ambiguous than the enhanced penalty statute at issue in *Gordon*, CR-24-0064-PR, slip op. at 8 ¶¶ 37–41, 11–12 ¶¶ 56–59 (Bolick, J., dissenting), we should follow that precedent and not apply the severe enhanced penalty here absent clear statutory direction that we do so.

B. Section 13-3554(B) Does Not Modify § 13-3554(C).

¶60 According to the majority, the Arizona Legislature’s express statements prohibiting the fictitious minor defense “to a prosecution” apply beyond the State’s prosecution of the offense at trial. *Supra* ¶¶ 16, 19–20 (citing § 13-3554(B)).

¶61 The majority asserts that the defendant could present mitigating evidence at sentencing to persuade the court to impose a lesser sentence—i.e., to defend against the imposition of a maximum or enhanced sentence. *Supra* ¶ 16. But unlike the aggravating factor in subsection (C), which requires a jury finding, only trial courts consider mitigating *66 evidence and find mitigating factors based on the evidence presented at trial and sentencing. § 13-701(C), (E). Section 13-3554(B) neither impliedly nor explicitly prohibits a trial judge from considering evidence that the crime was effectively victimless because it involved a fictitious minor. See A.R.S. § 13-4401 (“ ‘Victim’ means a *person* against

whom the criminal offense has been committed, including a minor.” (emphasis added)). And § 13-701 uses the phrase “a defense to prosecution” to describe a complete defense used at trial. See § 13-701(E). It follows that the Legislature does not view “a defense to prosecution” as incorporating a defendant’s arguments against a maximum or enhanced sentence.

¶62 Instead, the Legislature has explained that a sentencing court “shall consider” evidence that mitigates a defendant’s culpability but not to a degree that would have negated an element of the charged offense. See § 13-701(E)(4). In these provisions, the Legislature chose to distinguish mitigating evidence at sentencing from evidence that would constitute “a defense to a prosecution.” § 13-701(E) (“the court shall consider ... 2. [t]he defendant’s capacity to appreciate the wrongfulness of the defendant’s conduct or to conform the defendant’s conduct to the requirements of law was significantly impaired, *but not so impaired as to constitute a defense to prosecution*”; “3. [whether t]he defendant was under unusual or substantial duress, *although not to a degree that would constitute a defense to prosecution*”; “4. [t]he degree of the defendant’s participation in the crime was minor, *although not so minor as to constitute a defense to prosecution*” (emphasis added)).

¶63 A defense to negate an element of the offense is needless at sentencing because the State would have already proven each element beyond a reasonable doubt. Yet, while evidence that the subject of the offense was not an actual minor would not negate an element of the offense, it may serve as mitigating proof to persuade the court to impose a lesser sentence. See § 13-701(E)(6) (“the court shall consider ... [a]ny other factor that is relevant to the defendant’s character or background or to the nature or circumstances of the crime and that the court finds to be mitigating”).

¶64 Interpreting § 13-3554(B) to prohibit the fictitious minor defense at sentencing would improperly expand the statute’s scope beyond the Legislature’s stated intent. See *State ex rel. Ariz. Dep. of Revenue v. Tunkey*, 254 Ariz. 432, 437 ¶ 26, 438 ¶ 31, 524 P.3d 812 (2023) (Bolick, J., concurring) (“[T]he words of a statute are not ‘evidence’ of anything. They are the law.... The temptation to correct perceived legislative error or expand statutes beyond their plain meaning can lead the Court to transgress legislative power.”). The bifurcated structure of prosecution and sentencing are reflected throughout the statutory scheme, and subsection (B) relates only to the former.

C. The Post-*Wright* Amendments To § 13-705 Fail To Demonstrate An Intent To Define Subsection (C) As The Majority Proposes.

¶65 The majority contends that the Legislature intended to incorporate actual and fictitious minors within the enhanced penalty provision in § 13-3554(C) based on its amendments to § 13-705 following this Court’s decision in *Wright*. *Supra* ¶ 34. However, reading § 13-3554 *in pari materia* with § 13-705 does not lead to the interpretation that the majority proposes. Doing so supports the proposition that subsection (C) requires an actual minor as the subject of the offense.

¶66 This Court “consider[s] statutes that are *in pari materia*—of the same subject or general purpose—for guidance and to give effect to all of the provisions involved.” *In re M.N.*, 259 Ariz. 120, 124 ¶ 20, 563 P.3d 136 (2025) (quoting *In re Drummond*, 257 Ariz. 15, 18 ¶ 5, 543 P.3d 1022 (2024)). “*In pari materia* is a primary tool of interpretation and ambiguity is not a prerequisite to applying it.” *State Farm Auto. Ins. Co. v. Orlando*, 259 Ariz. 531, 536 ¶ 24, 569 P.3d 394 (2025).

¶67 “It is a logical consequence of this contextual principle that the meaning of an ambiguous provision may change in light of a subsequent enactment.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 254-55 (2012) (citing *67 *United States v. Stewart*, 311 U.S. 60, 64, 61 S.Ct. 102, 85 L.Ed. 40 (1940)).

1. Section 13-705(S)

¶68 In *Wright*, the defendant was convicted of solicitation to commit child molestation, and he had committed the offense against “a fictitious child.” 243 Ariz. at 119 ¶ 1, 402 P.3d 1003. Solicitation to commit child molestation is a DCAC crime in the second degree, § 13-705(M); see *Wright*, 243 Ariz. at 120 ¶ 9, 402 P.3d 1003, and child molestation is automatically punishable pursuant to the DCAC statute, A.R.S. § 13-1410(B) (“Molestation of a child is a class 2 felony that is punishable pursuant to section 13-705.”). However, § 13-1410(A) requires that the victim be “a child who is under fifteen years of age,” and unlike luring, the statute does not prohibit defendants from asserting a fictitious minor defense. Additionally, at the time of the *Wright* decision, the DCAC statute provided that child molestation was a DCAC crime if “committed against a minor who [was] under fifteen years of age.” *Wright*, 243 Ariz. at 120 ¶ 8, 402 P.3d 1003. Therefore, our Court held that this phrase in the

DCAC statute “require[d] an actual child victim for DCAC enhanced sentences to apply.” *Id.* at 121–22 ¶¶ 15, 18, 402 P.3d 1003.

¶69 After *Wright*, the Legislature amended the DCAC statute to include § 13-705(P) (2018), now codified as § 13-705(S). Under § 13-705(S), “[i]t is not a defense to a dangerous crime against children that the minor is a person posing as a minor or is otherwise fictitious if the defendant knew or had reason to know the purported minor was under fifteen years of age.”

¶70 While the Legislature added subsection (S) to § 13-705, it did not amend the definition of a DCAC crime to include fictitious minors. *See* § 13-705(S) (2022) (defining a DCAC crime as one of twenty-three enumerated crimes “committed against a minor who is under fifteen years of age”). The Legislature’s decision to leave the DCAC crime definition untouched signals its acceptance of this Court’s interpretation in *Wright*.

¶71 But § 13-705(S) is not meaningless. Section 13-705(S) alters our understanding of *Wright* as to crimes automatically punishable pursuant to § 13-705, subject only to the restrictions in the DCAC statute. These crimes are DCAC crimes without provisions like § 13-3554(C) that restrict the application of the DCAC enhancement. They include (1) child molestation; (2) child sex trafficking under § 13-3212(B)(1); (3) continuous sexual abuse of a child; and (4) manufacturing methamphetamine under circumstances that cause physical injury to a minor:

- (1) “Molestation of a child is a class 2 felony that is punishable pursuant to section 13-705.” A.R.S. § 13-1410(B).
- (2) “Child sex trafficking pursuant to subsection B, paragraph 1 of this section is a class 2 felony and is punishable pursuant to section 13-705.” A.R.S. § 13-3212(E).
- (3) “Continuous sexual abuse of a child is a class 2 felony and is punishable pursuant to section 13-705.” A.R.S. § 13-1417(B).
- (4) “A person who violates this section is guilty of a class 2 felony and is punishable as provided by section 13-705.” A.R.S. § 13-3407.01(B) (“manufacturing methamphetamine under circumstances that cause physical injury to a minor”).

¶72 For example, child molestation was automatically punishable pursuant to § 13-705 at the time of the *Wright* decision; but this Court dismissed the DCAC enhancement in *Wright* because a crime committed against a fictitious child did not qualify as a DCAC crime under the statute. *See Wright*, 243 Ariz. at 122 ¶ 18, 402 P.3d 1003. The child molestation statute did not preclude the enhancement’s application. It was a restriction within the DCAC statute.

¶73 Today, § 13-705(S) would authorize the trial court to apply the DCAC enhancement to Wright’s sentence because subsection (S) forbids a defendant’s use of the fictitious minor defense against DCAC crimes. Because Wright could not use this as a defense, the facts of his case would satisfy the definition of a DCAC crime as provided under § 13-705(T)(1). Therefore, the Legislature’s *68 addition of § 13-705(S) effectively corrected the result in *Wright*.

¶74 Still, § 13-705(S) specifies that it applies to “dangerous crime[s] against children.” Therefore, § 13-705(S) has no effect on non-DCAC crimes. Child molestation always constitutes a DCAC crime. The same is not true of luring. Simple luring is not a DCAC crime in which § 13-705(S) would automatically apply. If a defendant committed luring against a minor who is fifteen years old, the offense would not be a DCAC crime because it fails to satisfy subsection (C). In that case, § 13-705(S) would have no effect on the defendant’s luring conviction. And as explained above, this case involves simple luring.

2. Section 13-705(T) (2025)

¶75 The 2025 amendment to the DCAC statute also illustrates that the Legislature did not originally intend § 13-705(S) (prohibiting the fictitious minor defense) and § 13-705(T) (defining dangerous crimes against children) to be read together. In 2017, this Court explained in *Wright*, “if the [L]egislature intended to include fictitious children within the DCAC sentencing scheme, it would have included language such as ‘a person posing as a minor under the age of fifteen’ ” within the DCAC crime definition. *Wright*, 243 Ariz. at 122 ¶ 17, 402 P.3d 1003. The Legislature waited until 2025 to amend § 13-705(T)(1) to include fictitious minors: “ ‘Dangerous crime against children’ means any of the following that is committed against a minor who is under fifteen years of age *or against a person posing as a minor* if the defendant knew or had reason to know that the purported minor was under fifteen years of age.” 2025 Ariz. Sess. Laws ch. 75, § 1 (1st Reg. Sess.) (S.B. 1585).

¶76 The Legislature's decision to add a separate provision in 2022, in lieu of modifying the definition of DCAC crimes under § 13-705(T)(1) as it did in 2025, suggests that the Legislature previously intended Arizona courts to read § 13-705(S) and (T) separately. The post-*Wright* amendments to § 13-705 make clear that the Legislature did not originally intend to apply § 13-705(S) to § 13-705(T), or for that matter, § 13-3554(C).

¶77 Reading § 13-3554(C) *in pari materia* with § 13-705 does not reasonably lend to an interpretation that, under subsection (C), an adult officer posing as a minor under fifteen years old constitutes a minor under fifteen years of age. And this reading does not do harm to the purpose and meaning of the respective statutes, as defendants who commit the underlying offenses against fictitious minors do not circumvent punishment for these offenses.

3. Arizona courts recognize that subsection (C) requires an actual minor.

¶78 “[T]he principle of stare decisis ... has special force in statutory cases,” such that an ambiguous provision that “has already been given an authoritative judicial interpretation” does not “change in light of a subsequent amendment.” Scalia & Garner at 254–55. The Legislature “can change the law whose meaning the prior judicial interpretation established. But once that meaning *has* been established, the meaning cannot change ‘in light of’ a later statute with which a different meaning would be more compatible.” *Id.* at 255 (emphasis in original).

¶79 As applied here, Arizona courts have consistently understood that the phrase “the minor” as it framed in § 13-3554(C) refers to an actual minor under fifteen years old. See *State v. Farnsworth*, 243 Ariz. 150, 403 P.3d 150 (2017) (dec. order) (vacating the court of appeals’ holding that the DCAC statute applied to a defendant convicted of luring who had targeted an officer posing as a minor under the age of fifteen); *Mejak v. Granville*, 212 Ariz. 555, 557 ¶ 13, 136 P.3d 874 (2006) (relying on “[t]he use of the phrase ‘the minor’ in subsection (C)” to conclude that subsection (A) “is violated only when an actual minor is lured” “unless subsection (B) applies”); *State v. Villegas*, 227 Ariz. 344, 345 ¶ 3, 258 P.3d 162 (App. 2011) (“[I]t is immaterial that Villegas believed he was targeting a fourteen-year-old girl” because “the plain language of §§ 13-705 and 13-3554 precludes application of the DCAC sentence enhancement when, as

here, the victim is not under the age of fifteen.”); *State v. Regenold*, 227 Ariz. 224, 226 ¶ 4, 255 P.3d 1028 (App. 2011) (“[T]he plain language of § 13-3554(C) requires *69 the victim to actually be a minor under 15 years of age for a court to sentence the defendant under [the DCAC statute].”); *State v. Hollenback*, 212 Ariz. 12, 16 ¶ 13, 126 P.3d 159 (App. 2005) (“When the victim is older than fifteen, the statutes are silent and the general sentencing scheme would apply.”); *State v. Hazlett*, 205 Ariz. 523, 528 ¶ 12, 73 P.3d 1258 (App. 2003) (“This conclusion that the term ‘minor’ as employed in A.R.S. § 13-3553 is intended to refer to an ‘actual child’ finds further support in subsection (C) of the statute, which sets forth the penalty for the offense.”); see also *State v. Farnsworth*, 241 Ariz. 486, 495 ¶ 43, 389 P.3d 88 (App. 2017) (Eckerstrom, C.J., concurring in part) (explaining that the Legislature “expressly excluded DCAC enhancement when the target [of luring] was not an actual minor under the age of fifteen”), *majority opinion partially vacated by* 243 Ariz. 150, 403 P.3d 150.

¶80 Yet the Legislature has opted not to amend subsection (C) of the luring statute to include fictitious minors. See § 13-3554(C). Even the state has previously conceded “that the DCAC allegation for [a] luring charge should be dismissed” when “there was no actual victim under the age of [fifteen] involved.” See *State v. Bejarano*, 2 CA-CR 2012-0073, 2013 WL 1707693, at *1 ¶ 4 (Ariz. App. Apr. 19, 2013) (mem. decision) (internal quotation marks omitted) (alteration in original).

¶81 And to the extent that other Arizona cases have defined “the minor” in subsection (C) as including fictitious minors, those holdings are dicta or lack precedential value. See *State v. Moninger*, 258 Ariz. 18, 26 ¶ 39, 552 P.3d 519 (2024) (identifying that luring a fictitious minor under the age of fifteen was a first degree DCAC offense, thus making the defendant ineligible for probation); *State v. McNulty*, 573 P.3d 581, 592 ¶ 42 (Ariz. App. 2025) (agreeing with the dissent in the court of appeals’ decision here); *State v. Garner*, 2 CA-CR 2023-0221-PR, 2024 WL 1071884, at *1–2 ¶ 7 (Ariz. App. Mar. 12, 2024) (mem. decision) (holding that § 13-3554(C) does not “refer[] only to a ‘minor ... under fifteen years of age’ ” because reading the provision as such “would create a conflict with § 13-705”); see also *State ex rel. Polk v. Campbell*, 239 Ariz. 405, 408 ¶ 15, 372 P.3d 929 (2016) (declining to decide whether “*Regenold* and *Villegas* were correctly decided”).

¶82 In this case, no actual minors, much less a minor under age 15, were involved in the offense. The plain meaning of [§ 13-3554\(C\)](#) establishes that a trial court may not enhance the sentence of a defendant convicted of luring unless the subject of the offense is an actual minor under fifteen years old. The effort required to cobble together a contrary meaning at best demonstrates the statute's ambiguity, which requires dismissal of enhancement because the statute does

not “clearly prescribe” the penalty. Therefore, the court of appeals was correct in affirming the trial court's dismissal of the DCAC sentencing enhancement. For these reasons, and with great respect to my colleagues, I dissent.

All Citations

167 Arizona Cases Digest 11, 583 P.3d 53

Footnotes

- 1 The material facts are not in dispute for purposes of addressing the sentencing enhancement question presented.
- 2 Though not applicable here, the amendment puts the matter to rest for future cases. [A.R.S. § 1-246](#); [State v. Peek](#), 219 Ariz. 182, 185 ¶ 20, 195 P.3d 641, 644 (2008); [State v. Fell](#), 209 Ariz. 77, 80 ¶ 10, 97 P.3d 902, 905 (App. 2004).
- 3 Chief Judge Staring concurred in part of the opinion but declined to “join in the analysis in paragraphs 13-22.” [Marner](#), 258 Ariz. at 519 ¶ 24, 560 P.3d 338 (Staring, C.J., concurring). Accordingly, he did not join in this portion of the majority opinion.
- 4 In this case, we review the statutory scheme as it was codified in 2024—when the defendant allegedly committed the offense.

259 Ariz. 493
Supreme Court of Arizona.

STATE of Arizona, Appellee,

v.

Edwardo SERRATO, III, Appellant.

No. CR-24-0264-PR
I
Filed May 14, 2025

Synopsis

Background: Defendant was convicted in the Superior Court, Mohave County, No. S8015CR201800630, [Billy K. Sipe](#), Judge Pro Tempore, of arson of an occupied structure, based on determination that the offense's occupancy element was satisfied by defendant's sole presence at the vehicle when it was set on fire. Defendant appealed. The Court of Appeals, Division One, [258 Ariz. 361](#), [557 P.3d 795](#), affirmed. Defendant filed petition for review, which was granted.

The Supreme Court, [Lopez](#), V.C.J., held that as a matter of first impression, the term “human beings,” within meaning of statute defining occupied structure as a structure in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger, unambiguously means persons other than the arsonist.

Court of Appeals opinion vacated; conviction and sentence reversed and remanded.

Procedural Posture(s): Appellate Review.

***757** Appeal from the Superior Court in Mohave County, The Honorable [Billy K. Sipe](#), Judge *Pro Tempore*, No. S8015CR201800630. **REVERSED AND REMANDED**

Opinion of the Court of Appeals, Division One, [258 Ariz. 361](#), [557 P.3d 795](#) (App. 2024). **VACATED**

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VICE CHIEF JUSTICE LOPEZ authored the Opinion of the Court, in which CHIEF JUSTICE TIMMER, JUSTICES BOLICK, BEENE, MONTGOMERY, KING, and BERCH (Retired) * joined.

Opinion

VICE CHIEF JUSTICE LOPEZ, Opinion of the Court:

***758** ¶1 We consider whether an arsonist's lone presence at the time of the crime is sufficient to support a conviction for arson of an “occupied structure” under [A.R.S. § 13-1704](#). An “occupied structure” is one “in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time the fire or explosion occurs.” [A.R.S. § 13-1701\(2\)](#). The dispositive issue is whether, in committing arson of an “occupied structure,” an arsonist qualifies as a “human being” under [§ 13-1701\(2\)](#).

¶2 We hold that, in context, the meaning of “occupied structure” in [§§ 13-1701\(2\)](#) and -1704 unambiguously excludes arsonists. An alternative interpretation would render [A.R.S. § 13-1703](#) nearly superfluous and undermine the tiered arson statutory scheme. Accordingly, we interpret “occupied structure” in [§§ 13-1701\(2\)](#) and -1704 to mean a structure in which one or more human beings—other than the arsonist—are present, likely to be present, or so near as to be in equivalent danger at the time of the fire or explosion.

BACKGROUND

¶3 On Christmas night in 2007, firefighters in Kingman, Arizona extinguished a fire engulfing a pickup truck. Investigators smelled gasoline fumes and discovered a residue of unusual flammable liquids and remnants of a gas can on the driver's seat. Based on the evidence, investigators confirmed that someone had intentionally set the fire inside the truck.

¶4 Officers traced the truck's registration to Anna Hammond, who lived about a mile from the fire. When police entered

her home, they found her and her dog lying on the floor in a pool of blood. The dog was dead, and Hammond later died from her injuries. The kitchen stove was on, gas fumes filled the home, and someone had tried to start a fire on the kitchen table. Hammond's jewelry, gun, coins, and cash were also missing.

¶5 A grand jury indicted Edward Serrato III for these crimes. After a seven-day trial in 2023, a jury convicted him of second degree murder, first degree burglary, arson of an occupied structure (the vehicle), theft of means of transportation, and attempted arson of an occupied structure (the house). The court imposed consecutive sentences for each of these charges, totaling 135 years—35 of which stemmed from the vehicle arson conviction.

¶6 Serrato appealed his convictions and resulting sentences. The court of appeals, on its own motion, ordered supplemental briefing on the vehicle arson conviction. The catalyst was the prosecutor's claim during closing arguments that “[Serrato] himself was obviously present when he set the truck on fire, so his presence alone makes the truck an occupied structure, even if no one was inside the vehicle.”

¶7 The court of appeals issued a memorandum decision affirming Serrato's convictions and sentences for second degree murder, first degree burglary, theft of means of transportation, and attempted arson of an occupied structure (the house). See *State v. Serrato* (“*Serrato II*”), No. 1 CA-CR 23-0384, 2024 WL 4216167, at *1 ¶ 1 (Ariz. App. Sept. 17, 2024) (mem. decision). The court also issued an opinion on the vehicle arson conviction acknowledging that there was no evidence that anyone besides the defendant was in or near the truck when the fire started. *State v. Serrato* (“*Serrato I*”), 258 Ariz. 361, 362, 557 P.3d 795, 796 ¶ 7 (App. 2024). Nevertheless, the court held that Serrato's presence alone satisfied the occupancy requirement under § 13-1704 and affirmed his conviction and sentence. See *id.* at 362, 363, 557 P.3d at 796 ¶ 7, 797 ¶ 12.

¶8 Serrato petitioned this Court for review. We granted review to address an issue of *759 first impression and statewide importance that is likely to recur: whether an arsonist's presence alone is sufficient to support a conviction of arson of an occupied structure under § 13-1704. We have jurisdiction under article 6, section 5(3), of the Arizona Constitution and A.R.S. § 12-120.24.

DISCUSSION

¶9 Whether an arsonist's lone presence is sufficient to support a conviction under § 13-1704 involves statutory interpretation, a matter we review de novo. See *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 ¶ 13, 545 P.3d 892, 897 (2024). When interpreting statutes, this Court starts with the text. *Franklin v. CSAA Gen. Ins. Co.*, 255 Ariz. 409, 411 ¶ 8, 532 P.3d 1145, 1147 (2023). “We interpret statutory language in view of the entire text, considering the context and related statutes on the same subject.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11, 432 P.3d 925, 927 (2019). If a statute's text is clear and unambiguous, it controls unless it results in an absurdity or a constitutional violation. *4QTKIDZ, LLC v. HNT Holdings, LLC*, 253 Ariz. 382, 385 ¶ 5, 513 P.3d 1106, 1109 (2022). However, “[i]f the statutory language is ambiguous—if ‘it can be reasonably read in two ways’—we may use alternative methods of statutory construction, including examining the rule's historical background, its spirit and purpose, and the effects and consequences of competing interpretations.” *Planned Parenthood Ariz.*, 257 Ariz. at 142 ¶ 17, 545 P.3d at 897 (quoting *State v. Salazar-Mercado*, 234 Ariz. 590, 592 ¶ 5, 325 P.3d 996, 998 (2014)).

I.

¶10 Section 13-1704(A), which establishes arson of an occupied structure, provides that “[a] person commits arson of an occupied structure by knowingly and unlawfully damaging an occupied structure by knowingly causing a fire or explosion.” As a class 2 felony, arson of an occupied structure is the most severe arson offense. Compare § 13-1704(B), with A.R.S. § 13-1702(B) (reckless burning: class 1 misdemeanor) and § 13-1703(B) (arson of unoccupied structure: class 4 felony; arson of property: class 1 misdemeanor or class 4 or 5 felony depending on the property's value).

¶11 Hammond's truck constitutes a structure because § 13-1701(4) defines “structure” as including “any building, object, vehicle, watercraft, aircraft or place with sides and a floor, used for lodging, business, transportation, recreation or storage.” (Emphasis added.) But the pertinent and closer question is whether Hammond's truck constitutes an “occupied structure” under § 13-1701(2). (Emphasis added.)

¶12 An “occupied structure” is a structure “in which one or more human beings either is or is likely to be present or so near as to be in equivalent danger at the time the fire or explosion occurs.” § 13-1701(2). Under § 13-1701(2), we must consider Hammond’s truck an “occupied structure” if (1) a human being was inside the truck, (2) a human being was likely to be inside the truck, or (3) a human being was so near the truck as to be in equivalent danger. Whether Serrato, as the arsonist, qualifies as a “human being” for purposes of the occupancy requirement depends on the statute’s contextual plain meaning.

II.

¶13 Section 13-1701 does not define “human being.” Because the legislature adopted § 13-1701 in 1977, contemporary dictionary definitions control. See *Garibay v. Johnson*, --- Ariz. —, —, 565 P.3d 236, 243 ¶ 24 (2025) (“Absent a statutory definition, we may consider dictionaries and written publications to discern the word’s common meaning and usage, respectively, at the time the legislature enacted the statute.”). Those definitions confirm that “human being” encompasses all people. See *Human Being*, The American Heritage Dictionary of the English Language (1969) (“A member of the genus *Homo*, and especially of the species *Homo sapiens*”); *Human Being*, Ballentine’s Law Dictionary (1969) (“A person, male or female.”).

¶14 In line with these definitions, the court of appeals determined that the “occupied structure” definition under § 13-1701(2) was “unambiguous” because “[b]y its plain language, *760 ‘one or more human beings’ encompasses all human beings—including the defendant.” *Serrato I*, 557 P.3d at 796 ¶ 10 (quoting § 13-1701(2)). Accordingly, the court upheld Serrato’s conviction because “[a] defendant’s presence alone is sufficient to sustain a conviction for arson of an occupied structure” under § 13-1704. *Id.* at 797 ¶ 12.

¶15 But the court of appeals conflated textualism with literalism. Literalism, also known as strict constructionism, involves “a narrow, crabbed reading of a text.” See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 355–56 (2012). Textualism, on the other hand, “does not limit one to the hyperliteral meaning of each word in the text.” *Id.* at 356. We do not interpret a statute’s plain text hyper literally to determine whether it is unambiguous. See *In re Drummond*, 257 Ariz. 15, 18 ¶ 5, 543 P.3d 1022, 1025 (2024); see also *Niz-Chavez v. Garland*, 593 U.S. 155,

168–69, 141 S.Ct. 1474, 209 L.Ed.2d 433 (2021) (noting that “when interpreting this or any statute, we do not aim for ‘literal’ interpretations,” instead, “textual and contextual clues persuade us of [a] statute’s ordinary meaning”).

¶16 Rather, Arizona courts analyze whether the “statute’s plain language is unambiguous *in context*.” *Drummond*, 257 Ariz. at 18 ¶ 5, 543 P.3d at 1025 (emphasis added). “In context” means reading statutes as a cohesive whole so that “no word or provision is rendered superfluous.” *In re Riggins*, 257 Ariz. 28, 31 ¶ 12, 544 P.3d 64, 67 (2024). Indeed, “one of the more important [statutory construction] rules is that effect shall, if possible, be given to every part of a statute.” *Town of Florence v. Webb*, 40 Ariz. 60, 64, 9 P.2d 413, 417 (1932). The court of appeals overlooked several contextual clues that inform the meaning of “human being” in § 13-1701(2).

A.

¶17 Section 13-1704 targets “[a] person” who knowingly damages “an occupied structure,” signaling a distinction between the actor (the arsonist) and the object of the offense (a structure occupied by others). While the legislature used “person” to refer to the arsonist, it used “human being” in § 13-1701(2)’s definition of “occupied structure,” indicating that the legislature did not intend for the arsonist to be the “human being” referenced in § 13-1701(2). This actor-object structure mirrors other title 13 statutes that distinguish the defendant from “human beings” potentially at risk. For example, A.R.S. § 13-3102(A)(9) prohibits a person from “[d]ischarging a firearm at an occupied structure,” and A.R.S. § 13-3101(6) defines “occupied structure” as one where “one or more human beings” are present or in equivalent danger. In these statutes, the term “human beings” refers to third parties—not the shooter—at risk of harm. So too here. While § 13-1701(2) defines “occupied structure” as including “human beings,” it does not nullify the actor-object distinction in § 13-1704. Instead, § 13-1704 presumes a structure occupied by others, not merely the actor setting it ablaze.

¶18 The definition of “occupied structure” further supports this reading. Section 13-1701(2) defines “occupied structure” as including “any dwelling house, whether occupied, *unoccupied or vacant*.” (Emphasis added.) Because the arsonist is almost always present, if the arsonist’s presence alone was enough to satisfy the statute, the term “vacant” would be insignificant. See *State v. Deddens*, 112 Ariz. 425, 429, 542 P.2d 1124, 1128 (1975) (noting that we

avoid rendering statutory language “superfluous, void, contradictory or *insignificant*” (emphasis added)). “[W]hen possible, we interpret statutes to give meaning to every word.” *State v. Gates*, 243 Ariz. 451, 454 ¶ 13, 410 P.3d 433, 436 (2018) (quoting *State v. Pitts*, 178 Ariz. 405, 407, 874 P.2d 962, 964 (1994)). We decline to construe § 13-1701(2) in a way that would render the term “vacant” mere surplusage. See *Deddens*, 112 Ariz. at 429, 542 P.2d at 1128; see also *Mussi v. Hobbs*, 255 Ariz. 395, 398 ¶ 13, 532 P.3d 1131, 1134 (2023) (stating that courts give meaning to every word in statutes to avoid rendering any part inert or trivial). Rather, the inclusion of “vacant” confirms that the statute anticipates scenarios where no one—arsonist or victim—is present. This language suggests that occupancy *761 requires the presence or likely presence of others, not the arsonist.

B.

¶19 The court of appeals also ignored the context of the broader arson statutory scheme. Courts read statutes in harmony to avoid leaving any provision “superfluous, void, contradictory or insignificant.” *Deddens*, 112 Ariz. at 429, 542 P.2d at 1128; see also *City of Phoenix v. Yates*, 69 Ariz. 68, 72, 208 P.2d 1147 (1949) (noting that we give meaning to “[e]ach word, phrase, and sentence ... so that no part will be void, inert, redundant, or trivial”). We are also guided by A.R.S. § 13-104, which instructs us to interpret statutes to “promote justice and effect the objects of the law,” and A.R.S. § 13-101, which requires us to distinguish between serious and minor offenses and to ensure proportionality.

¶20 Arizona’s criminal code defines three tiers of arson. The least severe offense, reckless burning, is a class 1 misdemeanor and applies when someone “recklessly” causes a fire or explosion that damages an “occupied structure, a structure, wildland or property.” § 13-1702. The next tier, arson of a structure or property, a class 4 felony depending on property value, occurs when a person damages “a structure or property by knowingly causing a fire or explosion.” § 13-1703. The most severe offense, arson of an occupied structure, is a class 2 felony and applies when a defendant “knowingly” causes a fire or explosion to an “occupied structure.” § 13-1704. The primary difference between the crimes delineated in §§ 13-1703 and -1704 is the “occupied” requirement.

¶21 Serrato argues that, under the court of appeals’ reasoning, nearly every instance of arson involving a structure would

automatically fall under § 13-1704 since the arsonist’s presence alone would satisfy the statutory definition of “occupied.” We agree. Under that reading, § 13-1703 would retain only modest remaining application. To be sure, § 13-1703 would still cover arson of property that is not a structure. But, as for arson to structures, § 13-1703 would conceivably only apply to remote arsonists—those who start a fire while at a safe distance from the structure.

¶22 Perhaps even this assessment overstates § 13-1703’s residual application under the court of appeals’ interpretation. Under § 13-1701(2), an “occupied structure” also includes a structure where a human being is “likely to be present.” So, even if a remote arsonist is not physically present or near enough to be in equivalent danger, a court could deem the arsonist “likely to be present” at the time of ignition because setting a remote incendiary device may result in a premature ignition. Thus, the court of appeals’ interpretation does not merely broaden § 13-1704—it effectively displaces § 13-1703 as a viable, independent offense concerning arson of structures.

¶23 This outcome is at odds with the legislature’s tiered approach, which assigns greater penalties to arson offenses that create heightened risks to innocent human life. See § 13-101(4) (providing that the public policy of this State is “[t]o differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties for each”). Indeed, while arson of a “structure” is a class 4 felony, arson of an occupied structure is a class 2 felony, with the latter resulting in harsher sentencing. Compare § 13-1703(B), with § 13-1704(B). And, as Serrato argues, arson of an “occupied structure” is a more serious offense because of the inherent danger to property and persons. In *State v. Gatliff*, 209 Ariz. 362, 366 ¶ 18, 102 P.3d 981, 985 (App. 2004), the court of appeals held that arson of an occupied structure justifies a “greater term of imprisonment” precisely because it involves the risk of serious injury to a person inside. As such, we decline to strip § 13-1703, a separate crime, of its meaning and vitality without express instruction from the legislature.

¶24 We rejected a similarly problematic interpretation in *City of Mesa v. Killingsworth*, 96 Ariz. 290, 294–95, 394 P.2d 410 (1964), where reading “fuel” to include all liquids used in motor vehicles would have rendered another tax provision on motor vehicle fuel meaningless. There, this Court reasoned *762 that “if by A.R.S. § 28-126 the legislature meant to include all liquids used in motor vehicles on highways

other than kerosene, then the language used in [A.R.S. § 28-1551](#), taxing liquids used in internal combustible engines to propel motor vehicles on highways, is surplusage” and “meaningless.” *Id.* at 294, 394 P.2d 410 (“If it were intended that all liquids were to be taxed under § 28-126, then there are no liquids to be taxed under [§ 28-1551](#).”).

¶25 Just as we concluded in [Killingsworth](#) that the legislature could not have intended to enact a provision with no operative effect, the same principle applies here. Reading “human beings” in [§ 13-1701\(2\)](#) as including the arsonist significantly circumscribes the lesser offense of arson of a structure under [§ 13-1703](#). And we presume the legislature did not intend to do a “futile thing” by including a provision that largely serves no purpose regarding arson of structures. *See Killingsworth*, 96 Ariz. at 294–95, 394 P.2d 410; *see also In re M.N.*, — Ariz. —, —, 563 P.3d 136, 142 ¶ 30 (2025) (interpreting two statutes to avoid creating “multiple requirements” rendering one of the statute’s provisions “superfluous”).

¶26 Our decision in [State v. Ewer](#), 254 Ariz. 326, 329, 523 P.3d 393, 396 (2023), also buttresses our contextual statutory analysis. In *Ewer*, the question was whether “the reference to ‘person’ in [A.R.S.] [§ 13-404\(A\)](#) is necessarily limited to a defendant, as reflected in Arizona’s self-defense jury instruction,” or whether it could also include the victim. *Id.* ¶ 12. To resolve that question, we considered “the context of [§ 13-404\(A\)](#) and related statutes on the same subject to properly discern the statutory definition.” *Id.* ¶ 13. Upon considering “the related justification statutes ... for context,” we held that “person” reflects a focus on the defendant as “an individual accused of a crime and subject to criminal prosecution.” *Id.* at 330 ¶ 14, 523 P.3d at 397.

¶27 Similarly, here, analyzing the term “human beings” in [§ 13-1701\(2\)](#) in context with the related arson statutes “provides the framework to decide this issue.” *See id.* ¶ 17. The focus of the term is on persons other than the arsonist. We accordingly hold that the meaning of “occupied structure” in [§§ 13-1701\(2\)](#) and -1704 is unambiguous when read *in pari materia* with [§ 13-1703](#). Although an arsonist is a human being as that term is commonly defined and understood, the arsonist does not fall within the meaning of “one or more human beings” in [§ 13-1701\(2\)](#).

C.

¶28 The court of appeals did not consider whether its literal interpretation of [§§ 13-1701\(2\)](#) and -1704 yielded an absurd result. *See Serrato I*, 557 P.3d at 796–97 ¶¶ 9–11. Serrato argues that the “court of appeals’ overly strict construction of singular words divorced from statutory context in the arson statutes leads to absurd results.” The State counters that the court of appeals’ holding does not result in absurdity because it is not irrational for the legislature to protect all life, including the lives of arsonists.

¶29 Because we agree with Serrato that the statutory text unambiguously excludes arsonists from the meaning of “occupied structure” in [§§ 13-1701\(2\)](#) and -1704, we need not decide whether the court of appeals’ interpretation violates the absurdity doctrine. *See Perini Land & Dev. Co. v. Pima County*, 170 Ariz. 380, 383, 825 P.2d 1, 4 (1992) (noting that the absurdity doctrine applies only if application of the plain meaning of the statute is “so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion” (alteration in original) (quoting *Bussanich v. Douglas*, 152 Ariz. 447, 450, 733 P.2d 644, 647 (App. 1986))).

D.

¶30 The State and the court of appeals also invoke [§ 13-1701](#)’s pre-enactment history to bolster their interpretation. *Serrato I*, 557 P.3d at 797 ¶ 11. On January 17, 1977, the House Committee on the Judiciary originally introduced a version of [§ 13-1701](#) that defined “occupied structure” as one in which “one or more human beings, *other than a participant in the crime, unless such participant is the owner or occupant of the structure*, either is *763 or is likely to be present or so near as to be in equivalent danger at the time the fire or explosion occurs.” H.B. 2054, 33d Leg., 1st Reg. Sess. (as introduced by House Comm. on Judiciary, Jan. 17, 1977) (emphasis added). This version made clear that the arsonist’s presence alone did not make a structure “occupied” unless they also owned or lived in it.

¶31 But, on March 3, 1977, the House amended the definition of “occupied structure” as it is defined today. *See* H.B. 2054, 33d Leg., 1st Reg. Sess. (as amended by House Comm. on Judiciary, Mar. 3, 1977). The court of appeals reads this omission as an invitation to include arsonists in the term “human beings.” *See Serrato I*, 557 P.3d at 797 ¶ 11. But that conclusion relies on unenacted statutory language

—a notoriously “unsure and unreliable guide” to statutory meaning. *City of Flagstaff v. Mangum*, 164 Ariz. 395, 401, 793 P.2d 548, 554 (1990); cf. Scalia & Garner, *supra* ¶ 15, at 256 (“Statutory history—the statutes repealed or amended by the [enacted] statute under consideration”—“form[s] part of the context of the statute.”). In any event, the statute’s history is unhelpful where, as here, the statute is unambiguous in context. See *Ewer*, 254 Ariz. at 331 ¶ 20, 523 P.3d at 398 (“We do not consider legislative history when the correct legal interpretation can be determined from the plain statutory text and the context of related statutes.”).

¶32 Even if we were to consider the pre-enactment evolution of the statutory language, it would not compel the State’s desired outcome. At most, this record is ambiguous. The reason for the legislature’s change is unclear, and nothing in the amended language compels the court of appeals’ interpretation. It is just as plausible that the revision aimed to simplify the text rather than expand its scope. We decline to speculate about the meaning of language the legislature chose not to enact. See *State v. Prentiss*, 163 Ariz. 81, 85, 786 P.2d 932, 936 (1989) (discussing separation of powers and noting that “courts as an institution are not involved in the wisdom of the legislation”); see also Scalia & Garner, *supra* ¶ 15, at 388–89 (“Rather than resolving uncertainty, legislative history normally induces it. Predicting when it will be entirely ignored, on the one hand, or considered dispositive, on the other, is—not to put too fine a point on it—a crapshoot.”).

E.

¶33 Finally, Serrato and Amicus invoke the rule of lenity. But “absent ambiguity, the rule of lenity does not apply.” *State v. Fink*, 256 Ariz. 387, 389 ¶ 9, 539 P.3d 543, 545 (App. 2023); see also *State v. Pena*, 140 Ariz. 545, 549–50,

683 P.2d 744, 748–49 (App. 1983) (noting that “where the statute itself is susceptible to more than one interpretation, the rule of lenity dictates that any doubt should be resolved in favor of the defendant”), *aff’d*, 140 Ariz. 544, 683 P.2d 743 (1984); Scalia & Garner, *supra* ¶ 15, at 299 (noting that the rule of lenity applies only if “after all the legitimate tools of interpretation have been applied, ‘a reasonable doubt persists’”). Because §§ 13-1701(2) and -1704 are unambiguous in context, this Court need not apply this “construction principle of last resort.” See *State v. Bon*, 236 Ariz. 249, 253 ¶ 13, 338 P.3d 989, 993 (App. 2014).

CONCLUSION

¶34 We interpret “occupied structure” in §§ 13-1701(2) and -1704 to mean a structure in which one or more human beings—other than the arsonist—are present, likely to be present, or so near as to be in equivalent danger at the time of the fire or explosion. See *Ewer*, 254 Ariz. at 330 ¶¶ 14–17, 523 P.3d at 397 (harmonizing statutory language by interpreting “person” in the justification statutes to refer to criminal defendants rather than victims based on contextual clues). Our interpretation reflects the contextual meaning and operation of “occupied structure” in §§ 13-1701(2) and -1704, harmonizes §§ 13-1703 and -1704, and preserves the legislature’s tiered arson punishment scheme.

¶35 We therefore vacate the court of appeals’ opinion,¹ vacate Serrato’s conviction and resulting sentence for arson of an occupied *764 structure under § 13-1704, and remand the case to the trial court for further proceedings.

All Citations

259 Ariz. 493, 148 Arizona Cases Digest 42, 568 P.3d 756

Footnotes

* Justice Maria Elena Cruz is recused from this matter. Pursuant to [article 6, section 3 of the Arizona Constitution](#), Justice Rebecca White Berch (Ret.) of the Arizona Supreme Court was designated to sit in this matter.

1 Our decision does not affect the court of appeals’ separate memorandum decision on Serrato’s other convictions and sentences, [Serrato II](#), 2024 WL 4216167.

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257 Ariz. 15

Supreme Court of Arizona.

IN RE: Steven R. DRUMMOND,
Mary A. Drummond, Debtors.

No. CV-23-0009-CQ

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Filed February 23, 2024

Synopsis

Background: Chapter 7 debtors claimed as exempt, under the Arizona homestead exemption statute, the self-propelled motor home which they used as a full-time residence. Trustee objected. The United States Bankruptcy Court for the District of Arizona, [Paul Sala](#), J., certified to the Arizona Supreme Court the question of whether a motor home in which a person over 18 years of age resides qualifies as an exempt “mobile home” under Arizona law.

Addressing a matter of first impression, the Supreme Court, [Beene](#), J., held that a motor home does not qualify as a “mobile home” under Arizona’s homestead exemption statute.

Question answered.

[Timmer](#), V.C.J., filed dissenting opinion.

Procedural Posture(s): Certified Question.

****1024** Certified Question from the United States Bankruptcy Court for the District of Arizona, The Honorable [Paul Sala](#), Bankruptcy Judge, No. 0:22-BK-01765-PS. **QUESTION ANSWERED**

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JUSTICE BEENE authored the Opinion of the Court, in which CHIEF JUSTICE BRUTINEL, and JUSTICES BOLICK, LOPEZ, MONTGOMERY, and KING joined. VICE CHIEF JUSTICE TIMMER dissented.

Opinion

JUSTICE BEENE, Opinion of the Court:

***17 ¶1** The United States Bankruptcy Court for the District of Arizona certified the following question to this Court: “Whether a motor home in which a person over 18 years of age resides qualifies as a mobile home for the purpose of claiming an Arizona homestead exemption pursuant to [A.R.S. § 33-1101\(A\)\(3\)](#).” For the reasons explained below, we hold that a motor home does not qualify for an exemption.

BACKGROUND

¶2 Steven and Mary Drummond (the “Drummonds”) filed for Chapter 7 bankruptcy in March 2022. The question here centers around the Drummonds’ self-propelled motor home, a 2017 Tiffin Allegro recreational vehicle, which they use as a full-time residence. During the bankruptcy proceedings, the Drummonds claimed that their motor home is subject to the homestead exemption as a “mobile home” under [§ 33-1101\(A\)\(3\)](#).¹ The trustee objected to this exemption, arguing that the Drummonds’ motor home is not a mobile home under Arizona law. Following the parties’ arguments regarding the applicability of [§ 33-1101\(A\)\(3\)](#), the bankruptcy judge certified the question to this Court.

¶3 Because no Arizona precedent exists determining whether a motor home qualifies as a mobile home under Arizona’s homestead exemption statute, we agreed to resolve the certified question pursuant to [article 6, section 5\(6\) of the Arizona Constitution](#) and [A.R.S. § 12-1861](#).

***18 **1025 DISCUSSION**

¶4 [Section 33-1101\(A\)](#) sets out Arizona’s homestead exemption. The statute applies to four residence types and reads in relevant part:

A. Any person eighteen years of age or over, married or single, who resides within this state may hold as a

homestead exempt from execution and forced sale, not exceeding \$250,000 in value, any one of the following:

1. The person's interest in real property in one compact body on which exists a dwelling house in which the person resides.
2. The person's interest in one condominium or cooperative in which the person resides.
3. A mobile home in which the person resides.
4. A mobile home in which the person resides plus the land on which that mobile home is located.

§ 33-1101(A). Determining whether a motor home qualifies for a homestead exemption compels us to interpret § 33-1101(A).

¶5 We “determine the plain meaning of the words the legislature chose to use, viewed in their broader statutory context.” See *Columbus Life Ins. Co. v. Wilmington Tr., N.A.*, 255 Ariz. 382, 385 ¶ 11, 532 P.3d 757, 760 (2023). “Our task in statutory construction is to effectuate the text if it is clear and unambiguous.” *BSI Holdings, LLC v. Ariz. Dep’t of Transp.*, 244 Ariz. 17, 19 ¶ 9, 417 P.3d 782, 784 (2018). Absent ambiguity, we interpret statutes according to their plain language. *Premier Physicians Grp., PLLC v. Navarro*, 240 Ariz. 193, 195 ¶ 9, 377 P.3d 988, 990 (2016). When a statute’s plain language is unambiguous in context, it is dispositive. See *Shea v. Maricopa County*, 255 Ariz. 116, 120–21 ¶ 19, 528 P.3d 471, 475–76 (2023); see also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012) (explaining that courts must interpret a statute’s plain language in context, because “[c]ontext is a primary determinant of meaning”). Additionally, “[i]n construing a specific provision, we look to the statute as a whole and we may also consider statutes that are *in pari materia*—of the same subject or general purpose—for guidance and to give effect to all of the provisions involved.” *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7, 398 P.3d 574, 575 (2017). However, if more than one reasonable interpretation exists, we will examine secondary interpretation methods, including the statute’s subject matter, historical background, effects and consequences, as well as its spirit and purpose to aid with interpretation. See *Romero-Millan v. Barr*, 253 Ariz. 24, 27–28 ¶ 13, 507 P.3d 999, 1002–03 (2022).

I.

¶6 The Drummonds argue that their motor home qualifies for the homestead exemption under § 33-1101. Title 33 does not expressly define “motor home,” but Title 28, which governs transportation, defines “motor home” as “a motor vehicle that is primarily designed as temporary living quarters and that [i]s built onto as an integral part of, or is permanently attached to, a motor vehicle chassis.” A.R.S. § 28-4301(19)(a). This definition suggests that a “motor home” is a vehicle and is therefore readily and inherently movable. Consistent with this definition, the Drummonds used their 2017 Tiffin Allegro to travel around the United States from February through October 2019.

¶7 Section 33-1101 allows certain “mobile homes” to qualify for the homestead exemption, but the statute does not define the term. Absent a statutory definition, courts generally give words their ordinary meaning and may look to dictionary definitions. *Chaparro v. Shinn*, 248 Ariz. 138, 141 ¶ 14, 459 P.3d 50, 53 (2020). When dictionary definitions are unavailing, however, context is critical. See *DBT Yuma, L.L.C. v. Yuma Cnty. Airport Auth.*, 238 Ariz. 394, 396 ¶ 10, 361 P.3d 379, 381 (2015).

¶8 Here, dictionary definitions of “mobile home” are too varied to categorically establish any plain meaning. See, e.g., *Mobile Home*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/mobile%20home> (last visited Feb. 20, 2024) (defined since 1934 as “a dwelling structure built on a steel chassis and fitted with wheels that is intended to be hauled to a usually permanent *19 **1026 site”); *Mobile Home*, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/mobile-home> (last visited Feb. 20, 2024) (“[A] type of building that people live in, usually staying in one place, but able to be moved using a vehicle or sometimes its own engine.”); *Mobile Home*, Dictionary.com, <https://www.dictionary.com/browse/mobile-home> (last visited Feb. 20, 2024) (“[A] large house trailer, designed for year-round living in one place.”). One definition allows for self-propulsion, while another only allows the mobile home to be “hauled.” But despite these differences, the dictionary definitions all suggest a mobile home must generally have a permanent location—either by design or intent. However, none of these definitions describe what makes such a location permanent.

¶9 But inconclusive dictionary definitions do not render the term ambiguous. Rather, as previously noted, “[w]e do not view statutory words in isolation, but rather draw their meaning from the context in which they are used.” See *DBT Yuma*, 238 Ariz. at 396 ¶ 10, 361 P.3d at 381. And considering the term “mobile home” in the context of § 33-1101(A)’s other subsections dispels any purported ambiguity regarding the term’s meaning.

¶10 Sections 33-1101(A)(1), (2), and (4) each describe a permanent residence in which a person seeking a homestead exemption resides. Each subsection describes a home that is permanently attached to land—often anchored to a foundation or at least with its wheels and axles removed, hard-wired to electrical services, and hard-plumbed to both water and sewer. Examined in this context, the Drummonds’ argument that the subsection (A)(3) definition of “mobile home” includes a readily movable “motor home” fails.

¶11 First, § 33-1101(A)(1)’s exemption includes a “person’s interest in real property in one compact body on which exists a dwelling house in which the person resides.” This subsection describes an occupied structure permanently located on a parcel of land—and it is axiomatic that both land and structures attached to it are real property. See *Real Property*, Black’s Law Dictionary (11th ed. 2019) (“Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.”). And real property inherently has a permanent location.

¶12 Second, § 33-1101(A)(2)’s exemption includes a “person’s interest in one condominium or cooperative in which the person resides.” A condominium is also real property permanently located where it is built. See A.R.S. § 33-1202(10) (“‘Condominium’ means *real estate*” (emphasis added)). The same is true for a person’s cooperative interest. See *Kadera v. Superior Court*, 187 Ariz. 557, 563, 931 P.2d 1067, 1073 (App. 1996) (“[T]he cooperator has a real property ownership interest.”). And both a condominium and a cooperative are immobile structures inherently tied to the location on which they were constructed. See *Condominium*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/condominium> (last visited Feb. 20, 2024) (“[I]ndividual ownership of a unit in a multiunit structure (such as an apartment building) or on land owned in common (such as a town house complex).”); *Cooperative*, Dictionary.com, <http://www.dictionary.com/browse/cooperative> (last visited Feb. 20, 2024) (“[A] building owned and managed by a corporation”). Though the

dictionary definition of “cooperative” is not limited to dwellings, § 33-1101(A)(2)’s reference to “in which the person resides” plainly identifies a cooperative in the context of a cooperative dwelling.

¶13 Lastly, § 33-1101(A)(4)’s exemption includes a mobile home, but also “the land on which the mobile home is located.” This requires that a mobile home has been placed on a particular piece of real property which is also owned by the homestead claimant. The fact that (A)(4) allows an individual to also claim the land indicates a strong, permanent connection between the mobile home and the land. If that were not the case, a readily movable vehicle such as a motor home could be parked on the debtor’s land shortly before a bankruptcy filing, and the land upon which it was parked would be included in the homestead exemption—despite not having any physical or permanent *20 **1027 attachment to the land. That would be beyond the legislature’s purpose of exempting a homestead. Cf. *In re McLauchlan*, 252 Ariz. 324, 325 ¶ 8, 502 P.3d 975, 976 (2022) (explaining that the purpose of the exemption is to prevent homelessness, but not “to confer any financial benefits upon debtors beyond the exemption”). Therefore, subsection (A)(4), like the other exemptions in § 33-1101(A), is concerned only with real property and the structures physically attached thereto. A mobile home under (A)(4), unlike a motor home, is physically connected to the land in such a way that it is not readily movable.

¶14 Residences that come under (A)(1), (2) and (4) are permanently situated and physically connected to land. Houses, condominiums, and cooperatives are physically connected to the property on which they are built. These physical connections include permanent integration with utilities, like electricity, water, and sewer. It is difficult and time-consuming to sever these connections and re-establish them elsewhere. Though it is theoretically possible to move, for example, a stick-built home to another piece of land, moving such a residence requires the effort of severing the permanent, physical connections to the residence’s foundation and utilities, as well as attaching wheels or using another mode of transportation. Similarly, mobile homes under (A)(4) are physically connected to land owned by the debtor and would also be difficult to sever and move.

¶15 This interpretation of subsection (A)(4) might suggest that § 33-1101(A)(3) could include a mobile home *without* any significant connection to land, but that would be a misreading of subsection (A)(3) considering the nature of

mobile home ownership. Owners of mobile homes may permanently situate their homes upon leased—rather than owned—land. *See generally* A.R.S. §§ 33-1401 to -1419 (“Arizona Mobile Home Parks Residential Landlord and Tenant Act”). Mobile home park residents connect their homes to utilities, rendering them difficult to move, and thus establish permanent connections with land. *See* § 33-1409(16) (“‘Mobile home space’ means a parcel of land for rent that has been designed to accommodate a mobile home and provide the *required* sewer and utility connections.” (emphasis added)). Owners of mobile homes who *lease* the land where their mobile home is situated would not be eligible for the § 33-1101(A)(4) exemption because they do not *own* the land. Section 33-1101(A)(3) merely provides the same exemption to individuals who do not own the property on which the mobile home is located.

¶16 Residential structures that are not readily movable and are tied to a permanent location is the context establishing subsection (A)(3)’s meaning because these characteristics are common among § 33-1101(A)’s subsections. Given this contextual framework, a “mobile home” under subsection (A)(3) describes a dwelling that is not intended to be moved once placed and physically attached to property.

¶17 Moreover, considering the term “mobile home” in a broader statutory context also suggests that the term describes a permanent dwelling attached to land. Although not an exemption statute like § 33-1101, a statute in a related chapter, § 33-1409, distinguishes between mobile homes and less-permanent, readily movable vehicles. Section 33-1409 expressly excludes any “recreational vehicle *such as a motor home*” from the definition of a mobile home. § 33-1409(14)(b)(i) (emphasis added). Though this definition is only directly applicable to the chapter in which it is found, § 33-1101 and § 33-1409 are *in pari materia* because they classify a specific type of residential property and determine that property’s legal treatment. *See Stambaugh*, 242 Ariz. at 509 ¶ 7, 398 P.3d at 575. Section 33-1409 thus provides additional context for the legislature’s use of the term “mobile home” in § 33-1101(A)(3)—that mobile homes and motor homes are separate and distinct.

¶18 Accordingly, a motor home cannot be a “mobile home” under the homestead statute because it is intended to be readily movable and is not tied to the land upon which it sits in any significant way. *See* § 28-4301(19)(a). Section 33-1101(A)(3)’s contextual plain meaning leads to

the conclusion that a “motor home” is not a “mobile home” for purposes of this exemption.

*21 **1028 ¶19 Our dissenting colleague, however, would have us analyze § 33-1101(A) divorced from context, and thus have us declare the term “mobile home” ambiguous. But it is not. We interpret statutes “according to the plain meaning of the words in their broader statutory context, unless the legislature directs us to do otherwise.” *S. Ariz. Home Builders Ass’n v. Town of Marana*, 254 Ariz. 281, 286 ¶ 31, 522 P.3d 671, 676 (2023). As explained, each subsection of § 33-1101(A) provides the context for (A)(3).

¶20 Though not disagreeing that (A)(1) and (A)(2) describe difficult-to-move dwellings that are physically attached to property, the dissent focuses on the word “located” in (A)(4) to argue that an easy-to-move dwelling could qualify for (A)(4)’s exemption. *Infra* ¶ 40. But if “located” in this context does *not* mean physically connected, then a bankruptcy debtor would be able to drive their motor home to a parcel of land to protect additional assets. And as the dissent acknowledges, the homestead exemption protects the home, *see infra* ¶ 46, not the most valuable plot of land you can drive a vehicle to for purposes of claiming an exemption.

¶21 Ultimately, the dissent elevates the policy interests purportedly served by the statute over what we view as the best reading of subsection (A)(3) in its proper context. *See infra* ¶ 46. That we cannot do. We defer to the legislature to exercise its prerogative to modify the statute to better align with its policy objectives if it disagrees with our interpretation of the statute. For all these reasons, subsection (A)(4) requires a permanent connection with the land, and, together with (A)(1) and (A)(2), informs us that (A)(3) also requires a permanent connection.

II.

¶22 Because § 33-1101(A)(3)’s plain meaning is clear, the statute is unambiguous; however, even if § 33-1101(A)(3) were ambiguous, analyzing the statute using secondary interpretive methods supports the interpretation set forth above. *See Fann v. State*, 251 Ariz. 425, 434–35 ¶¶ 27, 29, 493 P.3d 246, 255–56 (2021).

¶23 The associated-words canon, *noscitur a sociis*, is the interpretive method used to “avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying

words,” thus avoiding giving legislative acts “unintended breadth.” *Yates v. United States*, 574 U.S. 528, 543, 135 S.Ct. 1074, 191 L.Ed.2d 64 (2015) (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 575, 115 S.Ct. 1061, 131 L.Ed.2d 1 (1995)). This interpretive canon is applicable when terms are “conjoined in such a way as to indicate that they have some quality in common.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 196 (2012). “The common quality suggested by a listing should be its most general quality—the least common denominator, so to speak—relevant to the context.” *Id.*; see also *Third Nat’l Bank in Nashville v. Impac Ltd., Inc.*, 432 U.S. 312, 322, 97 S.Ct. 2307, 53 L.Ed.2d 368 (1977) (“It is a familiar principle of statutory construction that words grouped in a list should be given related meaning.”).

¶24 As noted above, the common characteristics among § 33-1101(A) subsections (1), (2), and (4) is that each describes a residential structure with permanent connections to land. See Part I ¶¶ 10–15. This permanent connection characteristic is the “least common denominator” among the statute’s exemptions and provides the context in which to conclude that a “mobile home” also constitutes a structure permanently anchored to land where a person resides. A mobile home used as a primary residence inherently has a permanent connection with land—it is hard-wired to electricity and similarly connected to other utilities. But in contrast, a “motor home” is readily movable and inherently *unanchored* to land. We must not give (A)(3) “unintended breadth” by interpreting it to include a readily movable motor home. See *Yates*, 574 U.S. at 543, 135 S.Ct. 1074. Accordingly, a motor home is not eligible for § 33-1101(A)(3)’s exemption.

¶25 Considering the statute’s title and subject matter also confirms this conclusion. See *State v. Eagle*, 196 Ariz. 188, 190 ¶ 7, 994 P.2d 395, 397 (2000) (noting that where an ambiguity exists, the title of a *22 **1029 statute may be used to aid in its interpretation). Title 33, chapter 8 is named “Homestead and Personal Property Exemption” and chapter 8, article 1—where § 33-1101(A) is located—is titled “Homesteads and Homestead Exemption.” As explained above, the exemptions found in article 1 relate to real property and structures permanently anchored to real property. See Part I ¶¶ 7–14. That is, article 1 is concerned with homesteads that are (1) real property, and (2) dwelling structures that cannot be readily moved because they are attached to real property. Cf. *Real Property*, Black’s Law Dictionary (11th ed. 2019) (“excluding anything that may be severed without injury to the land” from the definition of “real

property”). Conversely, the following article in chapter 8 is titled “Personal Property Exemption.” Here, the exemptions focus on personal property. Personal property is defined as “[a]ny *movable* or intangible thing that is subject to ownership and *not classified as real property*.” *Personal Property*, Black’s Law Dictionary (11th ed. 2019) (emphasis added). This second article is concerned with property that is easily movable because it is not anchored to real property.

¶26 A mobile home is customarily tied to real property because of its characteristic of permanency, see Part I ¶ 8, and such integration renders it *practically* unmovable, see Part I ¶ 14. In contrast, a motor home is self-propelled, and thus readily movable, and has no permanent connection with real property. Accordingly, § 33-1101’s title and subject matter further confirm that a motor home is not eligible for Arizona’s homestead exemption.

¶27 Whether interpreting § 33-1101(A)(3) according to its contextual plain meaning or applying secondary interpretative methods to ascertain its meaning, we conclude that subsection (A)(3)’s exemption pertains to a permanent, fixed structure where a person resides. Thus, a “motor home” cannot be a “mobile home” under the homestead statute because it is readily movable and not anchored to land.

III.

¶28 We conclude by addressing *In re Irwin*, 293 B.R. 28 (Bankr. D. Ariz. 2003), where the United States Bankruptcy Court for The District of Arizona concluded that a “motor home ... can qualify for the homestead exemption under A.R.S. § 33-1101(A)(3).” *Id.* at 33. The Drummonds relied on *Irwin* when asserting their homestead exemption. The dissent similarly relies on the rationale underpinning *Irwin*. *Infra* ¶ 46. But we disagree with the *Irwin* court’s interpretation of § 33-1101(A) for several reasons.

¶29 First, the bankruptcy court did not engage in an interpretive analysis of § 33-1101(A) when it concluded that “a motor home can satisfy the definition and purpose of Arizona’s homestead law.” *Irwin*, 293 B.R. at 29. Although the court attempted to ascertain the statute’s plain meaning, it did not consider its meaning by viewing the statute in its broader context. See *Columbus Life Ins. Co.*, 255 Ariz. at 385 ¶ 11, 532 P.3d at 760. Instead, it summarily concluded that the plain meaning of § 33-1101(A)(3) supported both parties’ definitions of mobile home. *Irwin*, 293 B.R. at 30.

¶30 The *Irwin* court's use of secondary methods of interpretation to define § 33-1101(A)(3) is equally unavailing. Rather than utilizing the previously mentioned secondary principles, the court determined that it was “necessary to rely on the legislative purpose underlying the statute” expressed in *Matcha v. Winn*, 131 Ariz. 115, 638 P.2d 1361 (App. 1981), to define § 33-1101(A)(3). *Irwin*, 293 B.R. at 30. However, the court's reliance on *Matcha* is misplaced.²

¶31 In *Matcha*, the court of appeals stated that “the fundamental purpose of the homestead law is to protect the family against the forced sale of home property from certain creditors, and, to further this purpose, the homestead laws should be interpreted liberally to advance the objectives of the statutes.” 131 Ariz. at 117, 638 P.2d at 1363. The court's directive to liberally interpret the homestead law, however, was announced for a circumstance distinctly different from the *23 **1030 one posed in this certified question. In that case, the court was asked to determine whether the party seeking an exemption, the Winns, complied with A.R.S. § 33-1102, which required, among other things, that an exemption claim be filed with the county recorder. *Id.* The party objecting to the exemption, the Matchas, asserted that the Winns failed to comply with § 33-1102's requirements. *Id.* It was in this limited context—whether there was substantial compliance with § 33-1102—that the court of appeals announced that the homestead laws should be liberally construed. *Id.* at 117–18, 638 P.2d at 1363–64.

¶32 This Court has previously found that the equitable doctrine of substantial compliance is appropriate when deciding whether statutory obligations have been met. *See, e.g., In re Pima Cnty. Mental Health No. 20200860221*, 255 Ariz. 519, 524 ¶ 11, 533 P.3d 951, 956 (2023) (explaining that substantial compliance “tolerates errors if the purpose of the relevant statutory requirements was nevertheless fulfilled”); *Feldmeier v. Watson*, 211 Ariz. 444, 447 ¶ 14, 123 P.3d 180, 183 (2005) (allowing substantial compliance with initiative petition statutes if the petition “fulfills the purpose of the relevant statutory or constitutional requirements”); *Pima County v. Cyprus-Pima Mining Co.*, 119 Ariz. 111, 114, 579 P.2d 1081, 1084 (1978) (allowing substantial compliance with statute requiring payment of disputed taxes because “spirit of the law” was satisfied). This doctrine, however, is not applicable when interpreting the text of a statute to determine its meaning. Our statutory interpretation jurisprudence is circumscribed, and it requires us to use established principles of interpretation to ascertain a statute's meaning. *See DBT*

Yuma, 238 Ariz. at 396 ¶ 10, 361 P.3d at 381; *Fann*, 251 Ariz. at 434–35 ¶¶ 27, 29, 493 P.3d at 255–26. And while applying an equitable doctrine like substantial compliance may be appropriate in determining whether a statute's requirements have been satisfied, we have never used the doctrine as a method of statutory interpretation. We see no compelling reason to do so now. *Cf. Molera v. Reagan*, 245 Ariz. 291, 297 ¶ 26, 428 P.3d 490, 496 (2018) (“[W]e cannot rewrite statutes to smooth their rough edges.”).

¶33 Finally, the *Irwin* court's analysis of the relationship between subsections (A)(3) and (A)(4) also misses the mark. In support of its conclusion that a motor home is exempt property, the court stated “the homestead statute indicates there is no necessity that the mobile home be affixed or even customarily used in connection with any particular real estate, because the distinction between paragraphs (A) (3) and (A)(4) clearly implies there need be no particular relationship to any real property.” *Irwin*, 293 B.R. at 31–32. A contextual analysis of § 33-1101(A), however, reveals that the exemptions are given to structures in which an individual can reside and that are permanently located on real property. *See* Part I ¶ 15. Given that the relationship to real property is the common characteristic among the exemptions in § 33-1101(A), the distinction between subsections (A) (3) and (A)(4) is significant because without this difference an individual's mobile home located on leased land would not be eligible for an exemption. Viewing § 33-1101(A) in context demonstrates that the distinction between subsections (A)(3) and (A)(4) is meaningful and reflects their necessary relationship to real property.

¶34 Accordingly, *Irwin*'s reliance on *Matcha* for the proposition that the homestead law should be “interpreted liberally” is misplaced and its conclusion that a motor home is exempt under § 33-1101(A)(3) is incorrect.

CONCLUSION

¶35 We answer the certified question by holding that a motor home in which a person over 18 years of age resides does not qualify for the Arizona homestead exemption under A.R.S. § 33-1101(A)(3).

TIMMER, VCJ., dissenting,

¶36 Since statehood, Arizona has provided homeowners with a homestead exemption to prevent families from being

rendered homeless by the debt collection process. See *In re McLauchlan*, 252 Ariz. 324, 325 ¶ 8, 502 P.3d 975, 976 (2022); *Ferguson v. Roberts*, 64 Ariz. 357, 361, 170 P.2d 855 (1946); see also *First Nat'l Bank v. Reeves*, 27 Ariz. 508, 514–15, 234 P. 556 (1925) (discussing the pre-statehood *24 **1031 and post-statehood homestead exemptions). Today, people make their homes in a variety of structures. Many people live in traditional single-family homes, condominiums, cooperatives, and permanently affixed manufactured homes. But others live in non-traditional portable housing, like houseboats, motor homes, and even tiny houses on wheels. The issue here is whether the term “mobile home,” as used in our homestead statute, A.R.S. § 33-1101(A), includes motor homes used as permanent housing, thereby giving their owners the same homestead exemption afforded to owners of traditional homes.

¶37 Federal courts have maintained for decades that the term “mobile home” can include a motor home used as a permanent residence, and I agree. See *Warfield v. Froemming*, 663 F.Supp.3d 1079, 1083–84 (D. Ariz. 2023); *In re Irwin*, 293 B.R. 28, 31 (Bankr. D. Ariz. 2003). I interpret “mobile home” as used in § 33-1101(A) to mean lodging that can be moved from place to place and is actually used as the owner's permanent residence. Because the majority reaches a contrary conclusion, I respectfully dissent.

¶38 The homestead statutes do not define “mobile home.” We therefore interpret § 33-1101(A) to effectuate the legislature's intent. See *Glazer v. State*, 237 Ariz. 160, 163 ¶ 12, 347 P.3d 1141, 1144 (2015). If the provision has only one reasonable meaning, we apply it without further discussion. *Id.* If the provision has more than one reasonable meaning, we apply secondary principles to determine the legislature's intended meaning, like examining the statute's “historical background, its effects and consequences, and its spirit and purpose.” *Id.* (quoting *Wyatt v. Wehmueeller*, 167 Ariz. 281, 284, 806 P.2d 870, 873 (1991)).

¶39 The majority finds that “mobile home” in § 33-1101(A)(3) plainly refers to “a dwelling that is not intended to be moved once placed and physically attached to property.” *Supra* ¶ 16. As such, my colleagues conclude the term cannot include a self-propelled motor home because it is “intended to be readily movable and is not tied to the land upon which it sits in any significant way.” *Supra* ¶ 18. I disagree that § 33-1101(A)(3) has one, plain meaning.

¶40 First, no language in § 33-1101(A)(3) or (A)(4) suggests that a “mobile home” must be designed to stay in one location or be physically attached to land. Subsection (A)(3) succinctly refers to a “mobile home.” Nothing indicates whether the legislature used “mobile home” as a term of art referring to a manufactured home, which is generally designed to stay in one place once installed, or merely to describe a “home” that is “mobile.” Either interpretation is reasonable. See *Warfield*, 663 F.Supp.3d at 1081. Subsection (A)(4) includes a mobile home and the land on which it is “located” within the homestead exemption. But “located” does not necessarily mean physically attached. A mobile home resting on land and hooked to utilities is “located” on that land. *Locate*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/located> (last visited Feb. 20, 2024) (defining “located” in relevant part as “to set or establish in a particular spot”).

¶41 Second, § 33-1101's other subsections do not establish that “mobile home,” as used in subsections (A)(3) and (A)(4), plainly refers to a dwelling intended to remain in one place and that is physically attached to property. The majority reasons that because the traditional dwellings in (A)(1) and (A)(2) are permanently affixed to real property, a “mobile home” must be similarly affixed. See *supra* ¶¶ 11–12. Why? A mobile home is inherently different from traditional dwellings. Unlike traditional homes, mobile homes have vehicle identification numbers, are titled by the Arizona Department of Transportation (until affixture), and are subject to security interests. See A.R.S. § 28-2063(A); § 42-15203(B). The mobile home is taxed as personal property unless the owner also owns the land where the home is installed and records an affidavit of affixture. See §§ 42-15202; -15203(K). In that situation, the mobile home is taxed as real property. See § 42-15202. There are too many differences between traditional homes and mobile homes to infer the latter necessarily must be designed to remain in one location and be permanently attached to land.

*25 **1032 ¶42 The majority also contends that subsection (A)(4) “describes a home that is permanently attached to land—often anchored to a foundation or at least with its wheels and axles removed, hard-wired to electrical services, and hard-plumbed to both water and sewer.” See *supra* ¶ 10. It then concludes that, along with subsections (A)(1) and (A)(2), subsection (A)(4) necessarily means that the “mobile home” in subsection (A)(3) must be immovable. Respectfully, the majority's characterization of subsection (A)(4) is not supported by its language. Subsection (A)(4) permits

a homestead exemption for “[a] mobile home in which the person resides plus the land on which that mobile home is located.” Nothing is said about permanent attachment, a foundation, removal of wheels and axles, hard-wiring or hard-plumbing. And as explained, a mobile home can be “located” on land without physical attachment. *See supra* ¶ 40.

¶43 Third, even if the legislature used “mobile home” as a term of art in 1971, the year the legislature included “mobile homes” within the homestead exemption, *see* 1971 Ariz. Sess. Laws ch. 94, § 2 (1st Reg. Sess.), the term was used broadly and could include motor homes. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 78 (2012) (“Words must be given the meaning they had when the text was adopted.”). For example, some dictionaries defined “mobile home” as a “trailer,” *Mobile Home*, Webster's Seventh New Collegiate Dictionary 543 (1967), and then defined “trailer,” in part, as “a highway vehicle designed to serve wherever parked as a dwelling,” *Trailer*, Webster's Seventh New Collegiate Dictionary 938 (1967). *See also Matthews v. Indus. Comm'n*, 254 Ariz. 157, 163 ¶ 33, 520 P.3d 168, 174 (2022) (turning to dictionary definitions from the time a provision was adopted to determine original public meaning of terms). Nothing confined that definition to non-self-propelled or difficult-to-move homes. Similarly, nothing in § 33-1101(A) disqualifies self-propelled homes from protection under the homestead statutes.

¶44 Fourth, the legislature explicitly defined “mobile home” in another chapter of Title 33 as excluding “motor homes.” *See* A.R.S. § 33-1409(14)(b)(i) (defining “mobile home” for purposes of the Arizona Mobile Home Parks Residential Landlord and Tenant Act as excluding “[a] recreational vehicle such as a motor home, camping trailer, van, fifth wheel trailer or other type of recreational vehicle”). This exclusion would not have been necessary if, as the majority posits, a “mobile home” plainly excludes motor homes. By including the exclusion within § 33-1409(14), the legislature acknowledged that people could otherwise reasonably interpret a “mobile home” as including a motor home.

¶45 For these reasons, I agree with federal court decisions that “mobile home,” as used in § 33-1101(A), can reasonably be interpreted as either a trailer home that is not self-propelled or a motor home that is self-propelled when either is used as a permanent residence. *See Warfield*, 663 F.Supp.3d at 1081; *Irwin*, 293 B.R. at 30. The term is therefore ambiguous, and we can only determine the legislature's intended meaning

by considering secondary interpretive principles. *See Glazer*, 237 Ariz. at 163 ¶ 12, 347 P.3d at 1144.

¶46 The purpose of the homestead exemption supports an interpretation of “mobile home” as any lodging that can be moved and is actually used as the owner's permanent residence. This Court has consistently found that the purpose of the homestead exemption is to ensure that “individuals whose property is subject to foreclosure are not rendered homeless.” *See McLaughlan*, 252 Ariz. at 325 ¶ 8, 502 P.3d at 976; *see also Ferguson*, 64 Ariz. at 361, 170 P.2d 855 (“The chief object of these laws is to shelter the family”). Consequently, we “liberally constru[e] our exemption laws so as to preserve the homestead.” *Reeves*, 27 Ariz. at 513, 234 P. 556; *see also Wilson v. Lowry*, 5 Ariz. 335, 341–42, 52 P. 777 (1898) (“It is the well-settled policy of the courts to liberally construe those humane and beneficial provisions of the law exempting certain property from execution for the payment of debts.”), *overruled in part on other grounds by Hoff v. City of Mesa*, 86 Ariz. 259, 344 P.2d 1013 (1959); *Matcha v. Winn*, 131 Ariz. 115, 117, 638 P.2d 1361, 1363 (App. 1981) (“[T]he homestead laws should *26 **1033 be interpreted liberally to advance the objectives of the statutes.”); A.R.S. § 1-211(B) (providing courts should “liberally construe[] [statutes] to effect their objects and to promote justice”). Interpreting “mobile home” as including self-propelled vehicles that are actually used as the owner's permanent residence fulfills this purpose. In other words, whether or not a home has a motor, the homestead exemption fulfills its purpose by protecting the family's interest in that home. *See Warfield*, 663 F.Supp.3d at 1082 (“[T]he fact that a debtor's home has a motor makes it no less the debtor's home.”).

¶47 Relatedly, interpreting “mobile home” in § 33-1101(A) as including a motor home if the owner actually resides there would not permit motor home owners to abuse the homestead exemption. A person or a married couple can only hold one homestead exemption. § 33-1101(B). Thus, if the motor home is that home, the exemption applies to it and no other home. Under no circumstances could a motor home owner receive an extra homestead exemption. Whether the owner can include the land on which the motor home is located, *see* § 33-1101(A)(4), would depend on the facts of the individual case. That issue is not before us. Regardless, an owner could not include land within the exemption simply by parking on it, just as an owner could not tow a non-self-propelled trailer to land simply to include that land within the exemption. *See* § 33-1101(A)(4) (requiring an owner to reside in the mobile home located on the land). Thus, I do not share the majority's

concerns about misusing the homestead exemption if a motor home could be considered a “mobile home.” See *supra* ¶ 13.

¶48 The operative provisions of §§ 33-1101(A)(3) and (A)(4) are consistent with my interpretation of “mobile home.” Those provisions authorize a homestead exemption for mobile homes alone, see § 33-1101(A)(3), or for mobile homes “plus the land on which that mobile home is located,” see § 33-1101(A)(4). A mobile home does not have to be permanently affixed to any real estate to qualify for the homestead exemption. See *Irwin*, 293 B.R. at 31–32 (“Moreover, the homestead statute indicates there is no necessity that the mobile home be affixed or even customarily used in connection with any particular real estate.”). The only limitation is that the mobile home be one “in which the person resides.” §§ 33-1101(A)(3), (A)(4); see also *Morrissey v. Ferguson*, 156 Ariz. 536, 536–37, 753 P.2d 1192, 1192–93 (App. 1988) (finding that an individual who filed a homestead declaration on his mobile home while in prison did not “reside” in the mobile home for purposes of prior version of A.R.S. § 33-1101(A)(4) and, therefore, did not comply with the requirements of the statute). Thus, the homestead exemption can extend to both non-self-propelled manufactured homes even if the owner does not file an

affidavit of affixture, see A.R.S. §§ 33-1501; 42-15203, or to motor homes, if the owner actually resides there.

¶49 Finally, the legislature’s decision not to exclude motor homes from the term “mobile home” as it did in the Arizona Mobile Home Parks Residential Landlord and Tenant Act “supports the conclusion that the term ‘mobile home’ encompasses a motor home for the purposes of the exemption.” *Warfield*, 663 F.Supp.3d at 1082.

¶50 The fundamental difference between a permanently attached manufactured home and a motor home is the latter’s ability to propel itself. Section 33-1101(A)’s focal point for permitting a homestead exemption is not the design or characteristics of a home—including whether it is motorized—but whether it actually serves as the owner’s residence. Thus, a motor home can be a mobile home for homestead purposes if the owner actually lives there, and I would answer the bankruptcy court’s question accordingly.

All Citations

257 Ariz. 15, 116 Arizona Cases Digest 19, 543 P.3d 1022

Footnotes

- 1 In discussing § 33-1101, this Opinion is only referring to the homestead exemption effective January 1, 2022. Thus, if applicable here, the exemption would exclude up to \$250,000 of equity in the motor home from the bankruptcy estate. See § 33-1101 (January 1, 2022).
- 2 In addition to misreading *Matcha*, the bankruptcy court also incorrectly attributed the *Matcha* decision to this Court. *Matcha* is an Arizona Court of Appeals Opinion.

259 Ariz. 248

Supreme Court of Arizona.

Gabriel GARIBAY; Deborah Martinez-Garibay; and Pima County, Petitioners,

v.

Hon. Kellie JOHNSON, Judge of the Superior Court of the State of Arizona, IN AND FOR the COUNTY OF PIMA, Respondent, and

William Fox, the Surviving Spouse of Angela Fox, Deceased, Individually and On Behalf of All Those Entitled By Law to Recover for the Death of Angela Fox, Real Party in Interest,

No. CV-24-0091-PR

|

Filed March 13, 2025

Synopsis

Background: Surviving spouse of apartment manager brought wrongful-death action against county, Arizona Constable Ethics, Standards and Training Board (CESTB), and constable's widower, alleging that constable negligently and grossly negligently breached duty to protect and avoid exposing manager to harm while serving writ of restitution on tenant, who shot and killed constable and manager before tenant took his own life. The Superior Court, Pima County, No. C20231936, [Kellie L. Johnson, J., 2023 WL 11157002](#), denied widower and county's motion for judgment on the pleadings. County and widower petitioned for special action. The Court of Appeals, Division Two, [O'Neil, J., The Court of Appeals, 2024 WL 590578](#), accepted jurisdiction and granted partial relief. On reconsideration, the Court of Appeals, [257 Ariz. 118, 545 P.3d 468](#), accepted jurisdiction and granted partial relief. The Supreme Court granted review.

Holdings: The Supreme Court, [Lopez, V.C.J.](#), held that:

common-law judicial immunity applied to constable when executing writ;

there was no legislative intent for statute imposing liability on constables who engage in any misconduct in the service or execution of a writ to abrogate judicial immunity or, to abolish

any common-law or other judicial immunity in one specific area;

specific liability imposed on constables for engaging in misconduct defeated any general statutory immunity the legislature had codified;

“misconduct” referred to intentional violations of an applicable rule, standard, or norm; and

as a matter of first impression, allegations of negligence and gross negligence were insufficient to establish that constable engaged in misconduct, and thus constable was shielded by judicial immunity.

Trial court's decision reversed and remanded and Court of Appeals' opinion vacated in part.

[Timmer, C.J.](#), filed opinion concurring in the result.

Procedural Posture(s): On Appeal; Petition for Special Action; Motion for Judgment on the Pleadings.

***239** Appeal from the Superior Court in Pima County, The Honorable [Kellie L. Johnson](#), Judge, No. C20231936. **REVERSED AND REMANDED**

Opinion of the Court of Appeals, Division Two, 257 Ariz. 118 (App. 2024). **VACATED IN PART**

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VICE CHIEF JUSTICE LOPEZ authored the Opinion of the Court, in which JUSTICES BOLICK, BEENE, MONTGOMERY, KING, and JUDGE PETERSON* joined. CHIEF JUSTICE TIMMER concurred in the result.

Opinion

VICE CHIEF JUSTICE LOPEZ, Opinion of the Court:

¶1 We consider whether the common law doctrine of judicial immunity shields constables from liability under [A.R.S. § 11-449](#) for “any misconduct in the service or execution” of a writ of restitution.

¶2 We hold that [§ 11-449](#) limits rather than abrogates judicial immunity. Thus, a constable who engages in “any misconduct” in the service or execution of a writ is subject to liability. “Misconduct” is an intentional violation of an applicable rule, standard, or norm. Within the meaning of the statute, “misconduct” involves a constable’s [*240](#) willful or intentional failure to follow a court directive, law, or rule—here, execution of a writ of restitution. Thus, “misconduct” arises from a constable’s failure to carry out a particular court directive, law, or rule, rather than mere negligence or gross negligence in the manner of its execution.

BACKGROUND

¶3 On August 25, 2022, Constable Deborah Martinez-Garibay (“Garibay”)—less than six months into her tenure as a constable—attempted to serve a writ of restitution issued by a justice court on a tenant in an apartment complex in Tucson. The tenant was being evicted for threatening a resident with a gun and disturbing the peace. Garibay enlisted the apartment manager, Angela Fox (“Angela”), to accompany her while she served the writ. At the tenant’s apartment door, Garibay knocked for several minutes, identified herself as a constable, announced her intent to serve the writ, and warned the tenant she would call the police if he did not open the door. The tenant fatally shot Garibay, Angela, and a visitor in an adjoining apartment before taking his own life.

¶4 Angela’s surviving spouse, William Fox (“Fox”), filed a wrongful death action against Garibay’s surviving spouse, as well as Pima County and the Arizona Constable Ethics, Standards and Training Board (“CESTB”).¹ As relevant here, Fox’s suit against Garibay’s spouse alleged that Garibay was negligent and grossly negligent in failing “to protect and avoid exposing [Angela] ... and the general public to harm” while serving the writ of restitution. Fox also alleged that Garibay “had cocaine, alcohol and other illicit substances in her system” while executing the writ.²

¶5 Garibay’s spouse moved for judgment on the pleadings, arguing that Garibay, as a constable, enjoyed judicial immunity and owed no duty to Angela because constables are officers of the court. The superior court denied the motion.

¶6 Garibay’s spouse filed a special action petition in the court of appeals, contending that Garibay, as a constable, was entitled to judicial immunity and owed no duty to Angela. The court accepted special action jurisdiction. In an opinion, the court held that Garibay was judicially immune from liability because, even if her actions were alleged to be negligent or grossly negligent, they did not constitute “misconduct” under [§ 11-449](#). *Garibay v. Johnson*, 257 Ariz. 118, 127 ¶ 26, 545 P.3d 468, 477 (App. 2024). The court therefore reversed the superior court’s denial of judicial immunity but did not consider whether Garibay owed a duty of care to Angela. *Id.* ¶¶ 27–28.

¶7 We granted review because whether the common law doctrine of judicial immunity shields constables from liability under [§ 11-449](#) is an issue of first impression, statewide importance, and likely to recur. We have jurisdiction under [article 6, section 5\(3\) of the Arizona Constitution](#).

DISCUSSION

¶8 To determine whether Garibay is subject to liability under [§ 11-449](#) for “any misconduct in the service or execution” of the writ of restitution, we must answer the following questions: (1) does common law judicial immunity apply to a constable; (2) if so, does [§ 11-449](#) abrogate or limit common law judicial immunity; and (3) if judicial immunity does not shield Garibay from [§ 11-449](#)’s application, did Fox’s complaint allege that Garibay committed “misconduct” within the statute’s meaning?

¶9 A party is entitled to judgment on the pleadings when a “complaint fails to state a claim for relief.” *Giles v. Hill Lewis Marce*, 195 Ariz. 358, 359 ¶ 2, 988 P.2d 143, 144 (App. 1999). When we review a motion for judgment on the pleadings, we accept the [*241](#) complaint’s factual allegations as true, but review the trial court’s legal conclusions de novo. *Shaw v. CTVT Motors, Inc.*, 232 Ariz. 30, 31 ¶ 8, 300 P.3d 907, 908 (App. 2013), *as amended* (Mar. 29, 2013). We review issues of statutory construction de novo. *Planned Parenthood Ariz., Inc. v. Mayes*, 257 Ariz. 137, 142 ¶ 13, 545 P.3d 892, 897 (2024).

I.

¶10 We begin our analysis with the threshold question of whether Garibay, as a constable, is subject to common law judicial immunity. The court of appeals held that constables enjoy judicial immunity, reasoning that when constables execute writs they engage in a judicial function “closely tied to the judicial decision to issue the writ in the first place.” *Garibay*, 257 Ariz. at 125 ¶ 15, 545 P.3d at 475. We agree.

¶11 Constables are borne of a legislative act and their duties are codified in statute. See A.R.S. § 22-131. As relevant here, § 22-131(A) requires constables to attend courts and execute, serve, and return all processes, warrants, and notices as directed by a justice of the peace or competent authority. *Clark v. Campbell*, 219 Ariz. 66, 71 ¶ 18, 193 P.3d 320, 325 (App. 2008). Moreover, courts may exercise control over constables and discipline them for non-performance of their judicial duties. *Id.* at 72 ¶ 21, 193 P.3d at 326.

¶12 The common law doctrine of judicial immunity exists to ensure judges perform their work with independence and without fear of consequences. *Burk v. State*, 215 Ariz. 6, 9 ¶ 7, 156 P.3d 423, 426 (App. 2007). But our courts have recognized that, to advance the independence and efficacy of the judiciary, judicial immunity should extend to court officers and others who perform functions intimately related to the judicial process. See *id.* ¶ 8.

¶13 Our courts have extended absolute judicial immunity to an array of court officers, employees, and agents who “assist the court in the judicial process.” *Acevedo v. Pima Cnty. Adult Prob. Dep’t*, 142 Ariz. 319, 322, 690 P.2d 38, 41 (1984); see also *Burk*, 215 Ariz. at 9 ¶ 8, 156 P.3d at 426 (recognizing application of judicial immunity to “guardians ad litem, court-appointed psychologists, and probation officers”); *Yamamoto v. Santa Cruz Cnty. Bd. of Supervisors*, 124 Ariz. 538, 540, 606 P.2d 28, 30 (App. 1979) (extending absolute immunity to a court clerk following a court’s order).

¶14 We have emphasized that, although many employees work with and within the judicial system, judicial immunity only applies where these duties are essential to the judicial process. For example, in *Acevedo*, parents sued the Pima County Adult Probation Department for negligent supervision of a probationer who, despite a probation condition prohibiting contact with minors, was permitted to reside with young children and injured them. 142 Ariz. at 320, 690 P.2d at 39. We recognized that probation officers are entitled to “absolute protection from suit for actions which are necessary” in preparing and submitting presentence

reports to the court and enforcing court-imposed conditions of probation. *Id.* at 322, 690 P.2d at 41. However, we clarified that not “all the activities of a probation officer in supervising a probationer are entitled to immunity.” *Id.* Many probation officer duties are administrative or supervisory and, thus, are “not part of the judicial function.” *Id.* We held that “[a] probation officer cannot assert for immunity unless the officer is acting pursuant to or in aid of the directions of the court.” *Id.* Thus, the probation officer was not immune from the parents’ suit because he permitted the probationer to reside with minor children in violation of the court’s specific direction prohibiting contact with minors. *Id.* The exception to judicial immunity in *Acevedo* proves the rule.

¶15 In *Adams v. State*, 185 Ariz. 440, 441–43, 916 P.2d 1156, 1157–59 (App. 1995), the court of appeals, applying the principles established in *Acevedo*, considered whether Department of Economic Security (“DES”) adoption caseworkers enjoyed judicial immunity from suit by adopted children. The children alleged that their DES-approved adoptive parents molested them as a result of the caseworkers’ negligent pre-adoption investigation and post-placement supervision. *Adams*, 185 Ariz. at 442, 916 P.2d at 1158.

*242 The court held that the caseworkers were not immune from suit for their investigative and supervisory actions because “their routine and statutorily-required investigative and supervisory functions were [not] conducted as an integral part of the judicial process.” *Id.* at 446, 916 P.2d at 1162.

¶16 We distill from our jurisprudence the principle that common law judicial immunity applies to court officers, employees, and agents who “assist the court in the judicial process” by carrying out court orders or otherwise serving an integral part of the judicial process. *Acevedo*, 142 Ariz. at 322, 690 P.2d at 41; *Adams*, 185 Ariz. at 445–46, 916 P.2d at 1161–62. Persons otherwise covered by judicial immunity, however, forfeit immunity if they act contrary to a court’s directive. *Acevedo*, 142 Ariz. at 322, 690 P.2d at 41. In executing writs, constables both assist the court in the judicial process and serve an integral part of the judicial process if they act consistent with a court’s directive.³ Thus, constables act as officers of the court and are entitled to judicial immunity when they execute court orders, including writs of restitution, § 22-131(A), as directed by the court. See *Clark*, 219 Ariz. at 72 ¶ 21, 193 P.3d at 326; cf. *State ex rel. Andrews v. Superior Court*, 39 Ariz. 242, 248–49, 5 P.2d 192 (1931) (holding that a sheriff acts as an officer of the court when carrying out certain statutory duties of the office). As a constable, Garibay was

entitled to common law judicial immunity when executing a writ of restitution.

II.

¶17 We next consider whether § 11-449 abrogates or limits Garibay's immunity. Fox argues that the “Arizona Legislature itself abolished any common-law or other judicial immunity in one specific area through § 11-449's plain words.”

¶18 Section 11-449, titled “Liability relating to writs, levies or sales,” provides:

If a sheriff neglects to make due return of a writ or paper delivered to him to be served or executed, or is *guilty of any misconduct* in the service or execution thereof, he is liable to the party aggrieved for damages sustained, and, in addition, for a penalty of two hundred dollars.

(Emphasis added.) Although § 11-449 refers only to “sheriffs,” the statute also applies to constables. *See* § 22-131(D) (“The provisions of law relating to sheriffs, as far as applicable, shall govern the powers, duties and liabilities of constables.”).

¶19 Fox is correct that, under Arizona law, statutes may abrogate or limit the common law. *See* A.R.S. § 1-201 (declaring that the common law applies “only so far as it is consistent with ... the laws of this state”); *see also* *Zambrano v. M & RC II LLC*, 254 Ariz. 53, 65 ¶ 43, 517 P.3d 1168, 1180 (2022) (noting that common law rules only apply when legislative guidance is lacking). However, “if the common law is to be changed or abrogated by statute, the legislature must do so expressly or by necessary implication.” *Pleak v. Entrada Prop. Owners' Ass'n*, 207 Ariz. 418, 422 ¶ 12, 87 P.3d 831, 835 (2004). “Absent a clear manifestation of legislative intent to abrogate the common law, we interpret statutes with ‘every intendment in favor of consistency with the common law.’ ” *Id.* (quoting *In re Thelen's Est.*, 9 Ariz. App. 157, 160–61, 450 P.2d 123 (1969)); *see also* § 1-201 (adopting the common law to the extent it is “not repugnant to or inconsistent with the Constitution of the United States or the constitution or laws of this state”).

¶20 Here, § 11-449 evinces no legislative intent to abrogate judicial immunity or, as Fox contends, to “abolish[] any common-law or other judicial immunity in one specific area.” In fact, the statute does not mention *243 judicial immunity at all. There is no textual support for Fox's claim that the legislature intended the statute to abolish “any” judicial immunity in these circumstances.

¶21 Section 11-449, however, limits the scope of judicial immunity in specific circumstances. As relevant here, the statute imposes liability on constables who are “guilty of any misconduct in the service or execution” of a writ. To the extent constables may have been immune from suit under the common law for misconduct in the service or execution of a writ, the legislature has eliminated such immunity.⁴ Thus, Garibay is not immune from Fox's suit if she was “guilty of any misconduct” in the service or execution of the writ of restitution.

III.

¶22 Although as a constable Garibay is entitled to judicial immunity, § 11-449 eliminates such immunity if she is “guilty of any misconduct” in the service or execution of the writ of restitution. Thus, this case turns on the meaning of “misconduct” in § 11-449.

A.

¶23 We begin with the text when interpreting a statute. *Franklin v. CSAA Gen. Ins. Co.*, 255 Ariz. 409, 411 ¶ 8, 532 P.3d 1145, 1147 (2023). “We interpret statutory language in view of the entire text, considering the context and related statutes on the same subject.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11, 432 P.3d 925, 927 (2019). If a statute's text is plain and unambiguous, it controls unless it results in an absurdity or a constitutional violation. *4QTKIDZ, LLC v. HNT Holdings, LLC*, 253 Ariz. 382, 385 ¶ 5, 513 P.3d 1106, 1109 (2022). However, “[i]f the statutory language is ambiguous—if ‘it can reasonably be read in two ways’—we may use alternative methods of statutory construction, including examining the rule's historical background, its spirit and purpose, and the effects and consequences of competing interpretations.” *Planned Parenthood Ariz., Inc.*, 257 Ariz. at 142 ¶ 17, 545 P.3d 892, 897 (quoting *State v. Salazar-Mercado*, 234 Ariz. 590, 592 ¶ 5, 325 P.3d 996, 998 (2014)).

¶24 Section 11-449 does not define “misconduct.” Absent a statutory definition, we may consider dictionaries and written publications to discern the word's common meaning and usage, respectively, at the time the legislature enacted the statute. *Matthews v. Indus. Comm'n*, 254 Ariz. 157, 163 ¶ 33, 520 P.3d 168, 174 (2022); see also *In re Drummond*, 257 Ariz. 15, 18 ¶ 7, 543 P.3d 1022, 1025 (2024). The legislature first adopted the language that now appears as § 11-449 in 1901; it was readopted as a statute in 1913. See Ariz. Civ. Code, §§ 1089, 1090 (1901); Ariz. Civ. Code, §§ 2542, 2543 (1913). Therefore, we determine the common meaning of “misconduct” as that term was understood when first adopted in 1901. *Matthews*, 254 Ariz. at 165 ¶ 40, 520 P.3d at 176 (“When a subsequent enactment imports unchanged earlier language, it imports the original meaning as well.”); see also Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 323 (2012) (“[W]hen a statute uses the very same terminology as an earlier statute, especially in the very same field, ... it is reasonable to believe that the terminology bears a consistent meaning. One might even say that the body of law of which a statute forms a part—especially if that body has been codified—is part of the statute's context.”).

1.

¶25 We begin by examining contemporaneous dictionary definitions. The Century Dictionary defines “misconduct” as “[w]rong *244 conduct; misbehavior” and “[m]ismanagement.” *Misconduct*, The Century Dictionary: An Encyclopedic Lexicon of the English Language (1897). Fox relies on several dictionary definitions that align with this general construction of “misconduct,” but his sources fall outside the relevant time period. Although ordinary dictionary definitions are inconclusive, they establish that the ordinary meaning of “misconduct” embodies wrongdoing.

¶26 Fox also overlooks two legal dictionaries from the relevant time period that refine the meaning of “misconduct” and define “wrong conduct,” “misbehavior,” and “mismanagement.” First, Judicial and Statutory Definitions of Words and Phrases (“First Judicial”) defines “misconduct” as:

[I]mplics a wrongful intention, and not a mere error of judgment

In usual parlance, misconduct means a transgression of some established and definite rule of action, where no discretion is left, except what necessity may demand; and carelessness, negligence, and unskillfulness are transgressions of some established, but indefinite, rule of action, where some discretion is necessarily left to the actor. Misconduct is a violation of definite law; carelessness, an abuse of discretion under an indefinite law. Misconduct is a forbidden act; carelessness, a forbidden quality of an act, and is necessarily indefinite.

Misconduct, Judicial and Statutory Definitions of Words and Phrases (1904). Thus, First Judicial's definition juxtaposes the concept of misconduct with negligence, explaining that misconduct embodies wrongful intent rather than mere error.

¶27 Second, Black's Law Dictionary aligns with First Judicial's definition of “misconduct”:

Any unlawful conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of parties or to the right determination of the cause The term is also used to express a dereliction from duty, injurious to another, on the part of one employed in a professional capacity, as an attorney at law, ... or a public officer.

Misconduct, Black's Law Dictionary (2d. ed. 1910). Read together, First Judicial and Black's Law suggest the plain meaning of “misconduct” as an intentional violation of an applicable rule, standard, or norm. Relevant here, they denote “a dereliction from duty ... on the part of ... a public officer.” *Id.*

2.

¶28 We next consider corpus linguistics to aid our understanding of the common usage of “misconduct” when the legislature enacted the statute. Corpus linguistics is a helpful tool in determining a word’s common usage. See *Matthews*, 254 Ariz. at 163 ¶ 33, 520 P.3d at 174. It is performed on “a massive database that enables date-specific searches for the possible, common, and most common uses of words or phrases as they were used in newspapers, books, magazines, and other popular publications.” *Id.* Corpus linguistics research is helpful to ascertain a term’s ordinary meaning “because the human brain understands words not in isolation but in their broader semantic (and pragmatic) context, [and] we may often miss the import of a given ... term if we just separately look up its component words in the dictionary.” Thomas R. Lee & James C. Phillips, *Data-Driven Originalism*, 167 U. Pa. L. Rev. 261, 283 (2019).

¶29 A search of the Corpus of Historical American English for “misconduct” as used between 1900 and 1919 yields seventy-six results. Search of “Misconduct” from 1900–1919, Corpus of Hist. Am. Eng., <https://www.english-corpora.org/coha/?c=coha&q=122908439> (last visited Mar. 3, 2025). Of these seventy-six results, sixty-two refer to intentionally wrongful acts serious enough to justify consequences or removal from a position. *Id.* Notably, only one entry used “misconduct” interchangeably with “negligence,” while thirteen sources used “misconduct” indiscernibly. Thus, the prevailing common usage of “misconduct” during the relevant period connotes intentional rather than negligent conduct.

¶30 Our corpus review is consistent with our linguistic analysis—“misconduct” refers to intentional violations of an applicable rule, standard, or norm. Dictionary definitions *245 and corpus linguistics entries demonstrate the objective—clear duty or rule violation—and the subjective—intentional—components of “misconduct” as the word was commonly understood and used when the legislature adopted it.

3.

¶31 Our jurisprudence interpreting “misconduct” at the time the legislature first codified the term is also consistent with our dictionary and corpus linguistics analyses. In *Mooney v. Broadway*, 2 Ariz. 107, 113, 11 P. 114 (1886), a sheriff prematurely released property levied under a writ. We held that the sheriff committed “misconduct,” even though the

sheriff did not intentionally neglect his duty. *Mooney*, 2 Ariz. at 113, 11 P. 114. We reject any implication, however, that *Mooney* can be read to expand “misconduct” to include negligence. The “misconduct” in *Mooney* refers to the sheriff’s failure to carry out the writ’s terms. *Id.*

¶32 In *Stiles v. W. Union Telegraph Co.*, 2 Ariz. 308, 311, 15 P. 712 (1887), the appellant sued for damages resulting from a delay in delivering a telegraphic message. We held the telegraph company liable for damages for failing to timely deliver the message and characterized the company’s conduct as “gross negligence and palpable misconduct.” *Stiles*, 2 Ariz. at 312, 15 P. 712. As in *Mooney*, the telegraph company’s misconduct in *Stiles* arose from its intentional violation of a duty. The Court’s allusion to “gross negligence” does not alter its fundamental point that the company’s misconduct arose from the failure to meet its obligation to its customer.

¶33 *Mooney* and *Stiles* confirm our definition of “misconduct.” In those cases, we characterized the intentional violation of a duty—whether to properly carry out a writ or to timely deliver a telegram—as “misconduct.” See *Mooney*, 2 Ariz. at 113, 11 P. 114; see also *Stiles*, 2 Ariz. at 312, 15 P. 712. We have also acknowledged that sheriffs are liable for violations of clearly established duties when executing writs. See *Fid. & Deposit Co. of Md. v. McFadden*, 47 Ariz. 116, 120, 53 P.2d 1085 (1936) (“[I]t was the duty of the sheriff to feed and properly care for the cattle [under the writ because] ... public policy would not permit him to contract against liability for his personal negligence in caring for and feeding the cattle while in his actual possession.”); *Schuster v. Merrill*, 56 Ariz. 114, 119, 106 P.2d 192 (1940) (stating that a sheriff violates his statutory duty to serve all process regular on its face where lack of authority for issuance of the process is “apparent on its face”).

¶34 We therefore hold that “misconduct” in § 11-449 means an intentional violation of an applicable rule, standard, or norm. Here, the relevant applicable rules, standards, and norms that pertain to constables involve implementing a court directive, law, or rule. See *Clark*, 219 Ariz. at 71 ¶ 18, 193 P.3d at 325. Consequently, under the statute, “misconduct” involves a constable’s willful or intentional failure to carry out a court directive, law, or rule, rather than negligence in the manner of discharging such duties.

B.

¶35 We now must determine whether Fox's complaint alleges Garibay engaged in “misconduct,” within the meaning of § 11-449, in executing the writ of restitution resulting in Angela's death.

¶36 Fox's complaint alleges that “[t]he wrongful death of Angela Fox occurred due to the negligence and/or gross negligence of Defendants,” which includes Garibay. Specifically, he alleges that Garibay acted with negligence and/or gross negligence by inviting Angela to accompany her to execute the writ because Garibay knew that the tenant “was evicted for threatening a resident with a gun and disturbing the peace.” Fox argues “[Garibay] should have never attempted this dangerous eviction alone or with a hapless civilian tagging along.” On appeal, Fox argues that Garibay's acts involved “misconduct” because they “constituted improper conduct, mismanagement, wrong conduct, ill behavior, misbehavior, bad behavior, bad conduct.”

¶37 We first address Fox's negligence claim. Although Fox initially argued that ordinary negligence always constitutes “misconduct” under § 11-449, he abandoned this claim at oral argument. We commend *246 Fox for this concession. Negligence entails breach of a duty to conform to a standard of care, which causes injury and damages. See *Ryan v. Napier*, 245 Ariz. 54, 59 ¶ 17, 425 P.3d 230, 235 (2018) (“A negligence claim focuses on the defendant's conduct; intent is immaterial.”). Under this standard, it is not necessary to show “misconduct” to prove negligence.

¶38 We now turn to Fox's gross negligence claim. We have acknowledged that defining “negligence” and “gross negligence” “is, at best, inexact.” *Weatherford ex rel. Michael L. v. State*, 206 Ariz. 529, 535 ¶ 20 n.4, 81 P.3d 320, 326 (2003). Inexactitude aside, our courts recognize that gross negligence differs from ordinary negligence. See, e.g., *Kemp v. Pinal County*, 13 Ariz. App. 121, 124–25, 474 P.2d 840 (1970) (noting that “[a] person can be very negligent and still not be guilty of gross negligence”). A party is grossly negligent if they know, or have reason to know, facts that would lead a reasonable person to recognize their conduct created an unreasonable risk of bodily harm and involved a high probability of substantial harm. *Noriega v. Town of Miami*, 243 Ariz. 320, 328 ¶ 35, 407 P.3d 92, 100 (App. 2017); see also *Gross Negligence*, Black's Law Dictionary (12th ed. 2024) (“Gross negligence is traditionally said to be the omission of even such diligence as habitually careless and inattentive people do actually exercise in avoiding danger to their own person or property.”). Thus, gross negligence

requires a level of disregard beyond ordinary inattention but less than conscious indifference. *Noriega*, 243 Ariz. at 328 ¶ 36, 407 P.3d at 100. Gross negligence does not encompass intentional malfeasance.

¶39 An illustration brings the distinction between gross negligence and misconduct into sharper relief. Gross negligence is playing with matches near a dry forest with a burn ban in effect: reckless, irresponsible, without regard for others, and with a high probability of substantial harm. Misconduct, on the other hand, is the intentional act of lighting a match with the purpose of causing a wildfire. This distinction matters. Gross negligence embodies extreme carelessness, but it falls short of the deliberate wrongdoing required for “misconduct.”

¶40 We concur in the court of appeals' holding that mere allegations of negligence and gross negligence do not allege “misconduct” under § 11-449. *Garibay*, 257 Ariz. at 127 ¶ 26, 545 P.3d at 477. Fox's allegations arise from Garibay's manner of executing a writ, a court directive she was required to follow. There is no allegation that Garibay failed, intentionally or otherwise, to comply with the court's command to execute the writ—the applicable rule, standard, or norm. Because Fox merely alleged that Garibay was negligent or grossly negligent in carrying out the court's order, he has not alleged that she engaged in “misconduct” under § 11-449. Thus, Fox's complaint fails to state a claim for relief because judicial immunity shields Garibay from suit on the allegations asserted in his complaint.

CONCLUSION

¶41 The legislature, in § 11-449, limited constables' judicial immunity, as relevant here, if a constable “is guilty of any misconduct” in the service or execution of a writ. The statute's effect on a constable's judicial immunity does not create liability for gross negligence in the service or execution of a writ. If the legislature intended to curtail constables' immunity in that manner, it would have done so. See A.R.S. § 12-820.02(A)(1) (adopting qualified immunity to protect officials from liability for ordinary negligence but not for gross negligence or intentional misconduct); *Clouse ex rel. Clouse v. State*, 199 Ariz. 196, 207 ¶ 42, 16 P.3d 757, 768 (2001); see also *Spooner v. City of Phoenix*, 246 Ariz. 119, 124 ¶ 10, 435 P.3d 462, 467 (App. 2018).

¶42 We therefore vacate ¶¶ 11–26 of the court of appeals' decision,⁵ reverse the trial court's ruling, and remand to the trial court for further proceedings consistent with this Opinion.

TIMMER, C.J., concurring in the result.

*247 ¶43 I join the majority opinion and agree with its holding. I write separately to pump the brakes on embracing corpus linguistics as a reliable aid in statutory and constitutional interpretation. *See supra* ¶¶ 28–30.

¶44 In *Matthews v. Indus. Comm'n*, 254 Ariz. 157, 163 ¶ 33, 520 P.3d 168, 174 (2022), this Court relied on corpus linguistics without the benefit of adversarial testing from the parties. *See* Peter Henderson et al., *Corpus Enigmas and Contradictory Linguistics: Tensions Between Empirical Semantic Meaning and Judicial Interpretation*, 25 Minn. J.L. Sci. & Tech. 127, 151 n.87 (2024) (hereafter, “Henderson”) (including *Matthews* among the cases that have initiated and conducted a corpus linguistics analysis without party input). In my partial concurrence and dissent, I rejected use of corpus linguistics without further vetting. *See Matthews*, 254 Ariz. at 168 ¶ 58, 520 P.3d at 179 (Timmer, V.C.J., concurring in part and dissenting in part) (lamenting the lack of sufficient information corpus linguistics and pointing out that the database used in that case “does not reflect oral usage” of words). This case presents the second time we have used corpus linguistics, and for the second time we are doing so without input and adversarial testing from the parties. In my view, this is short-sighted and may present problems in future cases.

¶45 To be clear, I am not opposed to corpus linguistics. Like any appellate judge, my eyes light up at the prospect of using an empirical, scientific tool to help identify textual meaning. But caution is warranted. Some scholars enthusiastically embrace corpus linguistics for use in interpreting legal texts, albeit with caveats. *See* Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 Yale L.J. 788, 851–58 (2018). Others warn that using corpus linguistics “may sub silentio clash with express jurisprudential commitments.” Henderson, *supra* ¶44, at 127; *see also Marshall v. PricewaterhouseCoopers, LLP*, 371 Or. 536, 539 P.3d 766, 780 n.1 (2023) (James, J., dissenting) (opining that corpus linguistics is “problematic on many levels, including suffering from the limitations and biases of those who compile the corpus, manipulation through the choice of database, and potentially overly suggestive results

due to the construction of the search terms and methods”). That gets my attention. Thus, in my view, we should not rely on corpus linguistics before receiving input and scrutiny from parties; ensuring ourselves that the database searched is a reliable tool for identifying ordinary meaning of words; and adopting a research and interpretive methodology that ensures we use the tool with an appropriate degree of precision.

¶46 This special concurrence is not the place to thoroughly analyze if and how corpus linguistics should be used to interpret legal texts. I am not an expert in linguistics, and I am unwilling to engage in scientific research without input from parties affected by the results. *See State v. Rasabout*, 356 P.3d 1258, 1264–66 ¶¶ 16–21 (Utah 2015) (criticizing sua sponte corpus linguistics research as unfair to parties and outside judicial expertise). Instead, I urge parties in future cases to examine the utility of corpus linguistics and advise this Court about if and how corpus linguistics should be used. This analysis may become particularly imperative as corpus linguistics interacts with artificial intelligence. *See* Henderson, *supra* ¶ 44, at 132 (warning that problems with corpus linguistics are likely to increase with the corresponding use of large language models “as meaning can include the arbitrary references of annotators or model creators”).

¶47 From my cursory review of writings on legal corpus linguistics—and there are an untold number—several issues deserve consideration. There are likely more. I have plugged the questions that immediately come to mind into two broad categories.

¶48 First, parties should identify whether a database or mix of databases can be reliably used to identify the ordinary meaning of words used in legal texts. In doing so, parties should consider criticisms that databases “rely on foreign law to give meaning to U.S. constitutional or statutory provisions,” which courts generally eschew; “offer subjective or strategic forms of legislative history” that do not reflect the ordinary meaning of the words used in text; and “represent[] elite rhetoric, not ordinary original public meaning.” *248 *See id.* at 131–32, 153 (emphasis removed).

¶49 Second, parties should identify the appropriate methodology for searching a database and interpreting the results. For example, what role does context play in the analysis? *See* Anya Bernstein, *Legal Corpus Linguistics and the Half-Empirical Attitude*, 106 Cornell L. Rev. 1397, 1429 (2021) (“Legal corpus linguistics, with its obsessive focus on

single words used in unconnected situations, to the exclusion of larger and more relevant contexts, encourages legal interpreters to neglect the real import of their decisions.”). Should inquiries solely focus on use of words in a legal context? See *id.* at 1417 (“One key thing legal corpus linguistic inquiry tends to neglect is the *legal* context of legal language.” (emphasis in original)). Are there any fallacies to avoid in using corpus linguistics? See Kevin P. Tobia, *Testing Ordinary Meaning*, 134 Harv. L. Rev. 726, 735 (2020) (explaining the “nonappearance fallacy,” which falsely “claim[s] that absence of a usage from a large corpus indicates that the usage is not part of the ordinary meaning”); see also Tammy Gales & Lawrence M. Solan, *Revisiting a Classic Problem in Statutory Interpretation: Is a Minister a Laborer?*, 36 Ga. St. U. L. Rev. 491, 500 (2020) (pointing out that the blue pitta, a bird of Asia, does not appear in the Corpus of Contemporary American English, but that does not make it any less a bird).

¶50 Corpus linguistics' promise of scientific objectivity is undeniably seductive. But it is the proverbial black box: I can see what goes in and what comes out, but I cannot see inside. And until “what's inside” is sufficiently probed by parties with a stake in the outcome, perhaps with the assistance of expert linguists, I believe the Court should rely exclusively on time-tested methods of statutory and constitutional interpretation. Here, dictionaries that were curated by lexicographers and caselaw support the plain meaning of “misconduct” identified by the majority. I think the analysis should stop there. For now, I continue to believe that we should not treat corpus linguistics as a settled part of our interpretive toolkit but instead view it as an intriguing *possible* tool and invite adversarial testing of that tool. With these thoughts in mind, and with respect to my colleagues, I concur in the opinion.

All Citations

259 Ariz. 248, 144 Arizona Cases Digest 8, 565 P.3d 236

Footnotes

- * Due to the retirement of Justice Robert Brutinel, pursuant to [article 6, section 3 of the Arizona Constitution](#), Judge Michael D. Peterson, Presiding Judge of the Graham County Superior Court, was designated to sit in this matter.
- 1 Fox's suit against Pima County and CESTB alleging vicarious liability under respondeat superior and negligent hiring, training, and supervision is not before us.
- 2 The toxicology report on Garibay was positive for five substances above the reporting limit, including an Ethanol level of 19 mg / dL, a Blood Alcohol Concentration of 0.019 g / 100 mL, an [Amphetamine](#) level of 34 ng / mL, a Benzoyllecgonine level of 210 ng / mL, and a Cocaine level of 50 ng / mL.
- 3 Statutory immunity for constables may also exist pursuant to [A.R.S. § 41-621\(K\)](#), which shields state officials from personal liability for “an injury or damage resulting from an act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in the officer, agent or employee and if the exercise of the discretion was done in good faith without wanton disregard of statutory duties.” However, because neither party raised this argument, we do not address that statute. See [Jimenez v. Sears, Roebuck & Co.](#), 183 Ariz. 399, 406 n.9, 904 P.2d 861, 868 n.9 (1995) (“We do not ordinarily consider issues not raised in the trial court or court of appeals.”).
- 4 Fox argues that [§ 11-449](#)'s “specific liability” “defeats any general statutory immunity” the legislature codified in [A.R.S. § 12-820.01\(A\)](#), which immunizes a “public entity” from liability for actions and omissions of its employees in the exercise of a judicial function. Invoking the principle that a specific statute prevails over a general one, [Morton v. Mancari](#), 417 U.S. 535, 550–51, 94 S.Ct. 2474, 41 L.Ed.2d 290 (1974), Fox submits that [§§ 11-449](#) and [12-820.01\(A\)](#) can be harmonized to maintain “general judicial immunity for most judicial functions [in the latter], with the exception in this case of special liability [in the former].” Assuming, without

deciding, that [§ 12-820.01\(A\)](#) applies to constables as “public entities,” we agree. Therefore, we need not address [§ 12-820.01\(A\)](#).

- 5 Because we did not grant review on the issue of legislative immunity, we express no opinion on ¶¶ 6–10 of the court of appeals' opinion.

BOOK REVIEWS

FIXING STATUTORY INTERPRETATION

JUDGING STATUTES. By Robert A. Katzmann. New York, N.Y.: Oxford University Press. 2014. Pp. xi, 171. \$24.95.

*Reviewed by Brett M. Kavanaugh**

Statutory interpretation has improved dramatically over the last generation, thanks to the extraordinary influence of Justice Scalia.¹ Statutory text matters much more than it once did. If the text is sufficiently clear, the text usually controls.² The text of the law is the law. As Justice Kagan recently stated, “we’re all textualists now.”³ By emphasizing the centrality of the words of the statute, Justice Scalia brought about a massive and enduring change in American law.

But more work remains. As Justice Scalia’s separate opinions in recent years suggest, certain aspects of statutory interpretation are still troubling.⁴ In my view, one primary problem stands out. Several substantive principles of interpretation — such as constitutional avoidance, use of legislative history, and *Chevron* — depend on an initial determination of whether a text is clear or ambiguous. But judges often cannot make that initial clarity versus ambiguity decision in a settled, principled, or evenhanded way.

The upshot is that judges sometimes decide (or appear to decide) high-profile and important statutory cases not by using settled, agreed-upon rules of the road, but instead by selectively picking from among

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¹ See e.g., Justice Elena Kagan, The Scalia Lecture: A Dialogue with Justice Kagan on the Reading of Statutes at 8:09 (Nov. 17, 2015), <http://today.law.harvard.edu/in-scalia-lecture-kagan-discusses-statutory-interpretation> [<http://perma.cc/3BCF-FEFR>] (explaining that “the primary reason” Justice Scalia will “go down as one of the most important, most historic figures in the Court” is that he “taught everybody how to do statutory interpretation differently”). For an early description of the “new textualism,” see William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621 (1990).

² See Kagan, *supra* note 1, at 8:28 (“I think we’re all textualists now in a way that just was not remotely true when Justice Scalia joined the bench.”).

³ *Id.* For an excellent discussion of the distinction between textualists and purposivists, see John F. Manning, *What Divides Textualists from Purposivists?*, 106 COLUM. L. REV. 70 (2006).

⁴ The Court often still divides in statutory interpretation cases. See *King v. Burwell*, 135 S. Ct. 2480, 2496 (2015) (Scalia, J., dissenting); *Bond v. United States*, 134 S. Ct. 2077, 2094 (2014) (Scalia, J., concurring in the judgment); *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1610 (2014) (Scalia, J., dissenting); see also *Yates v. United States*, 135 S. Ct. 1074, 1090 (2015) (Kagan, J., dissenting).

a wealth of canons of construction.⁵ Those decisions leave the bar and the public understandably skeptical that courts are really acting as neutral, impartial umpires in certain statutory interpretation cases.⁶

The need for better rules of the road is underscored by a recent book written by Robert Katzmann, the very distinguished Chief Judge of the Second Circuit. I know Chief Judge Katzmann from our service together on the Judicial Branch Committee of the Judicial Conference, where he served for many years as Chairman by appointment of the Chief Justice. Chief Judge Katzmann is one of America's finest judges and a true role model for me and many others, both in how he approaches his job and in how he seeks to improve the system of justice.

His new book *Judging Statutes* is a pleasure to read. It is succinct and educational. Chief Judge Katzmann's goal is to show that various tools of statutory interpretation, especially legislative history, can enhance judges' understanding of statutory meaning and allow them "to be faithful to the work of the people's representatives memorialized in statutory language" (p. 105).

As would be natural with any two judges on a topic of this kind, I agree with some parts of Chief Judge Katzmann's book and not with others. But even where I disagree, I have learned a great deal.

Every judge, lawyer, law professor, and law student who interprets statutes — which is to say every judge, lawyer, law professor, and law student — should read this book carefully. To paraphrase Justice Frankfurter: read the book, read the book, read the book.⁷

⁵ This criticism has been prevalent at least since Professor Karl Llewellyn's famous discussion of "dueling canons" in Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395 (1950). But my proposed solutions are largely new, as far as I know.

⁶ See, e.g., Richard A. Posner, Response, *Comment on Professor Gluck's "Imperfect Statutes, Imperfect Courts,"* 129 HARV. L. REV. F. 11, 11 (2015) ("I daresay that some judges (and Justices) some of the time actually use these [statutory interpretation] approaches and these tools (other than as window dressing), and that more think they are using them but aren't really. But I think that most of the time statutory interpretation is better described as creation or completion than as interpretation and that politics and consequences are the major drivers of the outcome."). In many *constitutional* cases, much of the public and bar has long since moved from skepticism to disbelief that judges act as neutral, impartial umpires. I do not agree with that view, but I understand it. That, however, is a topic for another day. Today is about *statutory* interpretation, and about how judges can counter that skepticism.

⁷ Cf. HENRY J. FRIENDLY, BENCHMARKS 202 (1967) (recounting how Justice Frankfurter's three rules of statutory interpretation were to "(1) [r]ead the statute; (2) read the statute; (3) read the statute!"). And while you are at it, read the recent book by Justice Scalia and Professor Bryan Garner as well. See ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW* (2012). And read the prodigious academic work of Professors John Manning, Bill Eskridge, and Abbe Gluck, among many others. Then you will have a multifaceted picture of some of the problems and difficulties of statutory interpretation today, and benefit from the thoughts of some of our most brilliant analysts and theorists of statutory interpretation.

Judging Statutes has caused me to think even more deeply about statutory interpretation and about what judges should be trying to achieve when we confront statutory cases. For me, one overarching goal is to make judging a neutral, impartial process in all cases — not just statutory interpretation cases. Like cases should be treated alike by judges of all ideological and philosophical stripes, regardless of the subject matter and regardless of the identity of the parties to the case.

To be sure, some may conceive of judging more as a partisan or policymaking exercise in which judges should or necessarily must bring their policy and philosophical predilections to bear on the text at hand.

I disagree with that vision of the federal judge in our constitutional system. The American rule of law, as I see it, depends on neutral, impartial judges who say what the law is, not what the law should be.⁸ Judges are umpires, or at least should always strive to be umpires. In a perfect world, at least as I envision it, the outcomes of legal disputes would not often vary based solely on the backgrounds, political affiliations, or policy views of judges.

In my view, this goal is not merely personal preference but a constitutional mandate in a separation of powers system. Article I assigns Congress, along with the President, the power to make laws.⁹ Article III grants the courts the “judicial Power”¹⁰ to interpret those laws in individual “Cases” and “Controversies.”¹¹ When courts apply doctrines that allow them to rewrite the laws (in effect), they are encroaching on the legislature’s Article I power.

But the vision of the judge as umpire raises a natural question: how can we move toward that ideal in our judicial system, where judges come from many different backgrounds and may have a variety of strong ideological, political, and policy predispositions?

To be candid, it is probably not possible in *all* cases, depending on the nature of the legal inquiry. After all, on occasion the relevant constitutional or statutory provision may actually *require* the judge to consider policy and perform a common law–like function.¹²

⁸ THE FEDERALIST NO. 78, at 464 (Alexander Hamilton) (Clinton Rossiter ed., 2003) (“The judiciary . . . may truly be said to have neither FORCE nor WILL but merely judgment . . .”).

⁹ U.S. CONST. art. I, § 7.

¹⁰ *Id.* art. III, § 1.

¹¹ *Id.* art. III, § 2.

¹² To take one example, we should not expect all judges to agree on whether a particular kind of search is “reasonable” under the Fourth Amendment. U.S. CONST. amend. IV; *see, e.g.*, *Riley v. California*, 134 S. Ct. 2473 (2014). Or what evidentiary privileges should be recognized “in the light of reason and experience.” FED. R. EVID. 501; *see, e.g.*, *Swidler & Berlin v. United States*, 524 U.S. 399 (1998). Or whether attorney’s fees are in “the interest of justice.” 15 U.S.C. § 2072(a) (2012). Or what constitutes a “restraint of trade.” 15 U.S.C. § 1 (2012). Cases such as those, where the judicial inquiry requires determination of what is reasonable or appropriate, are less a matter of pure interpretation than of common law–like judging.

But in most statutory cases, the issue is one of interpretation.¹³ To assist the interpretive process, judges over time have devised many semantic and substantive canons of construction — what we might refer to collectively as the interpretive rules of the road. To make judges more neutral and impartial in statutory interpretation cases, we should carefully examine the interpretive rules of the road and try to settle as many of them *in advance* as we can. Doing so would make the rules more predictable in application. In other words, if we could achieve more agreement ahead of time on the rules of the road, there would be many fewer disputed calls in actual cases. That in turn would be enormously beneficial to the neutral and impartial rule of law, and to the ideal and reality of a principled, nonpartisan judiciary.

With that objective in mind, I will advance one overarching argument in this Book Review. A number of canons of statutory interpretation depend on an initial evaluation of whether the statutory text is clear or ambiguous. But because it is so difficult to make those clarity versus ambiguity determinations in a coherent, evenhanded way, courts should reduce the number of canons of construction that depend on an initial finding of ambiguity. Instead, courts should seek the *best reading* of the statute by interpreting the words of the statute, taking account of the context of the whole statute, and applying the agreed-upon semantic canons. Once they have discerned the best reading of the text in that way, they can depart from that baseline if required to do so by any relevant substantive canons — for example, the absurdity doctrine.

To be clear, I fully appreciate that disputed calls will always arise in statutory interpretation. Figuring out the best reading of the statute is not always an easy task. I am not a modern-day Yogi Berra, who once purportedly said that there would be no more close calls if we just moved first base.

But the current situation in statutory interpretation, as I see it, is more akin to a situation where umpires can, at least on some pitches, largely define their own strike zones. My solution is to define the strike zone in advance much more precisely so that each umpire is operating within the same guidelines. If we do that, we will need to worry less about who the umpire is when the next pitch is thrown.

That's just too hard, some might argue. Statutory interpretation is an inherently complex process, they say. It's all politics anyway, others contend. I have heard the excuses. I'm not buying it. In my view, it is a mistake to think that the current mess in statutory interpretation is somehow the natural and unalterable order of things. Put simply, we

¹³ See ANTONIN SCALIA, A MATTER OF INTERPRETATION 13–14 (Amy Gutmann ed., 1997).

can do better in the realm of statutory interpretation. And for the sake of the neutral and impartial rule of law, we must do better.

I. THE KATZMANN THESIS AND SOME RESPONSES

In *Judging Statutes*, Chief Judge Katzmann's basic themes are straightforward: courts should understand Congress better, should interpret statutory text in light of Congress's purpose in enacting the particular statute, and, in particular, should rely on committee reports and other legislative history to try to divine Congress's purpose (pp. 9–10).

A. *Understanding Congress Better and the Role of Committee Reports*

Chief Judge Katzmann stands on very firm ground when he suggests that “[h]aving a basic understanding of legislative lawmaking can only better prepare judges to undertake their interpretive responsibilities” (p. 22). For judges to unpack a statute in a particular case, it is important to understand how the law came together. Oftentimes, for example, courts will confront a statute that has been amended multiple times over multiple years. Or a particular phrase in a statute may have been added in conference. As I see it, by understanding the legislative process, judges will better appreciate that legislation is a compromise with many competing purposes and cross-currents, that there will be redundancies, and that Congress may not always be consistent in its choice of terminology, among other things.

Chief Judge Katzmann describes the lawmaking process in some detail (pp. 11–22). He rightly explains that the central problem confronting Members of Congress is too much “pressure — such as the pressures of the permanent campaign for reelection, raising funds, balancing work in Washington and time in the district, balancing committee and floor work in an environment of increasing polarization, and balancing work and family responsibilities” (p. 17).¹⁴ That pressure is “now more intense than in the past” (p. 17). Those demands “reduce opportunities for reflection and deliberation” (p. 18). As Chief Judge Katzmann points out, Members cannot possibly read every word of every bill, much less understand all the effects of each bill (p. 18).

To mitigate this problem, Members rely heavily on congressional committees (p. 19). Those committees are staffed by numerous aides who assist the Members in their work. Legislators and their staffs educate themselves about bills by reading the materials produced by the committees that drafted and approved the proposed legislation (p. 19).

¹⁴ Internal footnote omitted.

Chief Judge Katzmänn's point here is that Congress usually operates on a kind of internal delegation system. In essence, the job of drafting legislation is often farmed out to subgroups of Congress. Those subgroups draft the precise language. The Members who vote on the bill do not read the end product, but instead often rely on the committee reports, or on their staffs who in turn rely on the committee reports (pp. 19–20).¹⁵

Chief Judge Katzmänn's larger interpretive point is that judges who understand this process better should and will recognize the importance of committee reports in the actual legislative process (p. 22). Chief Judge Katzmänn refers often to the concept of "authoritative" legislative history (pp. 29, 38, 54, 75, 85, 102–03), by which he primarily means the committee reports that form the basis on which other Members determine how to vote on a bill. Although Chief Judge Katzmänn acknowledges that "[l]egislative history is not the law" (p. 38), he says that committee reports are often "authoritative" guides to understanding the meaning of the law. If Members vote based on what is in the committee reports rather than what is in the text, he wonders, aren't judges required to pay attention to the committee reports as well (p. 22)?

Chief Judge Katzmänn asks a good and appropriate question. Of course, a good and appropriate response, as Professor John Manning has persuasively explained, is that the committee report is not an authoritative guide to determining the meaning of a law under our Constitution.¹⁶ Instead, the statute's text as passed by Congress and signed by the President (or passed by two-thirds of both Houses over the President's veto) is the law. Congress could easily include the relevant committee report (or key portions thereof) as a background section of the statute on which Congress is voting. In other words, if there is some key point in the committee report, there is an easy solution to make sure it is "authoritative": vote on it when voting on the statute. As Justice Kagan recently said of committee reports: "It's not what Congress passed, right? If they want to pass a committee report, they can go pass a committee report. They can incorporate a committee report into the legislation if they want to. You know, they didn't do that."¹⁷ Chief Judge Katzmänn never addresses that possibility,

¹⁵ In my view, Congress may not constitutionally disclaim responsibility for the precise statutory text. Even if subgroups of Congress draft the language, the final language is the law. That is true even when Members of Congress vote on the law without reading the law (as they often do).

¹⁶ See John F. Manning, *Why Does Congress Vote on Some Texts but Not Others?*, 51 *TULSA L. REV.* 559 (2016) (reviewing ROBERT KATZMÄNN, *JUDGING STATUTES* (2014)).

¹⁷ Kagan, *supra* note 1, at 32:10.

which, to my mind, leaves something of a hole in his concept of “authoritative” legislative history.¹⁸

Moreover, as many courts have noted over the years, committee reports are not necessarily reliable guides to the meaning of the text. That is especially true when the statutory text represents a compromise among competing interests, as it so often does. Committee reports often may represent an effort by one side to shape future interpretation of the text by judges and executive branch officials, rather than simply a neutral and dispassionate guide to the intended meaning of the terms in the statutory text.¹⁹

There are at least two possible explanations for why Congress does not vote on committee reports. First, Congress might not vote on committee reports (or even on key parts of committee reports) because Congress thinks a vote is unnecessary.²⁰ But if courts tell Congress that voting on those reports is necessary, or at least necessary if Congress wants those reports to be considered authoritative by courts, then Congress could readily decide whether and when to vote on those reports.²¹ Easy enough. That approach would satisfy the camps of both Justice Scalia and Chief Judge Katzmann, a win-win if ever there was one. Alternatively, Congress may not vote on the reports because it might not approve the reports if they came up for a vote.²² Of course, that possibility just proves the point for opponents of using committee reports in the interpretation of statutes.²³ It is hard to consider something “authoritative” if it was not voted on and may actually have been voted *down* if it had been voted on.²⁴

The bottom line is this: if Congress could — but chooses not to — include certain committee reports (or important parts thereof) in the statute, on what legal basis can a court treat the unvoted-on legislative history as “authoritative”?

¹⁸ Later in the book, Chief Judge Katzmann sidesteps this issue: “When Congress passes a law, it can be said to incorporate the materials that it, or at least the law’s principal sponsors (and others who worked to secure enactment), deem useful in interpreting the law” (p. 48). But the passive voice reveals the problem with this assertion. It “can be said” by whom? Congress has not said so, even though it easily could.

¹⁹ See, e.g., *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568–69 (2005); *Blanchard v. Bergeron*, 489 U.S. 87, 98–99 (1989) (Scalia, J., concurring in part and concurring in the judgment); see also Eskridge, *supra* note 1, at 684–90; Adrian Vermeule, *Legislative History and the Limits of Judicial Competence: The Untold Story of Holy Trinity Church*, 50 STAN. L. REV. 1833 (1998).

²⁰ See Manning, *supra* note 16, at 566–67.

²¹ Indeed, as Manning points out, this potential explanation seems even odder given the rise of textualism in the last three decades. He rightly emphasizes “Congress’s continued failure to put legislative history to a vote three decades into a textualist campaign that has put legislative history on uncertain footing in the Supreme Court.” *Id.* at 562.

²² See *id.* at 562, 567–68.

²³ See *id.* at 568–70.

²⁴ *Id.* at 568–69.

B. *The President*

In his description of the legislative process, Chief Judge Katzmann does not talk much about a critical player: the President.²⁵ The President and his or her staff play an essential role in the legislative process. Indeed, the President is the “Legislator in Chief” in some ways — given that no legislation can pass without the President’s approval, unless two-thirds of both Houses override a veto.²⁶ Moreover, the President often jumpstarts the legislative process on a particular subject through speeches or meetings with congressional leaders. The Framers envisioned the President playing such a role when they required that “[h]e shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient.”²⁷ A newly elected President will seek to shape the legislative agenda to advance his or her campaign proposals.²⁸ And Presidents use the State of the Union address — and the bully pulpit more generally — to push for legislation to address particular problems.

Lawyers, academics, and judges too often treat legislation as a one-body process (“the Congress”) or a two-body process (“the House and Senate”). But formally and functionally, it is actually a three-body process: the House, the Senate, and the President. Any theory of statutory interpretation that seeks to account for the realities of the legislative process — as Chief Judge Katzmann’s does — must likewise take full account of the realities of the President’s role in the legislative process.²⁹

Given that the President and the White House staff are not necessarily aware of the committee reports, and given that Members of Congress in one House may not be aware of reports from the other House, I think it is difficult to call those reports “authoritative” in any

²⁵ The relevant chapter is revealingly titled “Congress and the Lawmaking Process” (p. 11).

²⁶ See U.S. CONST. art. I, § 7, cl. 2.

²⁷ *Id.* art. II, § 3.

²⁸ For example, the No Child Left Behind Act and the Patient Protection and Affordable Care Act each addressed a central priority of Presidents George W. Bush and Barack Obama, respectively — and each was passed in the first fifteen months of their respective administrations.

²⁹ It is also true, as those of us who have been involved in the legislative process could explain, that interest groups and other affected parties play a role in the legislative process by, for example, originating language and signing off on language. Will the Chamber of Commerce go for this? What do the unions think? Is the NRA okay with this? What does the Brady Campaign say? Is NRDC good with this version? Has Pharma blessed this? Will Heritage score this bill? What does CAP say? To live in the world of legislative process — at either end of Pennsylvania Avenue — is to live with these questions. This action, which is absolutely critical to the reality of the legislative process, is rarely reflected in committee reports. Or sometimes it may be reflected in a skewed way, as when a lobbyist manages to land in a committee report some language that the lobbyist could not get into the actual statutory text. See, e.g., *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005).

formal or functional sense. Chief Judge Katzmman seems to realize this problem because he suggests forwarding committee reports to the President before the President signs the bill (p. 102). But is a President supposed to veto a bill because of some comment made by one committee of one House? And if the President does not exercise the veto power, does that make a comment by one committee of one House an authoritative guide to the statutory text?

C. How Committee Reports Signal Agencies

After examining the lawmaking process, Chief Judge Katzmman describes how executive and independent agencies interpret enacted statutes (pp. 23–28). Agencies must interpret statutes, both in order to issue rules and in order to determine whether to bring an enforcement action against someone who may have violated the law.

In this realm, as Chief Judge Katzmman points out, committee reports can be particularly important signals to the agencies. Members of Congress have many tools at their disposal to put pressure on agency officials. Those tools include appropriations, oversight hearings, confirmation hearings, and even phone calls and letters from Members to agency officials (pp. 24–25). The committee reports likewise serve as a signal to agency officials about how to exercise their rulemaking and enforcement discretion (p. 26).

Chief Judge Katzmman's observation here is extremely important and too often overlooked. Committee reports may and do legitimately influence agency conduct in exercising the discretion granted to them by the statutory text. Indeed, to the extent a statute grants discretion to an agency — and Members of Congress want to influence how that discretion is exercised (as they are permitted to do) — committee reports are actually a far more transparent tool than some of the alternatives, such as phone calls to agency officials threatening to cut appropriations if discretion is not exercised in a certain way. Suppose, for example, that a statute grants an agency that oversees mergers the discretion to adopt rules that ensure fair competition. A committee report that identifies the level of permissible concentration in an industry is more transparent than a later phone call from the committee chair to the agency head in which the committee chair says a particular merger is problematic. (Of course, an agency should feel free legally, albeit perhaps not politically, to ignore both kinds of signals.) Anyone who says *courts* should pay less attention to committee reports must nonetheless acknowledge that committee reports may serve an important and legitimate purpose for the executive and independent agencies that must implement the statutes and exercise any discretion granted them by statute.

That reality, no doubt, is one reason why Congress keeps producing committee reports even as courts have relied less and less on legislative

history over time. Agencies rely on those reports in the same way they might rely on other informal signals from Congress. So Congress has an appropriate reason and an incentive to keep producing the reports.

D. Courts and Legislative History

After analyzing agencies' reliance on legislative history, Chief Judge Katzmman turns to judicial interpretation of statutes (pp. 29–54). This chapter is the meat of the book. Chief Judge Katzmman's overriding point is that courts should use legislative history — in particular, committee reports — to interpret statutes (p. 31).

Chief Judge Katzmman correctly acknowledges that “[l]egislative history is not the law” (p. 38). But he adds that legislative history “can help us understand what the law means” (p. 38).

To understand Chief Judge Katzmman's point, it is important at the outset to appreciate that there are two primary uses of legislative history:

- (1) Use legislative history to resolve ambiguities in the text.
- (2) Use legislative history to override the clear text when following the text would contradict Congress's apparent intent. This proposition is also known as the *Holy Trinity*³⁰ principle.

Chief Judge Katzmman quite clearly advocates for the first use of legislative history, saying that judges should use legislative history whenever they are faced with an ambiguous text. Many judges nominally agree with that proposition, although Justice Scalia did not. But there are real debates over how quickly one should find ambiguity — much more on that point later — and whether legislative history ever really changes the outcome the judge otherwise would have reached.³¹

The second use of legislative history is far more controversial. It reflects a kind of broad “mistake canon” associated with the old 1892 *Holy Trinity* case. In *Holy Trinity*, as Chief Judge Katzmman explains (p. 32), the Supreme Court departed from the clear text of an immigration statute based on the legislative history and “spirit” of the law.³² Importantly, *Holy Trinity* used legislative history not simply to determine the meaning of an *ambiguous* text, but instead to override the meaning of otherwise *clear* text on the theory that the text must reflect

³⁰ *Church of the Holy Trinity v. United States*, 143 U.S. 457 (1892).

³¹ See Kagan, *supra* note 1, at 25:06 (describing most treatments of legislative history at the Supreme Court as “icing on a cake already frosted”); see also *Yates v. United States*, 135 S. Ct. 1074, 1093 (2015) (Kagan, J., dissenting) (“And legislative history, for those who care about it, puts extra icing on a cake already frosted.”).

³² See *Holy Trinity*, 143 U.S. at 461.

a mistake.³³ The basic idea is that the Court did not think Congress meant what it said — that the text was in part a mistake.

Even though *Holy Trinity* has never expressly been overruled, its mode of using legislative history to override clear text is rarely used in modern Supreme Court decisions.³⁴ The modern rule, as the Supreme Court has repeated often, is that clear text controls even in the face of contrary legislative history.

Does Chief Judge Katzmman agree? It's not entirely clear. Chief Judge Katzmman says that "[w]hen a statute is unambiguous, resorting to legislative history is *generally* not necessary; in that circumstance, the inquiry ordinarily ends" (p. 48).³⁵ But the word "generally" may be an important caveat. And when Chief Judge Katzmman describes several cases he's decided, he seems to indicate that legislative history may be used to override the meaning of *clear* statutory language, and not just to interpret ambiguous statutory language.³⁶ And that's *Holy Trinity* in a nutshell.

If he were advancing a return to *Holy Trinity*, then Chief Judge Katzmman would be mounting a critique of the heart of textualism. As the Supreme Court now says, when the text is clear, judicial inquiry is at an end. In what some have described as "the bad old days" before Justice Scalia,³⁷ that was not the rule.³⁸

But perhaps I am reading too much into what Chief Judge Katzmman says. He may simply be making the narrower (and less controversial) claim that legislative history should be used to resolve ambiguities.

³³ See *id.* at 458–59, 463–65.

³⁴ See, e.g., *Allapattah*, 545 U.S. at 568 ("As we have repeatedly held, the authoritative statement is the statutory text, not the legislative history or any other extrinsic material. Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms."); *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999) ("As in any case of statutory construction, our analysis begins with 'the language of the statute.' And where the statutory language provides a clear answer, it ends there as well." (quoting *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992))). For an argument that the Roberts Court is resurrecting *Holy Trinity*, see Richard M. Re, *The New Holy Trinity*, 18 GREEN BAG 2d 407 (2015).

³⁵ Emphasis has been added.

³⁶ See *infra* section I.E, pp. 2129–33.

³⁷ Paul Clement, Opinion, *Arguing Before Justice Scalia*, N.Y. TIMES (Feb. 17, 2016), <http://www.nytimes.com/2016/02/17/opinion/arguing-before-justice-scalia.html> ("A few years back, during oral argument, Justice Antonin Scalia asked me when I thought 'the bad old days' — when the Supreme Court routinely looked beyond the text of statutes — had ended? I said, 'The bad old days ended when you got on the court, Mr. Justice Scalia.'"); see also Transcript of Oral Argument at 46, *CBOCS West, Inc. v. Humphries*, 553 U.S. 442 (2008) (No. 06-1431).

³⁸ *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) ("We begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. *Absent a clearly expressed legislative intention to the contrary*, that language must ordinarily be regarded as conclusive." (emphasis added)).

In any event, after finishing with legislative history, Chief Judge Katzmann turns to the canons of statutory construction (pp. 50–54). Chief Judge Katzmann says that many canons may “fail to reflect the reality of the legislative process” (p. 52). I agree. But his solution is not to try to fix the canons (as I would do³⁹). Instead, Chief Judge Katzmann offers canon failure as another reason to use legislative history. But I am not sure that his proposed solution follows from the problem. If the problem is the canons, then we should revise the canons.

E. Case Examples

After setting out his doctrinal framework, Chief Judge Katzmann walks us through a few cases that he has decided on the Second Circuit, and that the Supreme Court subsequently reviewed (pp. 55–91). This chapter is an especially illuminating part of *Judging Statutes*. I appreciate Chief Judge Katzmann’s willingness to elucidate his own thinking in such a candid and educational way.

Chief Judge Katzmann begins the section with an important statement:

Most judges, in my experience, are neither wholly textualists nor wholly purposivists (that is, seekers of purpose). Purposivists tend not to go beyond the words of an unambiguous statute; at times, textualists look to purposes and extratextual sources such as dictionaries. What sets the two apart is a difference in emphasis and the tools they employ to find meaning. (p. 55)

This passage is important, and I have two reactions to it. First, in my view, another critical difference between textualists and purposivists is that, for a variety of reasons, textualists tend to find language to be clear rather than ambiguous more readily than purposivists do. One need look no further than the statements of the archetypal textualist, Justice Scalia, for confirmation of this point.⁴⁰ As a result, textualists tend to resort less often to ambiguity-dependent canons and tools of construction such as constitutional avoidance, legislative history, and *Chevron*. Second, textualists look to legislative history only infrequently, and even then only to resolve cases of true statutory ambiguity. They never use legislative history to depart from

³⁹ See *infra* Part III, pp. 2159–62.

⁴⁰ See, e.g., Antonin Scalia, *Judicial Deference to Administrative Interpretations of Law*, 1989 DUKE L.J. 511, 521 (“In my experience, there is a fairly close correlation between the degree to which a person is (for want of a better word) a ‘strict constructionist’ of statutes, and the degree to which that person favors *Chevron* and is willing to give it broad scope. The reason is obvious. One who finds *more* often (as I do) that the meaning of a statute is apparent from its text and from its relationship with other laws, thereby finds *less* often that the triggering requirement for *Chevron* deference exists.”); see also Kagan, *supra* note 1, at 56:54 (noting differences between her and Justice Scalia over “the quickness with which we find ambiguity”).

otherwise clear statutory text (the *Holy Trinity* approach⁴¹), whereas some purposivists sometimes seem to do so, at least subtly.

Chief Judge Katzmman then proceeds through three cases as examples of his jurisprudence and theory.

In *Raila v. United States*,⁴² the plaintiff slipped on a package that a postal worker had left at her door.⁴³ The plaintiff filed suit against the United States under the Federal Tort Claims Act.⁴⁴ But that statute exempted “[a]ny claim arising out of the . . . negligent transmission of letters or postal matter.”⁴⁵

Writing for his Second Circuit panel, Chief Judge Katzmman explained that the statute was ambiguous as applied to the facts.⁴⁶ Relying primarily on its assessment of the broad statutory purposes — including the purpose of allowing plaintiffs to recover when injured by federal officials except in certain circumstances — the court held that the plaintiff’s claim was not exempt and did not involve the transmission of letters.⁴⁷

By a 7-1 vote, with Justice Kennedy writing, the Supreme Court agreed with the Second Circuit’s conclusion, but the Supreme Court relied on more textualist and canon-based reasoning.⁴⁸ The Supreme Court reasoned that the phrase “negligent transmission of letters or postal matter” in its ordinary meaning refers to mail that fails to arrive, arrives late, arrives at the wrong address, or is damaged.⁴⁹

As I see it, this case, while interesting, does not show us too much. The Supreme Court did not need to (and did not) go much beyond what was the best reading of the statutory text.⁵⁰ And given that negligent transmission of the mail is not usually understood as tripping someone with the mail, that was the beginning and end of it for the Supreme Court.

The second case, *United States v. Gayle*,⁵¹ concerned a provision of the Gun Control Act of 1968⁵² that prohibited the possession of fire-

⁴¹ See *Church of the Holy Trinity v. United States*, 143 U.S. 457, 459 (1892) (“It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers.”).

⁴² 355 F.3d 118 (2d Cir. 2004).

⁴³ *Id.* at 119.

⁴⁴ 28 U.S.C. §§ 1346(b), 2671–80 (2012).

⁴⁵ *Id.* § 2680(b).

⁴⁶ *Raila*, 355 F.3d at 120 (“The meaning of the words ‘negligent transmission’ is not self-evident.”).

⁴⁷ *Id.* at 121–23.

⁴⁸ See *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006).

⁴⁹ See *id.* at 486–87, 489.

⁵⁰ The Supreme Court also applied the *noscitur a sociis* semantic canon. See *id.* at 486–87. It does not appear that the canon did much independent work in that case, however.

⁵¹ 342 F.3d 89 (2d Cir. 2003).

⁵² Pub. L. No. 90-618, 82 Stat. 1213 (codified as amended in scattered sections of 18 and 26 U.S.C.).

arms by anyone who had been “convicted in any court of, a crime punishable by imprisonment for a term exceeding one year.”⁵³ The controversy there involved people who had been convicted in a foreign court rather than an American court.⁵⁴ Were they covered by this statute?⁵⁵

The Second Circuit concluded that “in any court” did not include foreign courts.⁵⁶ According to Chief Judge Katzmann, the phrase “in any court” was “ambiguous” (p. 74).⁵⁷ The panel therefore turned to the legislative history and concluded that the Senate Report “unmistakably contemplated felonies, for purposes of the Gun Control Act, to include only convictions in federal and state courts” of the United States.⁵⁸

The Supreme Court came to the same conclusion by a 5–3 vote, with an opinion written by Justice Breyer.⁵⁹ Importantly, however, the Supreme Court never said that the phrase “in any court” was ambiguous.⁶⁰ Instead, the Court relied partly on a variation of a substantive canon of construction: the presumption against extraterritorial application.⁶¹ The Court concluded that domestically oriented statutes should apply only domestically in the absence of contrary signals from Congress.⁶²

Justice Thomas, joined by Justices Scalia and Kennedy, dissented.⁶³ He would have held that “any court” means “any court.”⁶⁴ He said that the presumption against extraterritoriality had no application in this context.⁶⁵ In response to the Court’s use of legislative history, Justice Thomas also explained that he read the provision’s drafting history — in which the original draft that specified any felony conviction in

⁵³ 18 U.S.C. § 922(g)(1) (2000).

⁵⁴ *Gayle*, 342 F.3d at 90.

⁵⁵ Of course, in a case like this, the Government should have to prove that the defendant *knew* that he was ineligible to possess firearms — for example, by notice provided to him by the Government. See *United States v. Burwell*, 690 F.3d 500, 529 (D.C. Cir. 2012) (en banc) (Kavanaugh, J., dissenting) (“The presumption of mens rea applies to each element of the offense.”); see also *United States v. Moore*, 612 F.3d 698, 704 (D.C. Cir. 2010) (Kavanaugh, J., concurring).

⁵⁶ See *Gayle*, 342 F.3d at 90.

⁵⁷ See also *id.* at 90, 92–93. The Second Circuit also noted that certain federal and state offenses were excluded from the list of predicate offenses. The Second Circuit thought it odd that Congress would exclude federal and state offenses, but not foreign offenses of the same character. *Id.* at 93.

⁵⁸ *Id.* at 94.

⁵⁹ See *Small v. United States*, 544 U.S. 385, 387 (2005). Chief Justice Rehnquist took no part in the decision.

⁶⁰ See *Small*, 544 U.S. 385.

⁶¹ See *id.* at 388–91.

⁶² See *id.* at 390–91.

⁶³ *Id.* at 394 (Thomas, J., dissenting).

⁶⁴ *Id.* at 395.

⁶⁵ *Id.* at 399–401.

a “Federal” or “State” court was replaced by the phrase “any court” — to confirm his reading of the text.⁶⁶

In terms of the statutory text alone, Justice Thomas’s dissent for himself and Justices Scalia and Kennedy is more persuasive than the majority opinion of the Supreme Court. That said, the majority opinion did illustrate how substantive canons of interpretation — there, the presumption against extraterritoriality — can play an important role in statutory interpretation by sometimes overriding the best interpretation of even clear text. Importantly, none of the eight Justices said the phrase “in any court” was ambiguous.

The last case discussed by Chief Judge Katzmann, *Murphy v. Arlington Central School District Board of Education*,⁶⁷ is perhaps the most important and intriguing of the three in order to understand his point of view. The relevant statute — the Individuals with Disabilities Education Act⁶⁸ (IDEA) — allowed the court to award “reasonable attorneys’ fees as part of the costs” to prevailing plaintiffs.⁶⁹ The question was whether this statute allowed the award of the costs of expert witnesses and consultants.⁷⁰ Importantly, the legislative history (in particular, a committee report) suggested that the answer to that question was yes, even though the statutory language supplied no indication that the statute meant to cover the costs of expert witnesses and consultants. In essence, this was a classic *Holy Trinity* case. What Congress said in the statutory text did not appear to square with what Congress meant to say, at least if the committee report could be said to authoritatively reflect Congress’s intent.

The Second Circuit acknowledged that the text of the statute did not encompass these expert witness fees.⁷¹ But the court nonetheless read the legislative history and the larger purposes of the statute to contemplate fee awards for expert witnesses and consultants.⁷² As the Second Circuit noted, the committee report stated that the conferees intended the term “reasonable attorneys’ fees as part of the costs” to encompass expert witness fees.⁷³

The Supreme Court reversed, concluding that the phrase “reasonable attorneys’ fees as part of the costs” did not encompass expert witness fees.⁷⁴ The decision was 6–3 and written by Justice

⁶⁶ *Id.* at 406–07.

⁶⁷ 402 F.3d 332 (2d. Cir. 2005), *rev’d*, 548 U.S. 291 (2006).

⁶⁸ 20 U.S.C. §§ 1400–1482 (2012).

⁶⁹ *Id.* § 1415(i)(3)(B).

⁷⁰ *Murphy*, 402 F.3d at 333.

⁷¹ *See id.* at 336.

⁷² *See id.* at 336–38.

⁷³ *See id.* at 336–37 (citing H.R. REP. NO. 99-687, at 5 (1986) (Conf. Rep.)).

⁷⁴ *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 293–94 (2006).

Alito.⁷⁵ The Court expressly rejected the notion that legislative history could defeat an unambiguous text.⁷⁶ In doing so, the Court once again rejected the *Holy Trinity* principle.⁷⁷ The Court also noted that the IDEA was enacted under the Spending Clause, meaning that States would be required to pay only if the Act provided “clear notice” that expert witness fees were covered, which the Act did not.⁷⁸

In dissent, Justice Breyer adopted a *Holy Trinity*-style approach. He criticized the majority’s refusal to prioritize the legislative history over the text in this instance. “By disregarding a clear statement in a legislative Report,” he wrote, “the majority opinion has reached a result that no Member of Congress expected or overtly desired.”⁷⁹

F. Improving Congress’s Drafting of Statutes

In the final pages of his book, Chief Judge Katzmman promotes ideas for improving mutual understanding between the legislature and the courts (pp. 92–103). Although he correctly says that it would be “fanciful” to think that Congress could do away entirely with ambiguity in laws, he points out that there are nevertheless several ways Congress could help clarify legislative meaning (p. 93).

First, Chief Judge Katzmman suggests that “legislators and their staffs should make greater use of the skilled legislative drafters in their offices of legislative counsel” (p. 93). These offices could maintain a checklist of common issues, including statutes of limitations, private rights of action, preemption, and effective dates (p. 93). I agree fully with this excellent suggestion.

Chief Judge Katzmman also suggests that Congress formally adopt a series of default rules that become effective when the legislative branch has not dealt with a particular issue in a statute (p. 94). For example, Congress could enact a default statute of limitations (p. 94). Again, this is a great idea.⁸⁰

Chief Judge Katzmman also says that Congress should be more ready and willing to fix statutes when mistakes become apparent in later court cases (pp. 94–102). Again, I agree, although I am always quick to stress that it is much harder to enact statutes than it is to block them. For a court to say that Congress can fix a statute if it does not like the result is *not* a neutral principle in our separation of

⁷⁵ *Id.* at 293. Justice Alito wrote for a five-Justice majority, and Justice Ginsburg concurred in part and concurred in the judgment. *Id.*

⁷⁶ *Id.* at 296–97, 304.

⁷⁷ *See id.*; *see also infra* notes 190–195 and accompanying text.

⁷⁸ *See Murphy*, 548 U.S. at 295–98.

⁷⁹ *See id.* at 324 (Breyer, J., dissenting).

⁸⁰ *Cf.* Gregory E. Maggs, *Reducing the Costs of Statutory Ambiguity: Alternative Approaches and the Federal Courts Study Committee*, 29 HARV. J. ON LEGIS. 123, 158–60 (1992). *See generally* EINER ELHAUGE, STATUTORY DEFAULT RULES (2008).

powers scheme because it is very difficult for Congress to correct a mistaken statutory decision.⁸¹ The backdrop of possible congressional correction is not a good reason for courts to do anything but their level best to decide the case correctly in the first place.

Chief Judge Katzmman also argues for making legislative history more reliable (pp. 102–03). For example, he asks that the floor managers of a bill indicate which legislative reports count as authoritative (p. 102). To my mind, however, this suggestion quite elegantly reveals one of the concerns with legislative history. Legislative history is not authoritative — at least in a formal sense — because Congress does not vote on it. Allowing the floor managers (a tiny fraction of the Members of Congress necessary to pass the law) to designate particular documents as “authoritative” does not solve that problem. As I mentioned earlier, there’s an easy solution to that problem: put the key committee or conference reports (or at least the key provisions of them) into the statute itself and have the Members of Congress vote on it.⁸² Then it would be both formally and functionally authoritative. In my view, implementing that proposal would be more effective and far more acceptable to all judges than what Chief Judge Katzmman proposes here.

II. MY THESIS: ELIMINATING OR REDUCING THRESHOLD DETERMINATIONS OF CLARITY VERSUS AMBIGUITY

Chief Judge Katzmman’s book should trigger more introspection and debate about statutory interpretation by judges, scholars, and practitioners. It has certainly done so for me. Chief Judge Katzmman has pushed me to think even more deeply about some of these issues than I had before. Of course, he is not to blame for where my thinking has led me.

Chief Judge Katzmman’s discussion of using legislative history to resolve ambiguities triggers my first big question: how do we determine whether the text of a statute is clear or ambiguous?

A. Judges Have Trouble Determining Whether a Statute Is Clear or Ambiguous

In recent years, the Supreme Court has often repeated a critical principle: when the text of the statute is clear, the court does not resort

⁸¹ As Judge Easterbrook nicely put it before he took the bench: “There are a hundred ways in which a bill can die even though there is no opposition to it.” Frank H. Easterbrook, *Statutes’ Domains*, 50 U. CHI. L. REV. 533, 538 (1983).

⁸² See *supra* notes 16–24 and accompanying text. See generally Manning, *supra* note 16.

to legislative history.⁸³ Likewise, when the text of the statute is clear, a court should not turn to other principles of statutory interpretation such as the constitutional avoidance canon or *Chevron* deference. Chief Judge Katzmman himself notes this point many times.⁸⁴

Under the structure of our Constitution, Congress and the President — not the courts — together possess the authority and responsibility to legislate.⁸⁵ As a result, clear statutes are to be followed. Statutory texts are not just common law principles or aspirations to be shaped and applied as judges think reasonable.⁸⁶ This tenet — adhere to the text — is neutral as a matter of politics and policy. The statutory text may be pro-business or pro-labor, pro-development or pro-environment, pro-bank or pro-consumer. Regardless, judges should follow clear text where it leads.

At the same time, when the text of the statute is ambiguous rather than clear, judges may resort to a variety of canons of construction. These ambiguity-dependent canons include: (1) in cases of textual ambiguity, avoid interpretations raising constitutional questions; (2) rely on the legislative history to resolve textual ambiguity; and (3) in cases of textual ambiguity, defer to an executive agency's reasonable interpretation of a statute, also known as *Chevron* deference.⁸⁷

All of these canons, however, depend on a problematic threshold dichotomy.⁸⁸ Courts may resort to the canons only if the statute is not

⁸³ See, e.g., *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999) (“[W]here the statutory language provides a clear answer, [our analysis] ends there . . .”).

⁸⁴ As Chief Judge Katzmman recognizes, in most cases “the interpretive problem arises because the statute is ambiguous” (p. 30). For if the statute is unambiguous, then “the inquiry for a court generally ends with an examination of the words of the statute” (p. 29). But, Chief Judge Katzmman continues, “[w]hen the text is ambiguous, a court is to provide the meaning that the legislature intended. In that circumstance, the judge gleans the purpose and policy underlying the legislation and deduces the outcome most consistent with those purposes” (pp. 31–32). In doing so, he argues, the court should rely on legislative history, particularly “authoritative” committee reports (p. 38).

⁸⁵ See, e.g., Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 HARV. L. REV. 405, 415 (1989).

⁸⁶ See *id.*

⁸⁷ A number of other canons also depend on a threshold finding of ambiguity, such as the rule of lenity and the *Charming Betsy* canon. I do not address all such canons in this Book Review. In any event, as I say in the text, each ambiguity-dependent canon should be independently evaluated. I am not proposing a one-size-fits-all solution.

⁸⁸ Chief Judge Katzmman does not address this threshold dichotomy, even though he highlights its significance. He frames the choice judges face in interpreting statutes in this way: “Should the judge confine herself to the text even when the language is ambiguous? Should the judge, in seeking to make sense of an ambiguity or vagueness, go behind the text of the statute to legislative materials, and if so, to which ones?” (p. 3). Buried in this question, however, is the critical threshold question of whether the statute is ambiguous in the first place.

Chief Judge Katzmman does not directly engage this question. In fact, few do, at least in any detailed way. Professor Ward Farnsworth probably has done so best. See Ward Farnsworth et al., *Ambiguity About Ambiguity: An Empirical Inquiry into Legal Interpretation*, 2 J. LEGAL

clear but rather is ambiguous.⁸⁹ But how do courts know when a statute is clear or ambiguous? In other words, how much clarity is sufficient to call a statute clear and end the case there without triggering the ambiguity-dependent canons?

Unfortunately, there is often no good or predictable way for judges to determine whether statutory text contains “enough” ambiguity to cross the line beyond which courts may resort to the constitutional avoidance canon, legislative history, or *Chevron* deference. In my experience, judges will often go back and forth arguing over this point. One judge will say that the statute is clear, and that should be the end of it. The other judge will respond that the text is ambiguous, meaning that one or another canon of construction should be employed to decide the case. Neither judge can convince the other.⁹⁰ That’s because there is no right answer.

It turns out that there are at least two separate problems facing those disagreeing judges.⁹¹

ANALYSIS 257 (2010); *see also* Re, *supra* note 34; Brian G. Slocum, *The Importance of Being Ambiguous: Substantive Canons, Stare Decisis, and the Central Role of Ambiguity Determinations in the Administrative State*, 69 MD. L. REV. 791 (2010); Lawrence M. Solan, *Pernicious Ambiguity in Contracts and Statutes*, 79 CHI.-KENT L. REV. 859 (2004); Note, “How Clear Is Clear” in *Chevron’s Step One?*, 118 HARV. L. REV. 1687 (2005); *cf.* JOHN F. MANNING & MATTHEW C. STEPHENSON, *LEGISLATION AND REGULATION* 171 (2d ed. 2013) (“Another concern here is just how one defines or determines ‘ambiguity’ in the statute’s semantic meaning.”); Susannah Landes Foster, Note, *When Clarity Means Ambiguity: An Examination of Statutory Interpretation at the Environmental Protection Agency*, 96 GEO. L.J. 1347, 1362 (2008) (“A fair question is how agencies should figure out when Congress has been clear.”).

⁸⁹ *See* Solan, *supra* note 88, at 861 (“Part of the problem is that the law has only two ways to characterize the clarity of a legal text: It is either plain or it is ambiguous. The determination is important. Whether the text is a statute, a contract, or an insurance policy, once a court finds the language to be plain, it will typically refrain from engaging in a variety of contextually-based interpretive practices.”); *see also id.* at 862.

⁹⁰ *See* Farnsworth et al., *supra* note 88, at 276.

⁹¹ Of course, this analysis makes two assumptions.

First, it assumes that judges can agree on the meaning of “clarity” and “ambiguity” in the first place. But as a number of scholars have pointed out, there are many — and conflicting — definitions of these two terms. *See, e.g.*, WILLIAM D. POPKIN, *A DICTIONARY OF STATUTORY INTERPRETATION* 11 (2007) (observing that “[a]mbiguity” is ambiguous,” and then providing three different definitions); Farnsworth et al., *supra* note 88, at 258 (distinguishing between external and internal judgments about ambiguity); Slocum, *supra* note 88, at 799–802; Sanford Schane, *Ambiguity and Misunderstanding in the Law*, 25 T. JEFFERSON L. REV. 167, 171–72 (2002) (distinguishing between lexical ambiguity and syntactic ambiguity); *see also* Solan, *supra* note 88, at 859 (“The problem, perhaps ironically, is that the concept of *ambiguity* is itself perniciously ambiguous.”). To complicate things even further, different definitions of ambiguity can lead to different outcomes. *See* Farnsworth et al., *supra* note 88, at 271 (“[D]ifferent ways of asking about ambiguity produce different conclusions about its existence.”).

Second, it assumes that the line dividing ambiguity from clarity remains the same across (and within) all doctrines. In other words, this analysis assumes that the level of ambiguity necessary for moving to step two of *Chevron* is the same level of ambiguity required before a court may consult legislative history. But who knows whether that’s true? In fact, in some cases, the Supreme Court has implied a different clarity versus ambiguity threshold for certain doctrines.

First, judges must decide how much clarity is needed to call a statute clear.⁹² If the statute is 60-40 in one direction, is that enough to call it clear? How about 80-20? Who knows?

Second, let's imagine that we could agree on an 80-20 clarity threshold. In other words, suppose that judges may call a text "clear" only if it is 80-20 or more clear in one direction. Even if we say that 80-20 is the necessary level of clear, how do we then apply that 80-20 formula to particular statutory text? Again, who knows? Determining the level of ambiguity in a given piece of statutory language is often not possible in any rational way.⁹³ One judge's clarity is another judge's ambiguity. It is difficult for judges (or anyone else) to perform that kind of task in a neutral, impartial, and predictable fashion.⁹⁴

I tend to be a judge who finds clarity more readily than some of my colleagues but perhaps a little less readily than others.⁹⁵ In practice, I probably apply something approaching a 65-35 rule. In other words, if the interpretation is at least 65-35 clear, then I will call it clear and reject reliance on ambiguity-dependent canons. I think a few of my colleagues apply more of a 90-10 rule, at least in certain cases. Only if the proffered interpretation is at least 90-10 clear will they call it clear.⁹⁶ By contrast, I have other colleagues who appear to apply a 55-

See, e.g., *Chapman v. United States*, 500 U.S. 453, 463 (1991) (describing the rule of lenity as triggered by "grievous ambiguity" (quoting *Huddleston v. United States*, 415 U.S. 814, 831 (1974))). Some scholars have even suggested tailoring the clarity versus ambiguity threshold not only to doctrines, but also to individual cases within a single doctrine. *See, e.g.,* Note, *supra* 88, at 1699-703 (suggesting that *Chevron's* step one inquiry could be calibrated based on the type of delegation and agency at issue).

⁹² *See* Slocum, *supra* note 88, at 808 (noting "the lack of consensus regarding the probabilistic threshold an interpretation must meet in order to render a statutory provision unambiguous"); Note, *supra* 88, at 1698; *see also* Kagan, *supra* note 1, at 58:20 ("Some people think things are clear in circumstances in which other people think there's still a lot of question marks.").

⁹³ *See* Farnsworth et al., *supra* note 88, at 276 (noting that there are no legal standards for ambiguity, and there is "no way to falsify a judge's claim one way or the other").

⁹⁴ *See id.* ("[I]mpressionistic judgments are doing important work.").

⁹⁵ For an example of conflicting thresholds at work, *see Northeast Hospital Corp. v. Sebelius*, 657 F.3d 1 (D.C. Cir. 2011). In that case, the majority found the Medicare statute ambiguous as to whether a hospital patient who "receives Medicare benefits under Medicare Part C for a particular 'patient day[]' is . . . also 'entitled' for that same 'patient day' to Medicare benefits under Medicare Part A." *Id.* at 18 (Kavanaugh, J., concurring in the judgment); *see also id.* at 11 (majority opinion). The majority admitted the difficulties in the agency's position, but chose to defer to the agency under *Chevron* because it was "faced with two inconsistent sets of statutory provisions." *Id.* at 11. In contrast, I found the statute clear and declined to defer to the agency. *Id.* at 18 (Kavanaugh, J., concurring in the judgment).

⁹⁶ Judge Silberman explains that:

[E]ven assuming one is scrupulously honest in reading a statute thoroughly and looking carefully at its linguistic structure, legitimate ambiguities, which give room for differing good-faith interpretations, more often than not appear in our cases. If a case is resolved at the first step of *Chevron*, one must assume a situation where either a petitioner has brought a particularly weak case to the court of appeals, or the agency is sailing directly against a focused legislative wind. Neither eventuality occurs very often. Litigation is

45 rule. If the statute is at least 55-45 clear, that's good enough to call it clear.⁹⁷

Who is right in that debate? Who knows? No case or canon of interpretation says that my 65-35 approach or my colleagues' 90-10 or 55-45 approach is the correct one (or even a better one). Of course, even if my colleagues and I could agree on 65-35, for example, as the appropriate trigger, we would still have to figure out whether the text in question surmounts that 65-35 threshold. And that itself is a difficult task for different judges to conduct neutrally, impartially, and predictably.

The simple and troubling truth is that no definitive guide exists for determining whether statutory language is clear or ambiguous. In a considerable understatement, the Supreme Court itself has admitted that "there is no errorless test for identifying or recognizing 'plain' or 'unambiguous' language."⁹⁸ Professor Ward Farnsworth has elaborated persuasively on that point, arguing that "[t]here are no rules or clear agreements among judges about just how to decide whether a text is ambiguous."⁹⁹ As he puts it:

For making that determination, no theory helps; it is simply a judgment about the clarity of the English and whether it is reasonable to read it more than one way. It may be that the holders of some theories are more likely to answer that question one way rather than another, but the theories themselves are incapable of generating answers.¹⁰⁰

That conceptual problem opens the door to a more practical concern. "[J]udgments about ambiguity . . . are dangerous," Farnsworth concludes, "because they are easily biased by strong policy preferences that the makers of the judgments hold."¹⁰¹ Because judgments about

expensive for private parties and agencies are rarely so cavalier in interpreting their statutes.

Laurence H. Silberman, Chevron — *The Intersection of Law & Policy*, 58 GEO. WASH. L. REV. 821, 826 (1990).

⁹⁷ Justice Scalia self-identified into this camp. See Scalia, *supra* note 40, at 521.

⁹⁸ *United States v. Turkette*, 452 U.S. 576, 580 (1981).

⁹⁹ Farnsworth et al., *supra* note 88, at 273; see also *id.* at 275 ("[T]here is 'no errorless test' (indeed, there is no strictly *legal* test at all) for deciding whether a text is clear. Again, there are theories that say what to do *when* a statute is ambiguous, but there are no theories that help determine *whether* a statute is ambiguous, as by offering metrics for measuring its clarity or standards that the clarity must meet.").

¹⁰⁰ *Id.* at 274 (emphasis omitted) (footnote omitted); see also Slocum, *supra* note 88, at 795 ("[T]he selection of interpretive tools to provide contextual evidence of ambiguity, the persuasive force to give each interpretive tool, and the point at which the interpretive tools are deemed not to signal a correct meaning are, among other related issues, entirely matters of judicial judgment.").

¹⁰¹ Farnsworth et al., *supra* note 88, at 290; see also *id.* at 271 ("[S]imple judgments of ambiguity create a substantial risk of bias from policy preferences that the makers of the judgments hold. When respondents are asked how ambiguous a statute seems or whether two proposed readings of it are plausible, their judgments about the answers tend to follow the strength of their preferences about the outcome as a matter of policy: the more strongly they prefer one reading over the other,

clarity versus ambiguity turn on little more than a judge's instincts, it is harder for judges to ensure that they are separating their policy views from what the law requires of them.¹⁰² And it's not simply a matter of judges trying hard enough: policy preferences can seep into ambiguity determinations in subconscious ways.¹⁰³ As a practical matter, judges don't make the clarity versus ambiguity determination behind a veil of ignorance; statutory interpretation issues are all briefed at the same stage of the proceeding, so a judge who decides to open the ambiguity door already knows what he or she will find behind it.

Unfortunately, moreover, the clarity versus ambiguity question plays right into what many consider to be the worst of our professional training. As lawyers, we are indoctrinated from the first days of law school to find ambiguity in even the clearest of pronouncements. It is no accident that the most popular law school exam preparation book is titled *Getting to Maybe*.¹⁰⁴ When we practice law, we look for the ambiguity when defending a criminal defendant, a corporate client, an agency, or even a President. What may look clear to everyone else, lawyers argue, is actually not so clear. Maybe it is good that we do this as lawyers (although I am not so sure because I think it leads some lawyers to green-light clients to do things that they should not do). But it is one reason that many people hate lawyers.¹⁰⁵ And it can be pernicious when we bring that instinct onto the bench and employ it to make statutory interpretation much more difficult and unpredictable than it can and should be.¹⁰⁶

The problem of difficult clarity versus ambiguity determinations would not be quite as significant if the issue affected cases only on the margins. But the outcome of many cases turns on the initial — and

the more likely they are to say that the statute is unambiguous or that only one reading of the text is plausible.”).

¹⁰² See *id.* at 276 (“Perhaps this is not surprising; in the absence of any legal test to guide one’s thought process about clarity, one’s own strong views about policy might be a natural or at any rate an inevitable place to go for guidance.”).

¹⁰³ See, e.g., Dan M. Kahan, *The Supreme Court, 2010 Term — Foreword: Neutral Principles, Motivated Cognition, and Some Problems for Constitutional Law*, 125 HARV. L. REV. 1, 19–26 (2011). In his study, Farnsworth found that judgments about ambiguity were not affected by policy preferences when respondents were asked “whether ordinary readers of English would be likely to agree on the best reading of the statute in that case.” Farnsworth et al., *supra* note 88, at 272. But as noted earlier, courts have not distinguished doctrinally between different definitions of ambiguity in a way that might prevent policy preferences from influencing ambiguity determinations. See *supra* note 91.

¹⁰⁴ RICHARD MICHAEL FISCHL & JEREMY PAUL, *GETTING TO MAYBE* (1999).

¹⁰⁵ Cf. WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH* act. 4, sc. 2, l. 71 (Roger Warren ed., Oxford University Press 2002) (1591) (“The first thing we do, let’s kill all the lawyers.”).

¹⁰⁶ See Silberman, *supra* note 96, at 826 (“[V]irtually any phrase can be rendered ambiguous if a judge tries hard enough.”); cf. CLARK M. NEILY III, *TERMS OF ENGAGEMENT* 115 (2013) (noting critically that “lawyers are trained to find ambiguity in *anything*”).

often incoherent — dichotomy between ambiguity and clarity. As Farnsworth correctly notes: “Determinations of ambiguity are the linchpin of statutory interpretation.”¹⁰⁷

As a result, there can be serious incentives and pressures — often subconscious — for judges to find textual ambiguity or clarity in certain cases.¹⁰⁸ For example, a judge may find that the answer provided by the legislative history accords better with the judge’s sense of reason, justice, or policy. In that situation, the judge is subtly incentivized to categorize the statute as ambiguous in order to create more room to reach a result in line with what the judge thinks is a better, more reasonable policy outcome. Conversely, the judge may conclude that the interpretation offered by an agency does not accord with the judge’s sense of reason, justice, or policy. In that case, the judge may avoid *Chevron* deference simply by finding a sufficient degree of clarity in the statute at the outset. (Once again, keep in mind that no one has told courts, or could meaningfully tell courts, how much clarity is enough to call a text clear rather than ambiguous for these purposes.)

Moreover, once judges make the key move of finding text ambiguous, then they can take full advantage of the large shed of ambiguity-dependent tools and canons. And because there is no neutral method to evaluate whether a text is clear or ambiguous, that initial move is a surprisingly easy one for judges to make.¹⁰⁹ As Farnsworth explains, “[t]he ‘magic wand of ipse dixit’ is the standard tool for deciding such matters.”¹¹⁰

A number of important Supreme Court decisions have implicated the clarity versus ambiguity problem. For example, consider some of the cases that have turned on the constitutional avoidance canon in the recent past: the *NFIB* healthcare case,¹¹¹ the *NAMUDNO* voting rights case,¹¹² and the *Wisconsin Right to Life* campaign finance

¹⁰⁷ Farnsworth et al., *supra* note 88, at 257.

¹⁰⁸ See *id.* at 281 (“[H]ow a statute gets interpreted in the end, or *who* does the interpreting, will often depend on *whether* it is found ambiguous at the outset.”); see also Solan, *supra* note 88, at 865 (“[C]ourts themselves may not be sincere when they hold that the language of a statute is clear. For example, a judge may believe that language is susceptible to a number of interpretations, but say it is clear anyway in order to avoid triggering an interpretive doctrine that would lead to a result that she considers unjust in a particular case. When interpretive doctrine pushes judges toward putting more rhetorical weight on the language than they may feel is just in a particular case, it would not be surprising to find that they write insincerely about language in order to reach a result they believe is fair.” (footnote omitted)).

¹⁰⁹ See Slocum, *supra* note 88, at 809 (arguing that the concept of “statutory ambiguity” is “an inherently subjective interpretation that is highly amenable to judicial manipulation”).

¹¹⁰ Farnsworth et al., *supra* note 88, at 276 (quoting *United States v. Yermian*, 468 U.S. 63, 77 (1984) (Rehnquist, J., dissenting)).

¹¹¹ *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566 (2012).

¹¹² *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).

case.¹¹³ Those were hugely significant cases, each of which turned to a significant extent on an initial question of whether the relevant statute was clear or ambiguous. If the statute was ambiguous, then the Court could resort to the constitutional avoidance canon. If the statute was clear, then there would be no warrant for using the constitutional avoidance canon. All of these cases were extraordinarily important, and all were decided on the basis of a necessarily difficult evaluation of whether the text was clear or ambiguous.

Or consider the cases that have turned on *Chevron* deference. As Justice Scalia explained twenty-five years ago: “How clear is clear? It is here, if *Chevron* is not abandoned, that the future battles over acceptance of agency interpretations of law will be fought.”¹¹⁴ And, in fact, the Court has skirmished over exactly this terrain numerous times in the last twenty-five years, including in cases such as *Michigan v. EPA*,¹¹⁵ *Scialabba v. Cuellar de Osorio*,¹¹⁶ *EPA v. EME Homer City Generation, L.P.*,¹¹⁷ *Massachusetts v. EPA*,¹¹⁸ *FDA v. Brown & Williamson Tobacco Corp.*,¹¹⁹ *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*,¹²⁰ and *MCI Telecommunications Corp. v. AT&T Co.*¹²¹

A good example of the importance of the threshold ambiguity determination is *MCI*. There, the Court considered two provisions of the Communications Act of 1934.¹²² The first provision — section 203(a) — required communications common carriers to file tariff schedules with the Federal Communications Commission (FCC).¹²³ The second provision — section 203(b) — granted the FCC the power to “modify” any requirement of the first provision.¹²⁴ The question before the Supreme Court was deceptively simple: does the power to “modify” any requirement of the first provision include the power “to make tariff filing optional for all nondominant long-distance carriers,” as the FCC claimed?¹²⁵

In trying to answer this question, the Court divided over whether the statute was ambiguous. Led by Justice Scalia, the majority stated

¹¹³ *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007).

¹¹⁴ See Scalia, *supra* note 40, at 520–21.

¹¹⁵ 135 S. Ct. 2699 (2015).

¹¹⁶ 134 S. Ct. 2191 (2014).

¹¹⁷ 134 S. Ct. 1584 (2014).

¹¹⁸ 549 U.S. 497 (2007).

¹¹⁹ 529 U.S. 120 (2000).

¹²⁰ 515 U.S. 687 (1995).

¹²¹ 512 U.S. 218 (1994).

¹²² Pub. L. No. 73-416, 48 Stat. 1064 (1934) (codified as amended in scattered sections of 47 U.S.C.).

¹²³ 47 U.S.C. § 203(a) (1988).

¹²⁴ *Id.* § 203(b)(2).

¹²⁵ *MCI*, 512 U.S. at 220.

that it had “not the slightest doubt” that the statute did not allow the FCC to make tariff filing optional for a broad category of common carriers.¹²⁶ In dissent, Justice Stevens disagreed vehemently.¹²⁷ In his view, the statute “plainly confer[red] at least some discretion to modify the general rule that carriers file tariffs.”¹²⁸ By casting aside the traditional “ample leeway” extended to the agency, he argued, the majority had seized on “a rigid literalism that deprives the FCC of the flexibility Congress meant it to have.”¹²⁹

In that case, eight Justices came to two different answers about *whether* the statute was clear or ambiguous. That outcome will hardly reassure those who wish to keep the clarity versus ambiguity question as part of statutory interpretation. And *MCI* represents only one of many cases in which the Supreme Court has wrestled with determinations of ambiguity, to say nothing of the vast number of cases confronting the lower courts.

All of these cases came down to what turns out to be an entirely personal question, one subject to a certain sort of *ipse dixit*: is the language clear, or is it ambiguous? No wonder people suspect that judges’ personal views are infecting these kinds of cases. We have set up a system where that suspicion is almost inevitable because the reality is almost inevitable.

Of course, in characterizing some of these decisions as examples of the problem, I am not in any way suggesting that the judges who authored them acted in an improper or political manner. To the contrary: most judges apply the doctrine as faithfully as possible. But too much of current statutory interpretation revolves around personally instinctive assessments of clarity versus ambiguity, as these cases amply show. It is difficult to make these assessments in a neutral, even-handed way, or for different judges to reach the same assessments consistently. And even if judges could make threshold findings of ambiguity in a neutral way, they still would have trouble convincing the public that they were acting impartially. It is all but impossible to communicate clarity versus ambiguity determinations in a reasoned and accountable way — especially when those determinations lead di-

¹²⁶ *Id.* at 228.

¹²⁷ Justice Stevens was joined by Justices Blackmun and Souter. Justice O’Connor took no part in the consideration or decision of the case.

¹²⁸ *MCI*, 512 U.S. at 239 (Stevens, J., dissenting).

¹²⁹ *Id.* at 235. Although Justice Stevens did not describe the statute as “ambiguous,” he stated that the agency was entitled to deference under *Chevron*. *Id.* at 245. That implies that he found the statute ambiguous; otherwise, deference under step two of *Chevron* would not have been warranted.

rectly to the results in controversial cases.¹³⁰ Perhaps unsurprisingly, then, over time a number of Supreme Court Justices have expressed frustration with the difficulty — and arbitrariness — of the threshold inquiry.¹³¹

This kind of decisionmaking threatens to undermine the stability of the law and the neutrality (actual and perceived) of the judiciary.¹³² After nearly a decade on the bench, I have a firm sense that the clarity versus ambiguity determination — is the statute clear or ambiguous? — is too often a barrier to the ideal that statutory interpretation should be neutral, impartial, and predictable among judges of different partisan backgrounds and ideological predilections.

My point here should not be misunderstood. Statutes will always have many ambiguities. That is the nature of language, including Congress's language. We cannot eliminate or avoid ambiguities, or wish them away. Chief Judge Katzmann puts it well: "it is unreasonable to expect Congress to anticipate all interpretive questions that

¹³⁰ As Farnsworth illustrates colorfully: "If one person says that both proposed readings of a statute seem plausible, and a colleague disagrees, finding one reading too strained, what is there to do about it but for each to stamp his foot?" Farnsworth et al., *supra* note 88, at 276.

¹³¹ See, e.g., *United States v. Hansen*, 772 F.2d 940, 948 (D.C. Cir. 1985) (Scalia, J.) ("[The rule of lenity] provides little more than atmospherics, since it leaves open the crucial question — almost invariably present — of how much ambiguousness constitutes an ambiguity."); *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 572 (2005) (Stevens, J., dissenting) ("Because ambiguity is apparently in the eye of the beholder, I remain convinced that it is unwise to treat the ambiguity *vel non* of a statute as determinative of whether legislative history is consulted."); *United States v. Yermian*, 468 U.S. 63, 77–78 (1984) (Rehnquist, J., dissenting) ("Although 'there is no errorless test for identifying or recognizing 'plain' or 'unambiguous' language' in a statute, the Court's reasoning here amounts to little more than simply pointing to the ambiguous phrases and proclaiming them clear. In my view, it is quite impossible to tell which phrases the terms 'knowingly and willfully' modify, and the magic wand of *ipse dixit* does nothing to resolve that ambiguity." (first quoting *United States v. Turkette*, 452 U.S. 576, 580 (1981)); Kagan, *supra* note 1, at 56:25 (noting disagreements between the Justices about the presence or absence of ambiguity); Scalia, *supra* note 40, at 520–21.

¹³² See Ethan J. Leib & Michael Serota, *The Costs of Consensus in Statutory Construction*, 120 YALE L.J. ONLINE 47, 59 (2010) ("[W]ithout guidance to help judges understand the threshold inquiry into ambiguity that is supposed to constrain them, the benefits of curbing judicial discretion vanish. Detached from the help of any extrinsic aids, textual analysis and debating whether something is ambiguous may promote even more unbridled judicial decision by intuition."); cf. Antonin Scalia, Essay, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175, 1182 (1989) ("[W]e should recognize that, at the point where an appellate judge says that the remaining issue must be decided on the basis of the totality of the circumstances, or by a balancing of all the factors involved, he begins to resemble a finder of fact more than a determiner of law. To reach such a stage is, in a way, a regrettable concession of defeat — an acknowledgment that we have passed the point where 'law,' properly speaking, has any further application. And to reiterate the unfortunate practical consequences of reaching such a pass when there still remains a good deal of judgment to be applied: equality of treatment is difficult to demonstrate and, in a multi-tiered judicial system, impossible to achieve; predictability is destroyed; judicial arbitrariness is facilitated; judicial courage is impaired."). Although Justice Scalia was condemning judicial tests based on balancing or a totality of the circumstances, his criticism applies even more strongly to judicial tests based on nothing more than a judge's unguided intuition.

may present themselves in the future,” particularly when Congress operates under strict “time pressures” (p. 47).

But even though ambiguity is unavoidable as a practical matter, perhaps we can avoid attaching serious interpretive consequences to binary ambiguity determinations that are so hard to make in a neutral, impartial way. Instead of injecting the ambiguity problem into the heart of statutory interpretation, we can consider whether to sideline that threshold inquiry as much as possible.

B. Judges Should Determine the Best Reading of the Statute, Not Whether It Is Clear or Ambiguous

What is the solution? To be perfectly candid, I’m not sure at this point. But to start, perhaps we can try to examine ways to reduce reliance on the question of clarity versus ambiguity in the enterprise of statutory interpretation without sacrificing some of the rules of statutory interpretation that have helped structure the task. Here’s one idea: judges should strive to find the best reading of the statute. They should not be diverted by an arbitrary initial inquiry into whether the statute can be characterized as clear or ambiguous. In other words, we can try to make sure that judges do not — or at least only rarely — have to ask whether a statute is clear or ambiguous in the course of interpreting it.

Instead, statutory interpretation could proceed in a two-step process. First, courts could determine the best reading of the text of the statute by interpreting the words of the statute, taking account of the context of the whole statute, and applying any other appropriate semantic canons of construction.¹³³ Second, once judges have arrived at the best reading of the text, they can apply — openly and honestly — any substantive canons (such as plain statement rules or the absurdity doctrine) that may justify departure from the text.¹³⁴ Under this two-step approach, few if any statutory interpretation cases would turn on an initial finding of clarity versus ambiguity in the way that they do now.

How do judges determine the “best reading” of a statutory text under the first step of my proposed approach? Courts should try to read statutes as ordinary users of the English language might read and understand them. That inquiry is informed by both the words of the statute and conventional understandings of how words are generally used by English speakers. Thus, the “best reading” of a statutory text

¹³³ For more on the semantic canons of construction, see *infra* Part III, pp. 2159–62.

¹³⁴ The plain statement and absurdity rules tell us that the best reading of the statutory text does not control in certain circumstances. But those rules, as I envision them, do not require that judges make an initial determination of clarity versus ambiguity. See *infra* section II.B.4, pp. 2154–56; section II.C, pp. 2156–59.

depends on (1) the words themselves, (2) the context of the whole statute, and (3) any other applicable semantic canons, which at the end of the day are simply a fancy way of referring to the general rules by which we understand the English language.

To be sure, determining the best reading of the statute is not always easy. But we have tools to perform the task and communicate it to the parties and public in our opinions. Why layer on a whole separate inquiry — is the statute clear or ambiguous? — that does not help uncover the best reading and that is inherently difficult to resolve in a neutral, impartial, and predictable way?¹³⁵

But given that several existing canons depend on a threshold determination of ambiguity, wouldn't this proposed approach work a significant change in certain aspects of statutory interpretation? Not necessarily. It depends on which canons we end up discarding. Importantly, moreover, this is not an all-or-nothing proposal: we could re-fashion some ambiguity-dependent canons but not others depending on the values at stake with particular canons.¹³⁶

Let's take a look at a few of those canons.

1. *The Constitutional Avoidance Canon.* — Under the constitutional avoidance canon, judges must interpret ambiguous statutes so as to avoid a serious constitutional question, or actual unconstitutionality, that would arise if the ambiguity were resolved in one direction rather than the other.¹³⁷ For the canon to be triggered, however, there must be ambiguity in the statute.¹³⁸

The canon is based on a theory of judicial restraint. Under this theory, courts should avoid wading into difficult constitutional questions or holding statutes unconstitutional if they can reasonably avoid doing so. That reluctance is said to have the additional effect of showing respect for Congress by assuming that it would not have wanted to legislate across a constitutional line.

¹³⁵ See Slocum, *supra* note 88, at 837 (“Ultimately, though, the ambiguity-elevating aspect of *Chevron* places unnecessary emphasis on a purely subjective and discretionary standard and is incongruent with the realities of statutory interpretation.”).

¹³⁶ To take one example, I do not have a firm idea about how to handle the rule of lenity. Of course, the Supreme Court seems to be very uncertain about the rule of lenity, too. Compare, e.g., *Abramski v. United States*, 134 S. Ct. 2259, 2272 n.10 (2014) (refusing to apply the rule of lenity because any statutory ambiguity was resolved by “context, structure, history, and purpose”), with, e.g., *id.* at 2280–82 (Scalia, J., dissenting) (criticizing “the majority’s miserly approach,” *id.* at 2281).

¹³⁷ See *Gomez v. United States*, 490 U.S. 858, 864 (1989) (“It is our settled policy to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question.”); see also SCALIA & GARNER, *supra* note 7, at 247–51.

¹³⁸ For a discussion, see MANNING & STEPHENSON, *supra* note 88, at 257–59 (setting out two competing approaches to the idea of statutory “ambiguity” in the context of the avoidance canon).

Of course, one initial problem with this doctrine is that Congress may have wanted to legislate right up to the constitutional line but didn't know where it was and trusted the courts to make sure Congress did not unintentionally cross the line.¹³⁹ So constitutional avoidance can sometimes look more like judicial abdication — a failure to confront the constitutional question raised by the statute as written — than judicial restraint. Another problem is that the doctrine can be invoked when there are mere *questions* of unconstitutionality rather than actual unconstitutionality.¹⁴⁰ As a result, the doctrine gives judges enormous discretion to push statutes in one direction so as to avoid even coming within a penumbra of the constitutional line.

Over the years, for these and other reasons, many critics have advocated scaling back the constitutional avoidance canon, at least as applied to cases involving constitutional questions as opposed to actual unconstitutionality.¹⁴¹ For instance, Judge Easterbrook has described “the canon of construing statutes to avoid constitutional doubt” as “wholly illegitimate.”¹⁴² Noting that constitutional “doubt is pervasive,” he explains that the constitutional avoidance canon “acts as a roving commission to rewrite statutes to taste.”¹⁴³ As a result, the canon “is simultaneously unfaithful to the statutory text and an affront to *both* of the political branches.”¹⁴⁴ Likewise, Judge Posner criticizes the canon for “creat[ing] a judge-made constitutional ‘penumbra’ that has much the same prohibitory effect as the judge-made (or at least judge-amplified) Constitution itself.”¹⁴⁵ Along with the many other critics of the constitutional avoidance canon, Judges Easterbrook and Posner have made strong cases in my view.

Apart from (or in addition to) those reasons, I would consider jettisoning the constitutional avoidance canon for a different reason: the trigger for the canon — clear or ambiguous? — is so uncertain.

That flaw was famously highlighted in *NFIB v. Sebelius*.¹⁴⁶ In analyzing that case, it is perhaps important to underscore something

¹³⁹ See Richard A. Posner, *Statutory Interpretation — In the Classroom and in the Courtroom*, 50 U. CHI. L. REV. 800, 815–16 (1983).

¹⁴⁰ See *Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 481 (1989) (Kennedy, J., concurring in the judgment) (“The fact that a particular application of the clear terms of a statute might be unconstitutional does not provide us with a justification for ignoring the plain meaning of the statute.”).

¹⁴¹ See, e.g., Neal Kumar Katyal & Thomas P. Schmidt, *Active Avoidance: The Modern Supreme Court and Legal Change*, 128 HARV. L. REV. 2109, 2127–29 (2015); FRIENDLY, *supra* note 7, at 209–12; Frank H. Easterbrook, *Do Liberals and Conservatives Differ in Judicial Activism?*, 73 U. COLO. L. REV. 1401, 1405–06 (2002); Posner, *supra* note 139, at 815–16.

¹⁴² Easterbrook, *supra* note 141, at 1405.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 1406.

¹⁴⁵ Posner, *supra* note 139, at 816.

¹⁴⁶ 132 S. Ct. 2566 (2012).

that seems to be overlooked by almost all observers, even those who should know better. The Chief Justice *agreed* with the four dissenters (Justices Scalia, Kennedy, Thomas, and Alito) on all of the key constitutional and statutory issues raised about the individual mandate. Those five Justices agreed about the scope of the Commerce and Necessary and Proper Clauses.¹⁴⁷ They agreed about the scope of the Taxing Clause.¹⁴⁸ And they agreed that the individual mandate provision was best read to impose a legal mandate rather than a tax.¹⁴⁹ In short, they agreed that the individual mandate, best read, could *not* be sustained as constitutional under the Commerce, Necessary and Proper, and Taxing Clauses.

What they disagreed on with respect to the individual mandate — and, amazingly, *all* that they disagreed on — was how to apply the constitutional avoidance canon. In particular, they disagreed about whether the individual mandate provision was sufficiently ambiguous that the Court should resort to the constitutional avoidance canon.¹⁵⁰

Consider that for a moment. For all that has been written about the *NFIB* case (and in particular about Chief Justice Roberts's role), the decision on the individual mandate turned not on the proper interpretation of the Constitution and not on the best interpretation of the statute. It turned entirely on how much room judges have to find ambiguity when invoking the constitutional avoidance canon. In my view, this is an odd state of affairs. A case of extraordinary magnitude boils down to whether a key provision is clear or ambiguous, even though we have no idea how much ambiguity is enough to begin with, nor how to ascertain what level of ambiguity exists in a particular statute.

My point here is not to debate whether the Chief Justice or the four dissenters had the better argument about the clarity or ambiguity of the statutory provision in question. My point is that such a question arguably should not be part of the inquiry because — despite the best efforts of conscientious judges — it is not answerable in a neutral, im-

¹⁴⁷ See *id.* at 2593 (opinion of Roberts, C.J.) (rejecting the Commerce Clause and Necessary and Proper Clause arguments and citing the dissent in accord).

¹⁴⁸ Compare *id.* at 2600 (majority opinion) (“Congress’s authority under the taxing power is limited to requiring an individual to pay money into the Federal Treasury, no more.”), with *id.* at 2651 (joint dissent) (describing the difference between taxes and penalties).

¹⁴⁹ Compare *id.* at 2600 (opinion of Roberts, C.J.) (“[T]he statute reads more naturally as a command to buy insurance than as a tax . . .”), with *id.* at 2652 (joint dissent) (“So the question is, quite simply, whether the exaction here is imposed for violation of the law. It unquestionably is.”).

¹⁵⁰ Compare *id.* at 2594 (opinion of Roberts, C.J.) (holding it was “fairly possible” to interpret the individual mandate as a tax (quoting *Crowell v. Benson*, 285 U.S. 22, 62 (1932))), with *id.* at 2651 (joint dissent) (arguing that “there is simply no way, ‘without doing violence to the fair meaning of the words used,’ of interpreting the individual mandate as a tax (quoting *Grenada Cty. Supervisors v. Brogden*, 112 U.S. 261, 269 (1884))).

partial, or predictable way. A case of this magnitude should not turn on such a question, but that is what the canon of constitutional avoidance required, which is why those five Justices were all compelled to confront and analyze it. (The other four Justices — Justices Ginsburg, Breyer, Sotomayor, and Kagan — would have upheld the provision under the Commerce Clause; they had no occasion to delve into the Taxing Clause and the constitutional avoidance canon.)

If the constitutional avoidance canon were jettisoned, judges could instead determine the best reading of the statute based on the words of the statute, the context, and the agreed-upon canons of interpretation. If that reading turned out to be unconstitutional, then judges could say as much and determine the appropriate remedy by applying proper severability principles.

Of course, severability principles are their own separate mess. As currently framed, severability doctrine requires the judge to sever the offending provision from the statute, to strike down the entire statute, or to perform some other surgery. In deciding among this menu of options, the court must in part assess what Congress would have wanted and whether the statute would be workable without the offending provision.¹⁵¹

But how can the court determine what Congress would have wanted? For instance, in the *NFIB* case, the dissenters tried to determine whether Congress would have enacted the health care law without the provisions the dissenters deemed unconstitutional.¹⁵² They said no. But how can we know? Is that really what then-Speaker of the House Nancy Pelosi, then-Senate Majority Leader Harry Reid, President Barack Obama, and all the Members of Congress who voted *for* the bill, would have wanted? Is this even the right question to be asking?

Courts can reform principles of severability as well. For instance, courts might institute a new default rule: sever an offending provision from the statute to the narrowest extent possible unless Congress has indicated otherwise in the text of the statute.¹⁵³ This default rule has the benefit of stopping judges from trying to guess what Congress would have wanted, an inherently suspect exercise.¹⁵⁴ And it has the additional benefit of telling Congress what to expect.

Regarding *NFIB*, some contend that at least the narrowest version of the severability principle could have led to the same bottom line (eliminating the legal mandate but keeping the tax penalties on those

¹⁵¹ See *Alaska Airlines, Inc. v. Brock*, 480 U.S. 678, 684 (1987).

¹⁵² See *NFIB*, 132 S. Ct. at 2668–76 (joint dissent).

¹⁵³ This is what the Supreme Court did in *Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477 (2010). See *id.* at 508–10.

¹⁵⁴ See generally John F. Manning, Essay, *Inside Congress's Mind*, 115 COLUM. L. REV. 1911 (2015).

who fail to have insurance).¹⁵⁵ Others disagree with that notion. I take no position here on how severability could have been applied in that case, which is an extraordinarily difficult question in its own right.

In any event, for all the reasons mentioned above, it may be worth trading off increased reliance on severability principles in exchange for decreased reliance on clarity versus ambiguity determinations in invoking the constitutional avoidance doctrine.

2. *Legislative History*. — A second ambiguity-dependent “canon” is the principle — on which Chief Judge Katzmman focuses his book — that we construe ambiguous statutes in light of the statute’s legislative history.¹⁵⁶

As I discussed earlier, many have criticized the use of legislative history on formal and functional grounds. As a formal matter, committee reports and floor statements are not the law enacted by Congress. And as a functional matter, committee reports and floor statements too often reflect an effort by a subgroup in Congress — or, worse, outside of it — to affect how the statute will subsequently be interpreted and implemented, in ways that Congress and the President may not have intended. Moreover, legislative history is often conflicting because of different floor statements, reports, and the like. From the courts’ perspective, using legislative history can therefore be like “looking over a crowd and picking out your friends.”¹⁵⁷

I find yet another major problem with legislative history: the clarity versus ambiguity trigger for resorting to legislative history means that the decision whether to resort to legislative history is often indeterminate. The indeterminacy of the trigger greatly exacerbates the problems with the use of legislative history. As a judge, if all you need to “pick out your friends” — that is, to pick out the result that you find most reasonable — is a finding of ambiguity, and if there is no set or principled way to determine clarity versus ambiguity, then some judges are going to be more likely to find ambiguity in certain cases. That’s pretty obvious as a matter of both common sense and human psychology. If judges are given a gray area with no guideposts about how to decide in that gray area (how to decide clarity versus ambigu-

¹⁵⁵ For an exploration of this argument, see Joseph Fishkin, *Sever Everything but the Exhortation*, BALKINIZATION (Apr. 1, 2012, 4:33 AM), <http://balkin.blogspot.com/2012/04/sever-everything-but-exhortation.html> [<http://perma.cc/2QLW-QHFG>].

¹⁵⁶ See *supra* section I.D, pp. 2127–29. Of course, some textualists follow Justice Scalia’s example and do not accept legislative history even when interpreting ambiguous statutes.

¹⁵⁷ *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005) (quoting Patricia M. Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 IOWA L. REV. 195, 214 (1983), in turn borrowing Judge Leventhal’s “memorable phrase”).

ty), we should expect that they will end up with what they deem the most reasonable policy outcome.

In a world without initial determinations of ambiguity, judges would instead decide on the best reading of the statute.¹⁵⁸ In that world, legislative history would be largely limited to helping answer the question of whether the literal reading of the statute produces an absurdity, as discussed below.¹⁵⁹ Most importantly, in that world we would not make statutory interpretation depend so heavily on the difficult assessment of whether the text is clear or ambiguous.

3. *Chevron Deference*. — Under *Chevron*, courts uphold an agency's reading of a statute — even if not the best reading — so long as the statute is ambiguous and the agency's reading is at least reasonable.¹⁶⁰ This statutory interpretation principle is probably the one I encounter most as a judge on the D.C. Circuit.

Chevron has been criticized for many reasons. To begin with, it has no basis in the Administrative Procedure Act.¹⁶¹ So *Chevron* itself is an atextual invention by courts. In many ways, *Chevron* is nothing more than a judicially orchestrated shift of power from Congress to the Executive Branch. Moreover, the question of when to apply *Chevron* has become its own separate difficulty, as exemplified in cases such as *Mead*,¹⁶² *City of Arlington*,¹⁶³ and *King v. Burwell*.¹⁶⁴

In that regard, it is important to understand how *Chevron* affects the Executive Branch. From my more than five years of experience at the White House, I can confidently say that *Chevron* encourages the Executive Branch (whichever party controls it) to be extremely aggressive in seeking to squeeze its policy goals into ill-fitting statutory authorizations and restraints. My colleague Judge Tatel has lamented that agencies in both Republican and Democratic administrations too

¹⁵⁸ Under the “best reading” inquiry, the question is only how the words would be read by an ordinary user of the English language. That’s why textualists rely on dictionaries. Dictionaries may not provide authoritative, binding interpretations of the language of a statute, but they do tell courts something about how the ordinary user of the English language might understand that statutory language. In contrast, legislative history explains only what some Members of Congress *intended* to say, as opposed to what they actually said in the statutory text.

¹⁵⁹ There may be other uses of legislative history that might not depend on an initial finding of ambiguity, such as providing evidence of the ordinary usage of a term, or showing the problem Congress was attempting to address. Even if there are other uses, we should try to sideline the threshold clarity versus ambiguity determination to the extent we can.

¹⁶⁰ See *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–44 (1984).

¹⁶¹ Pub. L. No. 79-404, 60 Stat. 237 (1946) (codified as amended in scattered sections of 5 U.S.C.). In fact, if anything, *Chevron* seems to flout the language of the Act. The Act makes clear that “the reviewing court” — not the agency — “shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.” 5 U.S.C. § 706 (2012).

¹⁶² *United States v. Mead Corp.*, 533 U.S. 218, 226–27 (2001).

¹⁶³ *City of Arlington v. FCC*, 133 S. Ct. 1863, 1866 (2013).

¹⁶⁴ 135 S. Ct. 2480, 2488–89 (2015).

often pursue policy at the expense of law.¹⁶⁵ He makes a good point. As I see it, however, that will always happen because Presidents run for office on policy agendas and it is often difficult to get those agendas through Congress. So it is no surprise that Presidents and agencies often will do whatever they can within existing statutes. And with *Chevron* in the mix, that inherent aggressiveness is amped up significantly. I think some academics fail to fully grasp the reality of how this works. We must recognize how much *Chevron* invites an extremely aggressive executive branch philosophy of pushing the legal envelope (a philosophy that, I should note, seems present in the administrations of both political parties). After all, an executive branch decisionmaker might theorize, “If we can just convince a court that the statutory provision is ambiguous, then our interpretation of the statute should pass muster as reasonable. And we can achieve an important policy goal if our interpretation of the statute is accepted. And isn’t just about every statute ambiguous in some fashion or another? Let’s go for it.” Executive branch agencies often think they can take a particular action unless it is *clearly forbidden*.

Stated simply, we should not unduly blame the executive branch agencies for doing what our doctrine has encouraged them to do.

But when the Executive Branch chooses a weak (but defensible) interpretation of a statute, and when the courts defer, we have a situation where every relevant actor may agree that the agency’s legal interpretation is not the best, yet that interpretation carries the force of law. Amazing.

Perhaps in response to all of these criticisms, the Supreme Court itself has been reining in *Chevron* in the last few years. In one of its most significant recent pronouncements, *King v. Burwell*, the Court said that *Chevron* does not apply in cases involving “question[s] of deep ‘economic and political significance.’”¹⁶⁶ And *Chevron* does not apply at all unless “Congress delegated authority to the agency generally to make rules carrying the force of law, and . . . the agency interpretation claiming deference was promulgated in the exercise of that authority.”¹⁶⁷ These cases suggest some serious concern at the

¹⁶⁵ David S. Tatel, *The Administrative Process and the Rule of Environmental Law*, 34 HARV. ENVTL. L. REV. 1, 2 (2010) (“[I]n both Republican and Democratic administrations, I have too often seen agencies failing to display the kind of careful and lawyerly attention one would expect from those required to obey federal statutes and to follow principles of administrative law. In such cases, it looks for all the world like agencies choose their policy first and then later seek to defend its legality.”).

¹⁶⁶ See *King*, 135 S. Ct. at 2489 (quoting *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014)).

¹⁶⁷ *Mead*, 533 U.S. at 226–27.

Supreme Court about the reach of *Chevron*.¹⁶⁸ And *King v. Burwell* in particular raises two significant questions that the Supreme Court will presumably have to confront soon: First, how major must the questions be for *Chevron* not to apply? Second, if *Chevron* is inappropriate for cases involving major questions, why is it still appropriate for cases involving less major but still important questions?

All of that said, *Chevron* makes a lot of sense in certain circumstances. It affords agencies discretion over how to exercise authority delegated to them by Congress. For example, Congress might assign an agency to issue rules to prevent companies from dumping “unreasonable” levels of certain pollutants. In such a case, what rises to the level of “unreasonable” is a policy decision. So courts should be leery of second-guessing that decision. The theory is that Congress delegates the decision to an executive branch agency that makes the policy decision, and that the courts should stay out of it for the most part. That all makes a great deal of sense and, in some ways, represents the proper conjunction of the *Chevron* and *State Farm* doctrines.¹⁶⁹

But *Chevron* has not been limited to those kinds of cases.¹⁷⁰ It can also apply whenever a statute is ambiguous. In a case where a statute is deemed ambiguous, a court will defer to an agency’s authoritative reading, at least so long as the agency’s reading is reasonable.¹⁷¹

From the judge’s vantage point, the fundamental problem once again is that different judges have wildly different conceptions of whether a particular statute is clear or ambiguous. The key move from step one (if clear) to step two (if ambiguous) of *Chevron* is not determinate because it depends on the threshold clarity versus ambiguity determination.¹⁷² As Justice Scalia pointed out, that determination “is the chink in *Chevron*’s armor — the ambiguity that prevents it from being an absolutely clear guide to future judicial decisions.”¹⁷³

¹⁶⁸ See also, e.g., *Michigan v. EPA*, 135 S. Ct. 2699, 2712 (2015) (Thomas, J., concurring) (raising “serious questions about the constitutionality of our broader practice of deferring to agency interpretations of federal statutes” under *Chevron*); *Perez v. Mortgage Bankers Ass’n*, 135 S. Ct. 1199, 1211–12 (2015) (Scalia, J., concurring in the judgment) (stressing the conflict between *Chevron* deference and the APA and raising the possibility of “uproot[ing]” *Chevron*, *id.* at 1212); *Christensen v. Harris County*, 529 U.S. 576, 596–97 (2000) (Breyer, J., dissenting) (advocating for application of *Chevron* on a case-by-case basis within the broader *Skidmore* framework).

¹⁶⁹ Cf. *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 248 (D.C. Cir. 2008) (Kavanaugh, J., concurring in part, concurring in the judgment in part, and dissenting in part).

¹⁷⁰ See *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842–43 (1984).

¹⁷¹ *Id.*

¹⁷² See Slocum, *supra* note 88, at 794 (“Under *Chevron*, the concept of ambiguity is therefore central to whether an agency’s interpretation of a statute that it administers will receive judicial deference, but the determination of ambiguity by the judiciary is entirely standardless and discretionary.”). Step one also suffers from reliance on legislative history to determine whether there is an ambiguity in the first instance. See *Chevron*, 467 U.S. at 843 n.9, 851–53; *supra* section II.B.2, pp. 2149–50.

¹⁷³ See Scalia, *supra* note 40, at 520.

I see that problem all the time in my many agency cases, and it has significant practical consequences. In certain major *Chevron* cases, different judges will reach different results even though they may actually agree on what is the best reading of the statutory text. I have been involved in cases where that has happened.

Think about that for a moment. Consider, for example, a high-profile case involving a major agency rule that rests on the agency's interpretation of a statute. Suppose the judges agree that the agency's reading of the statute is not the best. But one judge believes that the statute is ambiguous, so that judge would nonetheless uphold the agency's interpretation even though it is not the best interpretation. The other two judges say that the statute is sufficiently clear, so those judges strike down the agency's interpretation. That simple threshold determination of clarity versus ambiguity may affect billions of dollars, the individual rights of millions of citizens, and the fate of clean air rules, securities regulations, labor laws, or the like. And yet there is no particularly principled guide for making that clarity versus ambiguity decision, and no good way for judges to find neutral principles on which to debate and decide that question.¹⁷⁴

This state of affairs is unsettling. As I stated above, my goal is to help make statutory interpretation a more neutral, impartial process where like cases are treated alike by judges of all ideological stripes, regardless of the issue and regardless of the identity of the parties in the case. That objective is hard to achieve — at least in many cases — if the threshold trigger for *Chevron* deference to the agency is ambiguity.¹⁷⁵

What's the solution?

To begin with, courts should still defer to agencies in cases involving statutes using broad and open-ended terms like “reasonable,” “appropriate,” “feasible,” or “practicable.” In those cases, courts should say that the agency may choose among reasonable options allowed by

¹⁷⁴ See Slocum, *supra* note 88, at 795 (“Thus, the *Chevron* doctrine’s reliance on explicit ambiguity conclusions to determine whether an agency’s interpretation will receive deference has elevated the importance of a concept that is subjective, discretionary, typically addressed through conclusory statements, and, not surprisingly, a source of considerable disagreement among members of the Court.”).

¹⁷⁵ Indeed, it seems that courts have allowed this problem to arise in far more cases than the *Chevron* Court itself intended. After all, footnote 9 of *Chevron* told us explicitly that we should employ all the “traditional tools of statutory construction” to resolve any statutory ambiguity *before* we defer to an agency. *Chevron*, 467 U.S. at 843 n.9. Of course, when we employ those tools of interpretation, we often resolve the ambiguity and thereby get an answer. So in those cases, we would not have to defer to the agency at all. Therefore, if we took *Chevron* footnote 9 at face value, fewer cases would get to *Chevron* step two in the first place.

the text of the statute.¹⁷⁶ In those circumstances, courts should be careful not to unduly second-guess the agency's choice of regulation.¹⁷⁷ Courts should defer to the agency, just as they do when conducting deferential arbitrary and capricious review under the related reasoned decisionmaking principle of *State Farm*.¹⁷⁸ This very important principle sometimes gets lost: a judge can engage in appropriately rigorous scrutiny of an agency's statutory interpretation and simultaneously be very deferential to an agency's policy choices within the discretion granted to it by the statute.¹⁷⁹

But in cases where an agency is instead interpreting a specific statutory term or phrase, courts should determine whether the agency's interpretation is the best reading of the statutory text. Judges are trained to do that, and it can be done in a neutral and impartial manner in most cases.

In short, the problem with certain applications of *Chevron*, as I see it, is that the doctrine is so indeterminate — and thus can be antithetical to the neutral, impartial rule of law — because of the initial clarity versus ambiguity decision. Here too, we need to consider eliminating that inquiry as the threshold trigger.

4. *Some Ambiguity-Dependent Principles of Interpretation Should Be Applied as Plain Statement Rules.* — The clarity versus ambiguity issue also arises with several substantive canons of interpretation that are now framed as presumptions. For example, we presume that statutes do not apply extraterritorially.¹⁸⁰ We presume that statutes do not effectuate implied repeals of other statutes.¹⁸¹ We presume that stat-

¹⁷⁶ See Silberman, *supra* note 96, at 825 ("Finding a specific congressional intent is particularly unlikely if the agency is applying statutory language that calls for an administrative judgment, such as what is 'feasible' or 'probable.'").

¹⁷⁷ Excessive delegation may be another problem (at least for some) in these examples. But that issue is beyond the scope of this Book Review.

¹⁷⁸ See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); see also *Am. Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 248 (D.C. Cir. 2008) (Kavanaugh, J., concurring in part, concurring in the judgment in part, and dissenting in part) ("Application of the beefed-up arbitrary-and-capricious test is inevitably if not inherently unpredictable — so much so that, on occasion, the courts' arbitrary-and-capricious review itself appears arbitrary and capricious.").

¹⁷⁹ Of course, agencies must still make *reasonable* choices. See, e.g., *Michigan v. EPA*, 135 S. Ct. 2699 (2015) (holding that EPA interpreted the Clean Air Act unreasonably when it deemed cost irrelevant to the decision to regulate power plants).

¹⁸⁰ *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010) ("[U]nless there is the affirmative intention of the Congress clearly expressed' to give a statute extraterritorial effect, 'we must presume it is primarily concerned with domestic conditions.'" (quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991))); *Arabian Am. Oil Co.*, 499 U.S. at 248 ("It is a longstanding principle of American law 'that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.'" (quoting *Foley Bros. v. Filardo*, 336 U.S. 281, 285 (1949))); see also SCALIA & GARNER, *supra* note 7, at 268–72.

¹⁸¹ *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 142 (2001) ("The rarity with which [the Court has] discovered implied repeals is due to the relatively stringent standard

utes do not eliminate mens rea requirements.¹⁸² And we presume that statutes do not apply retroactively.¹⁸³

Some of these presumptions implicitly rest on an initial finding of ambiguity. In essence, if the statutory text is ambiguous, then courts should interpret the statute not to apply extraterritorially, not to effectuate an implied repeal, not to eliminate a mens rea requirement, or not to apply retroactively, for example.

Other presumptions are framed as plain statement rules that apply even when a statute is otherwise clear.¹⁸⁴ For example, we will presume that a statute does not directly alter the federal-state balance unless Congress expressly states as much.¹⁸⁵

Whereas ambiguity-dependent presumptions can be overcome by clear text, presumptions framed as plain statement rules require something more: they demand language directly stating Congress's intent to wade into the area encompassed by the plain statement rule.¹⁸⁶ As a result, plain statement rules do not turn on a finding of clarity versus ambiguity; rather, they turn on whether the statute includes an express statement overcoming the default rule against a certain reading.

With the ambiguity-dependent presumptions, it is again problematic to let the clarity versus ambiguity determination resolve the fate of a

for such findings, namely, that there be an irreconcilable conflict between the two federal statutes at issue." (alteration in original) (quoting *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 381 (1996)); see also SCALIA & GARNER, *supra* note 7, at 327–33.

¹⁸² *Staples v. United States*, 511 U.S. 600, 606 (1994) ("[W]e have stated that offenses that require no *mens rea* generally are disfavored, and have suggested that some indication of congressional intent, express or implied, is required to dispense with *mens rea* as an element of a crime." (citation omitted)).

¹⁸³ *U.S. Fid. & Guar. Co. v. United States ex rel. Struthers Wells Co.*, 209 U.S. 306, 314 (1908) ("The presumption is very strong that a statute was not meant to act retrospectively, and it ought never to receive such a construction if it is susceptible of any other. It ought not to receive such a construction unless the words used are so clear, strong and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot be otherwise satisfied."); see also SCALIA & GARNER, *supra* note 7, at 261–65.

¹⁸⁴ See John F. Manning, Essay, *Clear Statement Rules and the Constitution*, 110 COLUM. L. REV. 399, 406–07 (2010) (defining clear statement rules as rules insisting "that Congress speak with unusual clarity when it wishes to effect a result that, although constitutional, would disturb a constitutionally inspired value," *id.* at 407). Plain statement rules are also sometimes known as clear statement rules.

¹⁸⁵ See *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) ("[I]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" (alteration in original) (quoting *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 65 (1989))).

¹⁸⁶ See William N. Eskridge, Jr. & Philip P. Frickey, *Quasi-Constitutional Law: Clear Statement Rules as Constitutional Lawmaking*, 45 VAND. L. REV. 593, 611–12 (1992) (noting that the Court's "super-strong clear statement rules" relating to federalism "can be rebutted only through" text that is both "unambiguous" and "targeted at the specific problem," *id.* at 612). For a good overview of some prominent plain statement rules, see Thomas W. Merrill, *Rescuing Federalism After Raich: The Case for Clear Statement Rules*, 9 LEWIS & CLARK L. REV. 823, 825 (2005); see also Manning, *supra* note 184, at 406–17.

case. But what's the solution here? Some of the presumptions are already fashioned as plain statement rules. In my view, the solution to the clarity versus ambiguity conundrum in this context is either to apply the presumption in question as a plain statement rule, or to eliminate it entirely. In other words, if some constitutional or quasi-constitutional value is sufficiently important that we will presume that Congress did not mean to abrogate that value, then we should require Congress to speak directly to that issue in order to overcome it — whether it be extraterritorial application, repeal of a prior statute, mens rea, or retroactive application, among many others.

A separate problem is determining which constitutional or quasi-constitutional values justify a presumption or plain statement rule. That topic is hotly disputed but is beyond the scope of this Book Review.¹⁸⁷

Putting aside transition questions,¹⁸⁸ this change would be easy to accomplish and would lead to far more predictability in the application of these presumptions in particular cases. It would also promote the kind of mutual understanding between courts and Congress that Chief Judge Katzmman rightly encourages. Indeed, the Supreme Court has seemingly been moving toward a plain-statement-like understanding of many of these presumptions already.¹⁸⁹

C. *Off-Ramps from the Text: The “Mistake” and Absurdity Canons*

What if a statute as written would produce an objectively absurd outcome? Or what if a statute as written says something that we are nearly certain that Congress did not mean — in other words, that the statutory text reflects a mistake?

To start, it's important to distinguish between the absurdity doctrine and the idea of a mistake.

The absurdity doctrine counsels that a statute should not be interpreted to produce an objectively absurd result.¹⁹⁰ At least in the abstract, this is a sound principle, although the alleged absurdity must

¹⁸⁷ For example, I am on record as rejecting the so-called *Charming Betsy* presumption. See *Al-Bihani v. Obama*, 619 F.3d 1, 32–36 (D.C. Cir. 2010) (Kavanaugh, J., concurring in the denial of rehearing en banc).

¹⁸⁸ Perhaps courts could adopt this change only for statutes enacted after the date on which the court announces the shift to a plain statement rule.

¹⁸⁹ See, e.g., *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 278 (2010) (Stevens, J., concurring in the judgment) (accusing the majority of seeking “to transform the presumption [against extraterritoriality] from a flexible rule of thumb into something more like a clear statement rule”).

¹⁹⁰ See *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 202–03 (1819) (Marshall, C.J.) (“[I]f, in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application.”).

surmount a high bar to be truly absurd.¹⁹¹ After all, one person's reasonableness may be another person's absurdity. Or one person may think that an idea is bad but not absurd whereas another person may think it absurd. Interestingly, in determining whether a statute produces an absurd result, even Justice Scalia agreed that judges may look to legislative history.¹⁹² Why? Legislative history may defeat an absurdity argument by demonstrating that some Members of Congress actually meant to legislate the result that the judge otherwise may think is absurd. And if Congress meant to legislate the result, that result cannot be absurd.

The mistake notion is more uncertain. It rests on a communications phenomenon that all of us confront on a daily basis. Someone might tell you, "you said X." And you might reply, "that's not what I meant." Or your child might say: "You asked me to do X, but I assumed you meant Y, so I did Y." These kinds of "mistakes" or divergences between what someone says and what someone means happen all the time. So too with Congress.

But is there a "mistake" principle in statutory interpretation? Do courts have the power to correct Congress's "mistakes"? The answer is yes, but only up to a limited point — that limited point being drafting errors, sometimes known as scrivener's errors.¹⁹³ All agree that those kinds of mistakes may be corrected by a court. Justice Scalia recently described the doctrine in this way: "Only when it is patently obvious to a reasonable reader that a drafting mistake has occurred may a court correct the mistake."¹⁹⁴

¹⁹¹ See John F. Manning, *The Absurdity Doctrine*, 116 HARV. L. REV. 2387 (2003).

¹⁹² See SCALIA & GARNER, *supra* note 7, at 388 ("[L]egislative history can be consulted to refute attempted application of the absurdity doctrine — to establish that it is indeed thinkable that a particular word or phrase should mean precisely what it says. For to establish thinkability (so to speak), just as to establish linguistic usage, one does not have to make the implausible leap of attributing the quoted statement to the entire legislature. It suffices that a single presumably rational legislator, or a single presumably rational committee, viewed the allegedly absurd result with equanimity."); see also *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 527–28 (1989) (Scalia, J., concurring in the judgment).

¹⁹³ A scrivener's error is "an obvious mistake in the *transcription* of the legislature's policies into words." MANNING & STEPHENSON, *supra* note 88, at 93. It applies "where on the very face of the statute it is clear to the reader that a mistake of expression (rather than of legislative wisdom) has been made." Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, in A MATTER OF INTERPRETATION 3, 20 (Amy Gutmann ed., 1997). The scrivener's error doctrine is used to correct spelling errors, wrongly numbered cross-references, and the like rather than to rewrite substantive law because it fails to align with perceived congressional intent. See MANNING & STEPHENSON, *supra* note 88, at 93–101.

¹⁹⁴ *King v. Burwell*, 135 S. Ct. 2480, 2504–05 (2015) (Scalia, J., dissenting); see also *id.* at 2505 (describing the doctrine as applying to "misprint[s]," "slip[s] of the pen," and "technical mistake[s] in transcribing" a statute rather than "substantive mistake[s] in designing . . . the law").

But beyond technical drafting mistakes, there appears to be no broader mistake canon, where the courts can conclude that Congress did not mean to say what it said. That's what *Holy Trinity* allowed but what the Supreme Court now rejects.¹⁹⁵

So what happens then when courts confront statutory text that is not what they think Congress meant to say but where the mistake is not akin to a drafting error? One answer — the answer that appears to correspond to current doctrine — is that courts may merely identify the apparent mistake, and then it is up to Congress to correct it. After all, Congress routinely passes technical corrections bills after it passes any major legislation.¹⁹⁶

Of course, this discussion brings us right to *King v. Burwell*, one of the most interesting statutory interpretation cases in recent years. The question presented was whether tax credits available to people who purchased health insurance on exchanges “established by the State” also were available to those who purchased insurance on exchanges established by the Federal Government, even though the statute did not say as much.¹⁹⁷ Some said that the Members of Congress who voted for the bill meant (or would have meant, had they noticed it) to include federally established exchanges in the relevant provision. Under this theory, in other words, Congress did not say in the statute what at least those who voted for and signed the Patient Protection and Affordable Care Act¹⁹⁸ likely meant to say.¹⁹⁹ But in resolving the case, the Supreme Court decided against *explicitly* using a kind of mistake canon — perhaps because doing so would resurrect a form of the now-disfavored *Holy Trinity* doctrine.

But the Court nonetheless ruled for the Government and seemed *implicitly* to employ a mistake canon. The Court reasoned: “Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a

¹⁹⁵ See *supra* note 34 and accompanying text. Of course, the idea of “congressional intent” is inherently problematic to begin with. See generally Manning, *supra* note 154.

¹⁹⁶ See, e.g., New Mexico Navajo Water Settlement Technical Corrections Act, Pub. L. No. 114-57, 129 Stat. 528 (2015) (making technical corrections to the Navajo water rights settlement in New Mexico); Office of Compliance Administrative and Technical Corrections Act of 2015, Pub. L. No. 114-6, 129 Stat. 81 (making administrative and technical corrections to the Congressional Accountability Act of 1995); Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416, 108 Stat. 4305 (making technical corrections to the Immigration and Nationality Act).

¹⁹⁷ *King*, 135 S. Ct. at 2487.

¹⁹⁸ Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of 26 and 42 U.S.C.).

¹⁹⁹ For an account of “where the four words at issue came from,” see Abbe R. Gluck, *The Supreme Court, 2014 Term — Comment: Imperfect Statutes, Imperfect Courts: Understanding Congress’s Plan in the Era of Unorthodox Lawmaking*, 129 HARV. L. REV. 62, 76–79 (2015).

way that is consistent with the former, and avoids the latter.”²⁰⁰ The Court appeared to suggest that the overall plan and context of the law showed that the words in question did not *mean* what they *said*. The Court stated: “But when read in context, ‘with a view to [its] place in the overall statutory scheme,’ the meaning of the phrase ‘established by the State’ is not so clear.”²⁰¹ The Court used the term “ambiguous” to describe the law, but I think the Court was describing more of a mistake rather than ambiguity in any traditional sense.

It’s not my place here to say whether *King v. Burwell* was right or wrong in its outcome. That’s not relevant for present purposes and beyond the scope of this Book Review. But I think the question of whether it was right or wrong depends on what one thinks about a mistake canon — that is, a narrower form of *Holy Trinity* — that does not allow resort to legislative history but does allow courts to look at the overall Act and adopt what they conclude Congress *meant* rather than what Congress *said*.²⁰²

In the wake of *King*, a separate issue going forward for statutory interpretation and an issue more central to my focus in this Book Review is that the *King v. Burwell* Court’s calling the “established by the State” language ambiguous — rather than directly addressing the appropriate role of the Court in dealing with Congress’s apparent mistakes — may have broader repercussions. As I have explained, many canons depend on a finding of clarity versus ambiguity. That threshold inquiry is already indeterminate. Because the phrase “established by the State” was deemed ambiguous, one can imagine that some judges may find fewer statutes “clear” because the statutory language in question is no less ambiguous than the phrase “established by the State” was in *King*. We will see.

III. REVISING THE PROBLEMATIC SEMANTIC CANONS

There is another set of canons of interpretation that judges apply when interpreting statutes. These are known as semantic canons. These canons help judges determine the best reading of the statutory text.

Semantic canons are generally designed to reflect the meaning that people, including Members of Congress, ordinarily intend to communi-

²⁰⁰ *King*, 135 S. Ct. at 2496.

²⁰¹ *Id.* at 2490 (alteration in original) (first quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000), then quoting 26 U.S.C. §§ 36B(b)–(c) (2012)).

²⁰² *Cf. id.* at 2504–05 (Scalia, J., dissenting) (“Only when it is patently obvious to a reasonable reader that a drafting mistake has occurred may a court correct the mistake. . . . [T]he Court does not pretend that there is any such indication of a drafting error on the face of [the statute].”); *Re, supra* note 34, at 413–15.

cate with their choice of words.²⁰³ But some semantic canons do not accomplish this mission very well, and some require judges to make difficult policy judgments that they are ill-equipped to make. It seems to me that we ought to shed semantic canons that fall into these categories. There is much to be written on this topic, but to keep this Book Review from turning (even more) into a book of its own, I will sketch out just a few preliminary thoughts.

A. *The Ejusdem Generis Canon*

The ejusdem generis canon tells us to interpret a general term at the end of a series of specific terms to be of like character as the specific terms.²⁰⁴ So when a statute says “no dogs, cats, or other animals allowed in the park,” we are told that we should read “other animals” to mean “other animals like dogs and cats.”

That does not make a whole lot of sense to me. Why not read “other animals” to mean “other animals”? It seems to me that we have to be wary of adding implicit limitations to statutes that the statutes’ drafters did not see fit to add.²⁰⁵ If legislators want to keep out animals like dogs and cats, then they should enact a statute that states “no dogs, cats, or other *similar* animals allowed in the park.” That’s easy enough going forward, at least putting aside the not-so-easy question of transition rules in how we are to interpret statutes passed before any shift in interpretive methods.²⁰⁶

The more fundamental problem with ejusdem generis, for present purposes, is that it requires judges to come up with their own sense of the connective tissue that binds the terms in the statute.²⁰⁷ Judges

²⁰³ See MANNING & STEPHENSON, *supra* note 88, at 202 (“Some of these canons are ‘semantic’ (or ‘linguistic’ or ‘syntactic’): They are generalizations about how the English language is conventionally used and understood, which judges may use to ‘decode’ statutory terms. The use of semantic canons can therefore be understood simply as a form of textual analysis.”); cf. Kagan, *supra* note 1, at 35:42 (“I think of [semantic canons] usually as guides to reading language sensibly . . . Rather than go and memorize fifty canons, it’s helpful to have an intuitive feel for how language works and how the people who write things think that language works. And the canons are often just ways of formalizing those intuitions, those correct intuitions, about how people use language.”).

²⁰⁴ See SCALIA & GARNER, *supra* note 7, at 199 (“Where general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned (*ejusdem generis*).”).

²⁰⁵ Cf. *id.* (explaining how the “principle of *ejusdem generis* . . . implies the addition of *similar* after the word *other*”).

²⁰⁶ Critics have attacked the ejusdem generis canon from many different perspectives. See, e.g., EDWARD BEAL, CARDINAL RULES OF LEGAL INTERPRETATION 65–66 (A.E. Randall ed., 3d ed. 1924); REED DICKERSON, THE INTERPRETATION AND APPLICATION OF STATUTES 233–34 (1975); Llewellyn, *supra* note 5, at 405.

²⁰⁷ Cf. SCALIA & GARNER, *supra* note 7, at 207 (“What sets *ejusdem generis* apart from the other canons — and makes it unpopular with many commentators — is its indeterminacy. The doctrine does not specify that the court must identify the genus that is at the lowest possible level

must first determine what characteristic makes “dogs” and “cats” similar, and then apply that characteristic as an implied limitation on “other animals.” This is a very indeterminate task for judges. Justice Kagan highlighted this problem in her brilliant dissent in *Yates v. United States*,²⁰⁸ a case involving an obstruction of justice statute where the majority relied on the ejusdem generis canon.²⁰⁹ As she noted in that case: “[Ejusdem generis] require[s] identifying a common trait that links all the words in a statutory phrase.”²¹⁰ Commenting on the case, she explained:

The canon says you need a common denominator. But what is that common denominator? Is the common denominator things that preserve information? Or in the context of an evidence tampering statute, is the common denominator things that provide information to an investigator, things that tell an investigator, say something to an investigator about what the crime is?²¹¹

Justice Kagan illustrates well the problem with the canon. Judges should not be in the position of trying to devise the connective tissue or common denominator. I would consider tossing the ejusdem generis canon into the pile of fancy-sounding canons that warrant little weight in modern statutory interpretation.

B. The Anti-redundancy Canon

Judges say that we should not interpret statutes to be redundant.²¹² But humans speak redundantly all the time, and it turns out that Congress may do so as well.²¹³ Congress might do so inadvertently. Or Congress might do so intentionally in order to, in Shakespeare’s words,

of generality. The court has broad latitude in determining how much or how little is embraced by the general term.”).

²⁰⁸ 135 S. Ct. 1074 (2015).

²⁰⁹ See *id.* at 1086–87.

²¹⁰ *Id.* at 1097 (Kagan, J., dissenting).

²¹¹ Kagan, *supra* note 1, at 46:17.

²¹² See SCALIA & GARNER, *supra* note 7, at 174 (“If possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*). None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence.”); see also *id.* at 174–79.

²¹³ See Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside — An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 STAN. L. REV. 901, 933–36 (2013). Despite supporting the canon, Justice Scalia and Professor Garner admit this commonsensical point. They write that the canon “cannot always be dispositive because (as with most canons) the underlying proposition is not *invariably* true. Sometimes drafters *do* repeat themselves and *do* include words that add nothing of substance, either out of a flawed sense of style or to engage in the ill-conceived but lamentably common belt-and-suspenders approach.” SCALIA & GARNER, *supra* note 7, at 176–77.

make “double sure.”²¹⁴ Either way, statutes often have redundancies, whether unintended or intended.

The anti-redundancy canon nonetheless tells us to bend the statute to avoid redundancies, at least to the extent we reasonably can. But if one statute says “No dogs in the park” and another one says “No animals in the park,” I believe we should generally assume that the drafter wanted no animals in the park and *really* wanted to make sure that there were no dogs in the park. The anti-redundancy canon instead would have judges try to find some meaning of “animals” that excludes dogs and thereby avoids the redundancy. Such an exercise is little more than policymaking and, in my view, often quite wrongheaded.

We need to be much more cautious when invoking the anti-redundancy canon. Our North Star should always be determining the best reading of the actual words of the statute.

C. *The Consistent Usage Canon*

Third, and relatedly, judges are told to presume that Congress uses terms consistently: where Congress uses the same term twice, it should be interpreted to mean the same thing, and where Congress uses different terms, they should be interpreted to mean different things.²¹⁵

Superficially, that presumption seems commonsensical, and in the right context it is well advised. But in certain cases, judges turn this commonsense observation about human language into an ironclad rule. Those judges will never allow the same word to mean different things in different places in a statute, no matter how much the context suggests otherwise. Of course, that rigidity is inappropriate — in documents as complex and sprawling as statutes, oftentimes authors will use the same term to mean different things in different places.

Similarly, if two different terms are normally synonyms, requiring them to be interpreted differently makes little sense. For example, sometimes people say “street” and sometimes they say “road,” as in “he lives down the street, but she lives at the other end of the road.” Those different words were not intended to communicate any different meaning. For that reason, I would caution against unnaturally reading synonyms to have different meanings. When judges hew too closely to this presumption, they may ditch the best reading of a statute and instead improperly invent one of their own.

²¹⁴ WILLIAM SHAKESPEARE, *MACBETH* act 4, sc. 1, l. 105 (Stephen Orgel ed., Penguin Books 2000) (1623).

²¹⁵ See SCALIA & GARNER, *supra* note 7, at 170 (“A word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning.”).

CONCLUSION

Suppose that courts decided to try the suggestions made in this Book Review. Where would that leave us? Likely with the following two-step approach:

First, find the best reading of the statute by interpreting the words of the statute, taking account of the context of the whole statute, and applying any appropriate semantic canons.

Second, apply any applicable plain statement rules, and ensure that the interpretation is not absurd.

Would this two-step process lead every set of judges to reach the same answer in every case? Of course not. But I believe it would produce a more stable and predictable body of statutory jurisprudence than we have now. It would sideline the clarity versus ambiguity determination that is so critical now, but also so indeterminate. This new approach would enhance the rule of law and the appearance of neutral, evenhanded justice.

Regardless of whether you go down that road and whatever your views on statutory interpretation, please read Chief Judge Katzmann's book *Judging Statutes*. And after reading it, do not stop thinking. Instead, use it as a springboard to start reflecting more deeply on the state of statutory interpretation. In my view, we have made enormous progress, thanks largely to Justice Scalia. But as he himself explained so well, the current state of affairs is still not always a pretty picture. I have sketched out some thoughts here to provoke discussion. Some of these may be good ideas; others may be not as good. I am not wedded to any of them at this point. But I am confident that we can do better in interpreting statutes. Prompted by Justice Scalia's brilliant life and career, and by Chief Judge Katzmann's excellent book, we should all strive to do better. That much is clear.

254 Ariz. 281

Supreme Court of Arizona.

SOUTHERN ARIZONA HOME BUILDERS
ASSOCIATION, Plaintiff/Appellant,

v.

TOWN OF MARANA, Defendant/Appellee.

No. CV-21-0211-PR

|

Filed January 17, 2023

Synopsis

Background: Home builders association brought action for declaratory judgment against town, alleging that town violated statute governing municipal-development fees by assigning entire cost of upgraded and expanded wastewater treatment facilities to future homeowners through development impact fees. On cross-motions by parties, the Superior Court, Pima County, No. C20184411, [Paul E. Tang, J., 2020 WL 12189073](#), granted summary judgment for town. Association appealed. The Court of Appeals, Division Two, [252 Ariz. 83, 497 P.3d 1032](#), affirmed. The Supreme Court granted review.

The Supreme Court, [Bolick, J.](#), held that town violated development-fee statute by assigning entire cost of upgraded and expanded wastewater treatment facilities to future homeowners.

Opinion of the Court of Appeals vacated; judgment of the Superior Court reversed; remanded.

Procedural Posture(s): Petition for Discretionary Review; On Appeal; Motion for Summary Judgment.

Appeal from the Superior Court in Pima County, The Honorable [Paul E. Tang](#), Judge, No. C20184411.

REVERSED AND REMANDED

Opinion of the Court of Appeals, Division Two, [252 Ariz. 83, 497 P.3d 1032 \(App. 2021\)](#). **VACATED**

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JUSTICE BOLICK authored the Opinion of the Court, in which CHIEF JUSTICE BRUTINEL, VICE CHIEF JUSTICE TIMMER and JUSTICES LOPEZ, BEENE, MONTGOMERY, and PELANDER (RETIRED) joined. *

Opinion

JUSTICE BOLICK, Opinion of the Court:

*282 **672 ¶1 We hold in this case that the Town of Marana violated [A.R.S. § 9-463.05](#) by assigning the entire cost of upgraded and expanded wastewater treatment facilities to future homeowners through development impact fees. Because the statute governing development fees was substantially changed following our seminal decision applying its prior provisions, [Home Builders Association of Central Arizona v. City of Scottsdale](#), 187 Ariz. 479, 930 P.2d 993 (1997), we interpret the statute afresh in light of the revised statute's significant constraints on and requirements for the imposition of such fees.

BACKGROUND

¶2 Before approving new development, municipal governments must assure they have an adequate 100-year water supply. [A.R.S. § 45-576\(B\), \(L\)](#).

¶3 Until 2012, Pima County provided sewer and water service to residents of the Town of Marana ("Town"). That year, the Town obtained operational control over a wastewater reclamation facility ("WRF") from Pima County, assuming

the approximately \$16.4 million outstanding debt on the facility. As acquired, the WRF's tertiary treatment system's capacity was 3.5 million gallons-per-day ("gpd").¹ However, the WRF's functional capacity was limited by the secondary treatment system's maximum capacity of 380,000 gpd.

¶4 In 2013, the Town acquired legal title to the WRF, including the infrastructure, land, and exclusive rights to the facility's effluent. As acquired, the Town's residents fully utilized WRF's operational capacity of 380,000 gpd. The Town improved the secondary treatment system to expand the WRF's output to 500,000 gpd.

¶5 Owning a facility's effluent contributes to the 100-year assured water supply required for new development, as it can be used to "recharge" the aquifer. Recharging, or replenishing, qualifies the Town to obtain "recharge credits" that help demonstrate an adequate long-term water supply. [A.R.S. § 45-855.01](#) ("the director shall include the amount of long-term storage credits ... in determining ... whether to designate the city, town or private water company as having an adequate water supply"); [A.R.S. § 45-852.01\(C\)\(1\)](#) (laying out a framework for the director to grant water storage credits for recharging an aquifer under certain conditions). Effluent rights to recharge the aquifer are so valuable to the Town, in fact, that it had been trying to acquire the WRF since 2007. The acquisition here provided a more efficient closed loop water system because reclaimed water is added back to the aquifer rather than purchased from Central Arizona Project. The Town estimated this would produce \$350,000 in annual savings as early as 2018.

¶6 In 2013, the Town issued twenty-year bonds with an annual debt service of \$1.8 million to finance the acquisition of the WRF. The Town also commissioned two infrastructure improvement plans ("IIPs"). An IIP is required before a municipality may assess fees like the ones at issue here. *See* [§ 9-463.05](#). Pursuant to the IIPs, half the acquisition ***283** ****673** costs were assigned to future water customers and half to future sewer customers in the form of development impact fees. *Infra* ¶ 10. None of the costs were assigned to existing users.

¶7 In 2017, the Town approved a Capital Improvement Project encompassing "multi-phase expansion and upgrades" to the water and sewer systems. At issue here is Phase 1, which was completed and became operational in 2018. The Town contends that the ultimate cost of Phase 1 was higher than projected in the Master Plan—around \$23 million, not

including design—however, the Town used the projected cost of \$17.5 million as the basis for assessing the impact fees being challenged here.

¶8 Phase 1 encompassed multiple components. To increase the WRF's capacity to 1.5 million gpd to serve both existing residents and anticipated development, a new influent sewer main, a new headworks facility, and higher capacity influent pumps were installed at a projected cost of \$982,800. Other new facilities built during the Phase 1 expansion included a new secondary treatment system at a projected cost of \$4,047,600, two secondary clarifiers at a projected cost of \$3,047,300, and a new solids handling facility at a projected cost of \$1,615,700.

¶9 The upgraded secondary treatment system was necessary to bring the Town into compliance with the Class B+ water quality standard required by its Aquifer Protection Permit. In 2017, the proposal for the new upgraded secondary treatment system triggered an Arizona Department of Environmental Quality ("ADEQ") requirement that the Town produce the highest quality water, Class A+, based on the best available technology. The new system included two secondary clarifiers that settle out the solids in the liquid after the secondary treatment and send treated effluent to the existing downstream processes of final filtration and disinfection, which helps the system operate more efficiently. The new solids handling facility also eliminated the need to pay a third-party contractor to haul away sludge, saving residents about \$400,000 annually. Through these upgrades, the new system improved water quality from barely meeting the Class B+ standard to Class A+ quality. The Class A+ water has re-use possibilities that Class B+ water did not have, such as improved crop irrigation, residential landscape irrigation, fire protection systems, and vineyard spray irrigation.

¶10 In 2017, the Town adopted new water and sewer impact fees in conjunction with the Capital Improvement Project, effectively replacing the 2013 development fees. The Town again assigned 100% of the debt service to future water and sewer customers via development impact fees. To account for the contributions made by the then-current customers for the existing utilized capacity, the Town contributed \$3.2 million, which it received from a refund from an unrelated 2004 bond offering, toward financing the WRF and Phase 1.

¶11 In 2018, Southern Arizona Home Builders Association ("SAHBA") filed this declaratory judgment action against the Town. SAHBA argued that the development fees violated

§ 9-463.05 because they disproportionately imposed 100% of the cost of the WRF and Phase 1 expenses on new development despite those facilities also benefitting current residents by enabling a higher level of service and saving taxpayer money. The Town argued the development fees were valid because the expansion and improvements were undertaken to serve future development.

¶12 The trial court granted summary judgment in favor of the Town. Applying *City of Scottsdale*, 187 Ariz. at 482, 930 P.2d at 996, the court ruled that the development impact fees bear “a presumption of validity, such which may be overturned *only* if SAHBA establishes the restrictions to be ‘arbitrary and without a rational relation to a legitimate state interest.’” The court concluded that “the Town’s chief goal in acquiring the WRF was to obtain its effluent as a water resource in order to secure recharge credits towards water rights as a means for sustaining growth by having access to a 100-year designated water supply.” Although acknowledging that “[t]here can be no question that this goal benefits current residents along with those arriving in the future,” the court concluded that § 9-463.05 was satisfied because *284 **674 the development fees “result in a beneficial use to the development.” (citing § 9-463.05(B)(1)).

¶13 The court of appeals affirmed. *S. Ariz. Home Builders Ass’n v. Town of Marana*, 252 Ariz. 83, 84 ¶ 1, 497 P.3d 1032, 1033 (App. 2021). Like the trial court, the court of appeals applied *City of Scottsdale* and its presumption of validity, *id.* at 86 ¶ 10 & n.2, 497 P.3d at 1035 & n.2, and concluded that SAHBA “has not shown” that the project increased the level of service to existing development. *Id.* ¶ 11. The court held that because the “upgrades and modernization to the WRF,” *id.* at 88 ¶16, 497 P.3d at 1037, were “undertaken for the existential benefit of new development,” *id.* at 89 ¶ 18, 497 P.3d at 1038, the fact that the project also “happens to serve existing development as well” does not render the imposition of the entire cost upon new development unlawful under § 9-463.05, *id.* at 88 ¶ 16, 497 P.3d at 1037.

¶14 We granted review of whether the Town violated § 9-463.05 by (1) making future development bear 100% of the cost of acquiring the WRF facility; (2) making future development bear nearly all the cost of upgrading, modernizing, and improving the facility; and (3) failing to take into account what could or could not be included in development fees under that statute, and to make any proportionate allocation of costs between existing and future

development. Because these issues present overlapping facts, issues, and legal principles, we consider them together.

¶15 This case presents unresolved issues of statewide importance. We have jurisdiction under [article 6, section 5\(3\) of the Arizona Constitution](#).

DISCUSSION

¶16 We review de novo a grant of summary judgment, “viewing the evidence in the light most favorable to the party against whom summary judgment was entered.” *Dabush v. Seacret Direct LLC*, 250 Ariz. 264, 267 ¶ 10, 478 P.3d 695, 698 (2021). We also review matters of statutory interpretation de novo. *State v. Jones*, 246 Ariz. 452, 454 ¶ 5, 440 P.3d 1139, 1141 (2019). “Our task in statutory construction is to effectuate the text if it is clear and unambiguous.” *BSI Holdings, LLC v. Ariz. Dep’t of Transp.*, 244 Ariz. 17, 19 ¶ 9, 417 P.3d 782, 784 (2018). “Words in statutes should be read in context in determining their meaning.” *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7, 398 P.3d 574, 575 (2017).

A. [A.R.S. § 9-463.05](#), Old and New.

¶17 [Section 9-463.05](#) was first enacted in 1982, authorizing municipal governments to “assess development fees to offset costs to the municipality associated with providing necessary public services to a development.” [A.R.S. § 9-463.05\(A\)](#) (2011). The main constraint was that the development fees “shall result in a beneficial use to the development,” [§ 9-463.05\(B\)\(1\)](#), and that “[t]he amount ... must bear a reasonable relationship to the burden imposed on the municipality to provide additional necessary public services to the development,” [§ 9-463.05\(B\)\(4\)](#).²

¶18 In *City of Scottsdale*, the Court considered a challenge to a water resources development fee on the basis that the city’s plans to acquire new water were too speculative to confer a beneficial use upon new development, as required by the then-operative version of [§ 9-463.05](#). 187 Ariz. at 480, 483, 930 P.2d at 994, 997. This Court noted that the adoption of the fee “was a legislative act that came to the court cloaked with a presumption of validity.” *Id.* at 482, 930 P.2d at 996. As applied by the Court, the presumption meant “first, that the factual underpinning for the city council’s decision, *i.e.*, that the city needed more water, must stand unless shown to be without factual support”; and second, “that the wisdom of Scottsdale’s choice of methods of meeting

its water needs is a legislative, not a judicial, question.” *Id.* The Court rejected plaintiff Home Builders Association's argument that Scottsdale's water plans were too speculative, holding that “it need only develop such plans as will indicate a good faith intent to use development fees to *285 **675 provide those services within a reasonable time.” *Id.* at 484, 930 P.2d at 998.

¶19 Turning to the statute's “reasonable relationship” requirement, the Court stated that the plaintiff had “the burden of showing that Scottsdale's fee bore no reasonable relationship to the public burden created by the proposed development.” *Id.* at 485, 930 P.2d at 999. The Court applied a two-part test for assessing the validity of these fees: (1) that “the exaction imposed on the developer be factually related to the need for public services created by the proposed development”; and (2) that “the nature and extent of the exaction must bear a reasonable relationship to that portion of the public burden created by the proposed development.” *Id.* at 483, 930 P.2d at 997. But the Court concluded that because the plaintiff did not challenge the amount of the fee, remand to the trial court to apply this standard was unnecessary. *Id.* at 485, 930 P.2d at 999.

¶20 The Court decided the case against the backdrop of *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), in which the United States Supreme Court had held that under the takings clause of the Fifth Amendment, an exaction imposed upon an individual landowner as a condition of development must be related both in nature and extent to the proposed development's burden on the community. *Id.* at 391, 114 S.Ct. 2309. The necessary relationship required by the Fifth Amendment is “rough proportionality.” *Id.* The *City of Scottsdale* Court noted that the Supreme Court's term “rough proportionality” was adopted rather than a reasonable relationship test because the term “reasonable relationship” is confusingly similar to the term “rational basis,” which describes a standard of minimum scrutiny. 187 Ariz. at 485, 930 P.2d at 999; *Dolan*, 512 U.S. at 391, 114 S.Ct. 2309. But this Court held that *Dolan* was inapplicable because Home Builders Association did not argue that “there was no reasonable relationship between the amount of the fee and the community burden.” *City of Scottsdale*, 187 Ariz. at 485–86, 930 P.2d at 999–1000.

¶21 In 2011, the legislature largely transformed § 9-463.05, amending all but two subparagraphs of the then-existing statute, and adding more than ten pages of new provisions. 2011 Ariz. Sess. Laws ch. 243, § 1 (1st Reg. Sess.). The new

statute is about four times as long as the previous version and consists primarily of procedural requirements and substantive limits on the imposition of development fees.

¶22 Perhaps the most noteworthy statutory changes were the removal of the “reasonable relationship” standard from the previous § 9-463.05(B)(4), and the new requirement that development fees must not be “used to impose on new residents a burden all taxpayers of a municipality should bear equally.” § 9-463.05(M).

¶23 The current statute carries over from its predecessor that “[d]evelopment fees shall result in a beneficial use to the development.” § 9-463.05(B)(1). But, adopting terminology from *Dolan*, it adds that the fee “shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.” § 9-463.05(B)(3). It further states that “[c]osts for necessary public services ... shall be based on the same level of service provided to existing development in the service area.” § 9-463.05(B)(4). The statute does not define “level of service.”

¶24 The statute lists examples where development fees may not be used. These include the “[c]onstruction, acquisition or expansion of public facilities” if they are not necessary public services or facility expansions identified in the IIP, § 9-463.05(B)(5)(a), and “[u]pgrading, updating, expanding, correcting or replacing existing necessary public services to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards,” § 9-463.05(B)(5)(c), or “to provide a higher level of service to existing development,” § 9-463.05(B)(5)(d). “Necessary public service” is defined to include municipal water and wastewater treatment facilities. § 9-463.05(T)(7)(a)–(b).

¶25 In assessing development fees, municipalities must use “qualified professionals” to calculate the fees in an IIP based on “projected *286 **676 demand for necessary public services or facility expansions required by new service units for a period not to exceed ten years.” § 9-463.05(D)(2), (E)(6).

¶26 Finally, the statute instructs that “[i]n any judicial action interpreting this section, all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.” § 9-463.05(M).

B. Applying [A.R.S. § 9-463.05](#).

¶27 We first articulate our decisional framework. The trial court and court of appeals applied the deferential treatment toward municipal authority to impose development fees from *City of Scottsdale*, which predated the significant statutory changes that were made after that decision. Those changes were tantamount to a repeal-and-replacement of the prior statute rather than minor revisions. *Supra* ¶ 21. As non-charter municipalities have no inherent powers and derive their authority solely from statute, 1 McQuillan Mun. Corp. § 2:10 (3d ed.); see *State ex rel. Brnovich v. City of Tucson*, 242 Ariz. 588, 607 ¶ 81, 399 P.3d 663, 682 (2017) (Bolick, J., concurring), development fees are valid only if the municipality complies with the express statutory requirements of [§ 9-463.05](#) in implementing such fees.

¶28 By its own terms, *City of Scottsdale* is largely inapplicable here. The Court there explained that the legislative acts at issue that were “cloaked with a presumption of validity” were the city’s decision that it needed more water and its choice of methods to accomplish that goal. 187 Ariz. at 482, 930 P.2d at 996. That presumption of validity does not apply here at all, given that the Town’s policy decisions regarding the need for new and improved facilities are unchallenged.

¶29 As to the amount of the development fees, which the Court concluded were not at issue, *City of Scottsdale* also applied a highly deferential “reasonable relationship” standard and assigned to those challenging the fees the “burden of showing that Scottsdale’s fee bore no reasonable relationship to the public burden created by the proposed development.” *Id.* at 485, 930 P.2d at 999. That standard was removed from the statute in 2011 and replaced with a proportionality standard. [§ 9-463.05\(B\)\(3\)](#) (“The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development.”).

¶30 In applying [§ 9-463.05](#) as amended, the court of appeals committed two principal errors. First, it applied from *City of Scottsdale* a presumption of validity to the Town’s assessment of development fees. *S. Ariz. Home Builders Ass’n*, 252 Ariz. at 86 ¶ 10, 497 P.3d at 1035. Second, it credited the Town’s intent that the project was “entirely for purposes of new development.” *Id.* at 87 ¶ 13, 497 P.3d at 1036; *id.* at 89 ¶ 18, 497 P.3d at 1038 (emphasizing the “larger context” that “the acquisition of the WRF and the various upgrades put in place were undertaken for the existential benefit of new

development”). The Town’s intent is irrelevant; we determine whether the fees are permissible solely on the basis of the Town’s compliance with statutory requirements.

¶31 Statutory interpretation requires us to determine the meaning of the words the legislature chose to use. We do so neither narrowly nor liberally, but rather according to the plain meaning of the words in their broader statutory context, unless the legislature directs us to do otherwise. *Matthews v. Indus. Comm’n*, 254 Ariz. 157, —, 520 P.3d 168, 175 ¶ 35 (2022). Here, the legislature did just that, expressly directing that “all powers conferred on municipal governments in this section shall be narrowly construed to ensure that development fees are not used to impose on new residents a burden all taxpayers of a municipality should bear equally.” [§ 9-463.05\(M\)](#). Thus, instead of the deference exhibited by the courts below and in *City of Scottsdale*, 187 Ariz. at 484, 930 P.2d at 998 (“We would be reluctant to deprive the city of the flexibility needed to deal with these projects unless the legislature made it clear that it intended no such flexibility.”), the legislative rewrite of [§ 9-463.05](#) greatly constrained municipal authority ****677** to assess development ***287** fees. To be clear, our role is not to second-guess the Town’s policy judgments regarding what facilities are needed to assure a safe and secure 100-year water supply, but to narrowly construe the Town’s authority to assess development fees, as [§ 9-463.05\(M\)](#) instructs, so as to ensure that new residents do not bear a disproportionate share of the costs of necessary public services.

¶32 As a threshold matter, most if not all of the acquired, new, improved, and expanded facilities clearly provide necessary public services. The statute defines “necessary public services” as including both water and wastewater facilities and the functions performed by those facilities. [§ 9-463.05\(T\)\(7\)\(a\)–\(b\)](#). We also readily conclude that the facilities confer a beneficial use on new development, [§ 9-463.05\(B\)\(1\)](#), given that “[w]ithout the assurance of a water supply, developers would be unable to develop and market their land.” *City of Scottsdale*, 187 Ariz. at 482, 930 P.2d at 996 (construing an unchanged provision of the prior statute). But this only begins the statutory inquiry.

¶33 The court of appeals, trial court, and the Town all acknowledge that the acquisition and improvement of the Town’s water facilities benefit both new and existing development. The court of appeals concluded, however, that although “the upgrades and modernization to the WRF incidentally improve[d] the processes serving existing residents,” they “[did] not make the development fees

unlawful when such upgrades were only undertaken so that the WRF would have the capacity to provide necessary public services to new development.” *S. Ariz. Home Builders Ass’n*, 252 Ariz. at 88 ¶ 16, 497 P.3d at 1037. To the contrary, the statute requires proportional allocation of costs between existing and future residents for necessary public services that serve both, regardless of the municipality’s motivation. § 9-463.05(B)(3)–(4), (B)(5)(a)–(b), (M). Nor is any exception made to the proportionality requirement for “incidental” benefits.

¶34 The acquisition of the WRF to obtain the effluent and recharge credits to assure a renewable and reliable water supply, the ability to create a closed-loop water system thereby eliminating the need to purchase CAP water and lowering costs, and the improvement in water quality all benefit existing as well as future users. Thus, the costs should be allocated proportionately.

¶35 Section 9-463.05(B)(5)(d) excludes from development fees the cost of “[u]pgrading, updating, expanding, correcting or replacing existing necessary public services to provide a higher level of service to existing development.” The term “level of service” is undefined, but by its plain meaning the adjective “higher” suggests not a new or different service but a better service. Higher is defined as “of greater degree, amount, cost, value, or content than average, usual, or expected.” *Higher*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/higher> (last visited Jan. 11, 2023); Ariz. State House Summary for S.B. 1525, 50th Leg., 1st Reg. Sess. (Mar. 15, 2011) (using development fees for “upgrading ... existing infrastructure improvements to provide *better service* to existing development” is prohibited (emphasis added)). The Town contends that the level of service for existing residents is the same: “They get tap water. They flush the toilet and it goes away.” But the uncontroverted evidence demonstrates that the improvement in water quality from B+ to A+, which ADEQ mandated as a condition of the project, provides healthier water that may be used for a wider variety of purposes—to the entire community’s benefit. Construing the statute narrowly to achieve a fair allocation of costs, as § 9-463.05(M) requires, the Town may not impose the entire cost of the facilities necessary to improve water quality on new residents. To the contrary, § 9-463.05(B)(4) requires that new development costs shall be based on the same level of service provided to existing development. Therefore, the task is identifying the cost to provide B+ quality water to new residents and allocating proportionally the increased costs of improving water quality.

¶36 In its answer to the complaint, and through its witnesses, see *Ariz. R. Civ. P. 30(b)(6)*, the Town admitted that the remaining Phase 1 projects and improvements—accounting for approximately 90% of the estimated Phase 1 project costs—would benefit *288 **678 both existing and future residents; and despite present disagreement between the parties, the Town is bound by those admissions. See, e.g., Answer to Plaintiff’s Complaint ¶ 30 (stating that “upgrading and modernizing the Marana WRF benefited and provided, and continues to benefit and provide, a higher level of service to current and future Town residents”). Examples of those projects and improvements include replacement of the Biolac® system to reduce nitrogen levels; replacement of the secondary treatment system, including secondary clarifiers, to achieve ADEQ compliance and improve water quality; and adding a solids handling facility, which will eliminate reliance on a third-party contractor and reduce costs. Again, such costs should be proportionally distributed.

¶37 At no time did the Town and its consultants calculate what should be included or excluded in the development fee, apart from assigning 100% of the costs to new development. As previously noted, the Town contributed roughly \$3.2 million, or approximately 15% of the Phase 1 costs. However, that contribution was untethered to any calculation regarding the relative proportion of costs of necessary services attributed to new development and existing users. Rather, the IIPs allocated the full cost of all Phase 1 expenditures to new development, although that was ultimately partly offset by the Town’s contribution.

¶38 In sum, we conclude that the Town violated § 9-463.05 by making future development bear 100% of the cost of acquiring the WRF; by making future development bear nearly all the cost of upgrading, modernizing, and improving the facility; and by failing to determine what could or could not be included in development fees or to make any proportionate allocation of costs between existing and future development. Our conclusion, however, does not absolve new development from paying its proportionate share of costs that may properly be included under the statute. Nor do we second-guess the Town’s determination of what facilities or services are needed to serve the needs of its residents. The statutory violation consists of requiring new residents to bear the entire cost of the new, expanded, and improved services and facilities. Under the statute, the proper allocation of costs requires discrete, evidence-based findings of fact and careful

adherence to the narrow statutory authority conferred upon municipalities.

¶39 SAHBA asks us to remand to the trial court with instructions to grant summary judgment in its favor. But because the trial court never made the determinations set forth in the preceding paragraph, we remand for it to do so consistent with the decisional framework set forth in this opinion. SAHBA remains free to argue that certain expenses may not be included in development fees at all. The Town may argue that certain expenses pertain exclusively to new development, and the Town may count its \$3.2 million contribution in the calculation. Alternatively, the trial

court may determine that the Town should recalculate the development fees in the first instance.

CONCLUSION

¶40 For the foregoing reasons, we vacate the court of appeals' opinion, reverse the trial court's judgment, and remand to the trial court for further proceedings consistent with this opinion.

All Citations

254 Ariz. 281, 88 Arizona Cases Digest 4, 522 P.3d 671

Footnotes

- * Justice King is recused from this matter. Pursuant to [article 6, section 3 of the Arizona Constitution](#), Justice John Pelander (Ret.) of the Arizona Supreme Court was designated to sit in this matter.
- 1 The tertiary treatment stage, which consists of a sand filtration and ultraviolet disinfection system, is used to further treat the wastewater following the secondary treatment.
- 2 References to [§ 9-463.05](#) in paragraphs 17 through 20 are to the statute as it existed in 2011; all other references are to the current version.

257 Ariz. 137
Supreme Court of Arizona.

PLANNED PARENTHOOD ARIZONA, INC., Successor-In-Interest to Planned Parenthood Center of Tucson, Inc.; Laura Conover, Pima County Attorney, Appellants,
v.
Kristin K. MAYES, Attorney General of the State of Arizona, Appellee,
and
Eric Hazelrigg, M.D., as guardian ad litem of unborn child of plaintiff Jane Roe and all other unborn infants similarly situated; Dennis McGrane, Yavapai County Attorney, Intervenor.

No. CV-23-0005-PR
|
Filed April 9, 2024

Synopsis

Background: Abortion provider and physicians brought action challenging constitutionality of Arizona's abortion statutes. After entry of judgment ruling statutes unconstitutional and permanently enjoining their enforcement, 19 Ariz. App. 142, 505 P.2d 580, Attorney General filed motion for relief from judgment, and county attorney and guardian ad litem of unborn child intervened. The Superior Court, Pima County, No. C127867, Kellie L. Johnson, J., 2022 WL 4487408, granted motion, and providers appealed. The Court of Appeals, Division Two, Vasquez, C.J., 254 Ariz. 401, 524 P.3d 262, affirmed in part as modified and reversed in part. Intervenor appealed.

Holdings: The Supreme Court, Lopez, J., held that:

statute restricting elective abortion to 15 weeks' gestation did not impliedly repeal statutory proscription on elective abortion;

statutes' overlap did not violate due process notice requirements; and

guardian ad litem was not entitled to attorney fees and costs under private attorney general doctrine.

Superior Court's judgment affirmed, Court of Appeals' judgment vacated, and matter remanded to Superior Court.

Timmer, J., dissented and filed opinion in which Brutinel, C.J., joined.

Procedural Posture(s): On Appeal; Motion for Relief from Order or Judgment; Motion for Attorney's Fees.

West Codenotes

Negative Treatment Vacated

Ariz. Rev. Stat. Ann. § 13-3603

****893** Appeal from the Superior Court in Pima County, The Honorable Kellie L. Johnson, Judge, No. C127867. **AFFIRMED**

Opinion of the Court of Appeals, Division Two, 254 Ariz. 401 (App. 2022). **VACATED**

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JUSTICE LOPEZ authored the Opinion of the Court, in which JUSTICES BOLICK, BEENE, and KING joined. VICE CHIEF JUSTICE TIMMER authored a dissenting opinion in which CHIEF JUSTICE BRUTINEL joined.¹

Opinion

JUSTICE LOPEZ, Opinion of the Court:

***140 **895 ¶1** We consider whether the Arizona Legislature repealed or otherwise restricted [A.R.S. § 13-3603](#) by enacting the abortion statutes in Title 36,² namely [A.R.S. § 36-2322](#), the statute proscribing physicians from performing elective abortions after fifteen weeks' gestation. This case involves statutory interpretation—it does not rest on the justices' morals or public policy views regarding abortion; nor does it rest on [§ 13-3603](#)'s constitutionality, which is not before us.

¶2 We conclude that [§ 36-2322](#) does not create a right to, or otherwise provide independent statutory authority for, an abortion that repeals or restricts [§ 13-3603](#), but rather is predicated entirely on the existence of a federal constitutional right to an abortion since disclaimed by [Dobbs v. Jackson](#)

Women's Health Organization, 597 U.S. 215, 292, 142 S.Ct. 2228, 213 L.Ed.2d 545 (2022). Absent the federal constitutional abortion right, and because § 36-2322 does not independently authorize abortion, there is no provision in federal or state law prohibiting § 13-3603's operation. Accordingly, § 13-3603 is now enforceable.

¶3 When this litigation was initiated in 1971, the plaintiffs asserted a number of state and federal constitutional challenges to § 13-3603, in addition to those presented in *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), which was overruled by *Dobbs*. We remand the case to the trial court for consideration of those additional constitutional challenges if the plaintiffs wish to pursue them, and we temporarily extend the existing stay against enforcement of § 13-3603 so that the trial court may determine how to proceed.

BACKGROUND

¶4 In 1864, the First Legislative Assembly published a code of laws governing the territory of Arizona. See Howell Code (1864). The Howell Code established Arizona's first criminal code, which included constraints on abortion. In 1901, the Twenty-First Legislative Assembly enacted a penal code reiterating the abortion law, dividing criminality between people who facilitate abortions and women who solicit assistance to procure an abortion. See Revised Statutes of Arizona, Penal Code §§ 234, 244 (1901). This language was adopted in whole in 1913, after Arizona statehood. See Revised Statutes of Arizona, Penal Code § 273 (1913). In 1928, the Arizona Legislature codified abortion criminality in A.R.S. §§ 13-211 to -213.

¶5 In 1971, Planned Parenthood Center of Tucson, Inc. sued the Attorney General challenging the constitutionality of Arizona's abortion statutes under both the state and federal constitutions. See *Planned Parenthood Ctr. of Tucson, Inc. v. Marks*, 17 Ariz. App. 308, 311–13, 497 P.2d 534 (1972) (reversing the trial court's order of dismissal and remanding to proceed to a resolution of the case on its merits). On remand from *Marks*, the trial court ruled Arizona's abortion statutes unconstitutional. See *Nelson v. Planned Parenthood Ctr. of Tucson, Inc.*, 19 Ariz. App. 142, 143, 505 P.2d 580 (1973). On appeal, the court of appeals reversed the trial court's ruling, upholding the constitutionality of the abortion statutes. *Id.* at 150, 505 P.2d 580. In 1973, after *Nelson* upheld § 13-211's constitutionality, the United States Supreme Court recognized a federal constitutional right to an abortion in *Roe*. This new

right established by *Roe* was inconsistent with § 13-211, so the Arizona Court of Appeals revisited the issue in *Marks*, this time holding the statute unconstitutional because of *141 **896 *Roe* and enjoining enforcement of § 13-211. *Nelson*, 19 Ariz. App. at 152, 505 P.2d 580.

¶6 Despite *Nelson*, the Arizona Legislature did not repeal § 13-211. To the contrary, four years after *Roe* and *Nelson*, the legislature recodified § 13-211 as § 13-3603, maintaining the operative language of the statute.³ 1977 Ariz. Sess. Laws ch. 142, § 99 (1st Reg. Sess.).

¶7 The abortion law's recodification was not the only legislative change made to the abortion statutory scheme. Between 1973 and 2022, and conforming to the federal abortion right established in *Roe*, the Arizona Legislature codified dozens of abortion statutes in Title 36. See, e.g., 1973 Ariz. Sess. Laws ch. 155, § 1 (1st Reg. Sess.); 2022 Ariz. Sess. Laws ch. 105, § 1 (2d Reg. Sess.). To the extent permitted by *Roe* and its progeny, all of these statutes restricted abortions, including adding many procedural requirements for physicians performing abortions.

¶8 In June 2022, the Supreme Court overturned *Roe*, thereby eliminating the federal constitutional right to abortion and returning “the authority to regulate abortion ... to the people and their elected representatives.” *Dobbs*, 597 U.S. at 292, 142 S.Ct. 2228.

¶9 After *Dobbs*, then-Attorney General Mark Brnovich moved for relief under *Arizona Rule of Civil Procedure* 60(b)(5)–(6), seeking to set aside the permanent injunction against § 13-3603 imposed in 1973. *Planned Parenthood Arizona, Inc.* (“Planned Parenthood”) opposed the motion, conceding that the original foundation for the injunction—*Roe*—was no longer applicable, but asserting that the injunction must be modified to harmonize § 13-3603 with Title 36, including § 36-2322. *Planned Parenthood Ariz., Inc. v. Brnovich*, 254 Ariz. 401, 403 ¶ 5, 524 P.3d 262, 264 (App. 2022).

¶10 The trial court granted the *Rule* 60 motion, noting that simply “modifying the injunction to harmonize laws not in existence when the Complaint was filed, on grounds for relief not set forth in the Complaint, is procedurally improper.” The court further reasoned that “the requested modified injunction which would carve out an exception for physicians, is not consistent with the plain language of A.R.S. § 13-3603 which contains no such exception.” Because the legal grounds for the 1973 injunction were overturned by *Dobbs*, the trial

court “vacate[d] the judgment in its entirety” to allow full enforcement of § 13-3603. Planned Parenthood appealed and filed an emergency motion to stay the trial court's order pending appeal. The trial court denied the request; however, the court of appeals subsequently granted the stay.

¶11 The court of appeals reversed the trial court's order, concluding, in part, that “[l]icensed physicians who perform abortions in compliance with Title 36 are not subject to prosecution under § 13-3603.” *Id.* at 408 ¶ 26, 524 P.3d at 269. The court of appeals held that the trial court improperly limited review regarding the 1973 injunction, as a proper review would necessitate a consideration of the full statutory scheme, including Title 36. *Id.* at 404–05 ¶¶ 7, 9–10, 524 P.3d at 265–66. Accordingly, the court of appeals considered whether § 13-3603 conflicted with Title 36, ultimately finding no “conflict between § 13-3603 and Title 36 that must result in the repeal of either.” *Id.* at 405 ¶ 13, 524 P.3d at 266. Instead, the court of appeals held that the statutes should be harmonized “to conclude the abortion regulations in Title 36 govern,” so “physicians who perform abortions in compliance with Title 36 are not subject to prosecution under § 13-3603.” *Id.* ¶¶ 10, 13.

¶12 Dr. Eric Hazelrigg (“Hazelrigg”) sought timely review of the court of appeals’ opinion. We granted review to consider the statutory construction of Arizona's abortion laws post-*Dobbs*, an issue of statewide importance. We have jurisdiction under article 6, section 5(3) of the Arizona Constitution.

*142 **897 DISCUSSION

I.

¶13 We review a question of statutory construction de novo. *BSI Holdings, LLC v. Ariz. Dep’t of Transp.*, 244 Ariz. 17, 19 ¶ 9, 417 P.3d 782, 784 (2018).

¶14 We pause to emphasize the unusual nature of the statutory interpretation in which we must engage. Interpreting and harmonizing multiple statutes concerning the same subject matter is a familiar task. *See, e.g., State v. Santillanes*, 256 Ariz. 534, 539 ¶ 16, 541 P.3d 1150, 1155 (2024); *Mussi v. Hobbs*, 255 Ariz. 395, 401 ¶ 30, 532 P.3d 1131, 1137 (2023); *State v. Patel*, 251 Ariz. 131, 137 ¶ 24, 486 P.3d 188, 194 (2021). Here, we consider a statute that was never repealed—in fact, it was recodified even after it was enjoined—

followed by the enactment of a series of statutes regulating the same subject matter in the wake of *Roe*, the Supreme Court decision striking down the original statute. Hence, the question presented is different from those arising in the ordinary statutory interpretation context: whether the later statutes “repeal or otherwise limit” the earlier statute. Neither party could identify precedent squarely resolving such an unusual circumstance. Thus, we examine the later-adopted Title 36 statutes to determine whether they repealed or limited § 13-3603, or instead merely restricted abortions to the extent possible so long as *Roe* prevented enforcement of § 13-3603.

A.

¶15 We begin by setting out the rules of statutory construction that guide our analysis. We interpret statutes “in view of the entire text, considering the context and related statutes on the same subject.” *Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11, 432 P.3d 925, 927 (2019). Clear and unequivocal language determines a statute's meaning, reading each word, phrase, clause, and sentence in such a way to ensure no part of the statute is void or trivial. *See Janson ex rel. Janson v. Christensen*, 167 Ariz. 470, 471, 808 P.2d 1222, 1223 (1991). Under this plain meaning analysis, “[w]e look first to the language of the provision, for if the [statutory] language is clear, judicial construction is neither required nor proper.” *Perini Land & Dev. Co. v. Pima County*, 170 Ariz. 380, 383, 825 P.2d 1, 4 (1992); *see also SolarCity Corp. v. Ariz. Dep’t of Revenue*, 243 Ariz. 477, 480 ¶ 8, 413 P.3d 678, 681 (2018). This analytical approach is premised on foundational trust in legislative competency, and this Court “presume[s] that the legislature knows the existing laws when it enacts or modifies a statute.” *State v. Garza Rodriguez*, 164 Ariz. 107, 111, 791 P.2d 633, 637 (1990).

¶16 Statutory terms must be given effect “in accordance with their commonly accepted meanings, ‘unless the legislature has offered its own definition of the words or it appears from the context that a special meaning was intended.’ ” *State v. Reynolds*, 170 Ariz. 233, 234, 823 P.2d 681, 682 (1992) (internal citation omitted) (quoting *Mid Kan. Fed. Sav. & Loan Ass’n of Wichita v. Dynamic Dev. Corp.*, 167 Ariz. 122, 128, 804 P.2d 1310, 1316 (1991)). In determining “commonly accepted meanings,” “we may refer to established and widely used dictionaries.” *Id.*; *Special Fund Div. v. Indus. Comm’n*, 232 Ariz. 110, 113 ¶ 12, 302 P.3d 635, 638 (App. 2013). We also may consider a statement of legislative intent, including a construction provision, in discerning the meaning of a statute.

See *S. Ariz. Home Builders Ass'n v. Town of Marana*, 254 Ariz. 281, 286 ¶ 31, 522 P.3d 671, 676 (2023) (noting that we determine the meaning of a statute “according to the plain meaning of the words in their broader statutory context, unless the legislature directs us to do otherwise”); *Aros v. Beneficial Ariz., Inc.*, 194 Ariz. 62, 66, 977 P.2d 784, 788 (1999). Therefore, we read a statute in the context of the law that grants it authority. Cf. *S. Ariz. Home Builders Ass'n*, 254 Ariz. at 286 ¶ 31, 522 P.3d at 676.

¶17 If the statutory language is ambiguous—if “it can be reasonably read in two ways”—we may use alternative methods of statutory construction, including examining the rule’s historical background, its spirit and purpose, and the effects and consequences of competing interpretations. *State v. Salazar-Mercado*, 234 Ariz. 590, 592 ¶ 5, 325 P.3d 996, 998 (2014); *143 **898 *State v. Aguilar*, 209 Ariz. 40, 47 ¶ 23, 97 P.3d 865, 872 (2004). “A statute is not ambiguous merely because the parties disagree about its meaning,” it is ambiguous if the “meaning is not evident after examining the statute’s text as a whole or considering statutes relating to the same subject or general purpose.” *Glazer v. State*, 244 Ariz. 612, 614 ¶ 12, 423 P.3d 993, 995 (2018).

B.

¶18 We first address Planned Parenthood’s claim that Title 36 creates a right to an abortion or otherwise independently authorizes elective abortion up to fifteen weeks’ gestation. Although Planned Parenthood conceded at oral argument that Title 36 does not create a right to abortion, it maintained its argument that § 36-2322 codifies permissive authorization to perform abortions such that it repeals or restricts § 13-3603. Planned Parenthood and Hazelrigg’s Title 36 arguments center almost entirely on § 36-2322.

¶19 Section 36-2322 provides, in relevant part:

A. Except in a medical emergency, a physician may not perform, induce or attempt to perform or induce an abortion unless the physician or the referring physician has first made a determination of the probable gestational age of the unborn human being and documented that gestational age in the maternal patient’s chart and, if required, in a report required to be filed with the department

B. Except in a medical emergency, a physician may not intentionally or knowingly perform, induce or attempt to

perform or induce an abortion if the probable gestational age of the unborn human being has been determined to be greater than fifteen weeks.

¶20 Planned Parenthood argues that, in order to statutorily restrict the availability of abortion, specifically through § 36-2322’s use of the terms “except” and “unless,” Title 36 must implicitly and necessarily authorize the procedure because “unless” is a conjunction meaning “except on the condition that” or “without the accompanying circumstances or condition that.” See *Unless*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/unless> (last visited Mar. 20, 2024). Accordingly, Planned Parenthood embraces the court of appeals’ holding that § 36-2322 “prohibits abortions except those it allows—that is, it permits a licensed physician to perform abortions in emergency situations and elective abortions if the physician has determined the fetus’s gestational age is fifteen weeks or less and otherwise has complied with Title 36.” *Brnovich*, 254 Ariz. at 406 ¶ 19 n.8, 524 P.3d at 267.⁴

¶21 Planned Parenthood is correct that if it were a standalone statute, by its plain terms, § 36-2322’s proscription on elective abortion after fifteen weeks’ gestation logically implies that abortion is otherwise permissible. But its interpretation that the purpose and effect of “except” and “unless” is to statutorily authorize certain abortions is not the only reasonable one. Reasonable minds could differ about whether “except” and “unless” independently statutorily authorize conduct not proscribed or, alternatively, merely qualify the circumstances under which a physician may be penalized under § 36-2322 (in other words, that a physician may not be penalized under § 36-2322 when the “except” and “unless” provisions apply).⁵ This textual ambiguity—one interpretation which concludes that § 36-2322 independently authorizes conduct not proscribed, thus repealing § 13-3603, and the other which posits that § 36-2322 simply qualifies the circumstances under which a physician may be penalized, thus leaving § 13-3603 undisturbed—generates two possible *144 **899 conclusions about § 36-2322’s effect on § 13-3603.

¶22 Section 36-2322’s text in isolation, therefore, does not resolve the fundamental issue before us: whether the statute creates independent statutory authority for abortion intended to repeal or restrict § 13-3603 or merely acknowledges the existence of a contemporaneous federal constitutional right to abortion under *Roe* at the time of its passage. Notably, §

36-2322's text does not address its effect on § 13-3603. Given the competing plausible textual readings of § 36-2322, which create ambiguity concerning the statute's effect on § 13-3603, any interpretation of the statute that ignores or minimizes the impact of *Dobbs*' disavowal of a federal constitutional abortion right runs headlong into the construction provision of Senate Bill 1164 ("S.B. 1164")—the genesis of § 36-2322 and part of what the legislature enacted. We must interpret the statute in its proper context. This requires us to reconcile the legislature's construction provision, which specifically preserves § 13-3603, and the text of § 36-2322, which is silent on, and ambiguous as to, its effect on § 13-3603. See *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7, 398 P.3d 574, 575 (2017); *S. Ariz. Home Builders Ass'n*, 254 Ariz. at 286 ¶ 31, 522 P.3d at 676.

C.

¶23 To determine if Title 36 creates a right to abortion, or otherwise provides independent statutory authority to perform the procedure, as Planned Parenthood contends, we must consider S.B. 1164's construction provision.

¶24 The legislature included a two-part construction provision in S.B. 1164, expressing its unequivocal intent that, in restricting elective abortion to fifteen weeks' gestation, it did not create, recognize, or expand a right to an abortion, nor did it repeal § 13-3603's proscription on elective abortion:

This act does not:

1. Create or recognize a right to abortion or alter generally accepted medical standards. The Legislature does not intend this act to make lawful an abortion that is currently unlawful.
2. Repeal, by implication or otherwise, [section 13-3603](#), [Arizona Revised Statutes](#), or any other applicable state law regulating or restricting abortion.

See 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg. Sess.). The construction provision is part of the bill that legislators have before them and approve, and has the same force of law as codified law. See *The Arizona Legislative Bill Drafting Manual 2021–2022* at 7.

¶25 We must consider the legislature's construction provision in S.B. 1164 when discerning the act's meaning because it is part of the bill the legislature approved. See, e.g., *State*

ex rel. Ariz. Dep't of Revenue v. Tunkey, 254 Ariz. 432, 438 ¶ 27, 524 P.3d 812, 818 (2023) (Bolick, J., concurring) ("If the legislature agrees on findings, purposes, or definitions, it becomes our duty to ascertain statutory meaning through those prisms."); cf. *S. Ariz. Home Builders Ass'n*, 254 Ariz. at 286 ¶ 31, 522 P.3d at 676; see also Kevin M. Stack, *The Enacted Purposes Canon*, 105 Iowa L. Rev. 283, 304–05 (2019); Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 232 (2012) ("Legal drafters have the power ... to limit the implications of their terms").

¶26 Before we consider S.B. 1164's construction provision, we first address Planned Parenthood's contention that § 36-2322 does not create a right to abortion, but rather "allows" the procedure and, thus, provides independent statutory authorization for it. We reject this distinction. As Hazelrigg notes, because S.B. 1164 does not define "right," we may rely on dictionary definitions. See *Special Fund Div.*, 232 Ariz. at 113 ¶ 12, 302 P.3d at 638. A "right" is a "privilege ... secured ... by law." *Right*, Black's Law Dictionary (11th ed. 2019). Here, we disagree that a statute that expressly disclaims creation of a right may be read to simultaneously create an independent statutory authorization akin to a right. Both describe a privilege secured by law.

¶27 Planned Parenthood argues that S.B. 1164's construction provision against repeal of § 13-3603 "or any other applicable state law regulating or restricting abortion" clarifies the legislature's intent to give every Title 36 provision effect, and any repeal of *145 **900 § 36-2322 would contravene this express legislative provision because the statute is part of Title 36. In other words, the legislature's construction provision was designed to foreclose a reading of S.B. 1164 that would result in its own demise.

¶28 This interpretation does not withstand scrutiny. First, it is inconsistent with the plain meaning and manifest purpose of the construction provision—to clarify that § 36-2322's enactment does not "create or recognize a right to abortion," repeal the statutory ban on elective abortion, or repeal "any other applicable state law *regulating* or *restricting* abortion." See 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg. Sess.) (emphasis added). Neither the construction provision's text, nor its context, suggest that the legislature intended to create an independent statutory authority for abortion that would repeal § 13-3603. To do so would contravene its express preservation of § 13-3603's ban on elective abortion, which the legislature neither repealed nor amended in any manner, and any other applicable law that *regulated* or *restricted*

abortion. Second, any suggestion that the legislature crafted the construction provision to clarify its intent not to repeal § 36-2322 by virtue of its own passage is absurd. *See* [4QTKIDZ, LLC v. HNT Holdings, LLC](#), 253 Ariz. 382, 385 ¶ 5, 513 P.3d 1106, 1109 (2022) (noting that the plain, clear and unambiguous text of a statute controls unless it results in an absurdity). The construction provision must be read as reflecting the legislature's intent not to repeal *other* laws akin to § 13-3603, not § 36-2322 itself.

¶29 A cursory review of the construction provision that the legislature “did not intend [S.B. 1164] to make lawful an abortion that is *currently* unlawful” seemingly engenders confusion, but its context and logic instead yield clarity. This provision can reasonably bear only one meaning: the legislature did not intend the act to codify an independent statutory right to an elective abortion before fifteen weeks’ gestation or otherwise repeal any other abortion laws more restrictive than S.B. 1164. Any other reading is implausible because, at the time of its passage, S.B. 1164 merely sought to restrict a federal constitutional right to abortion that the legislature was powerless to abolish. Under no scenario could the legislature’s *restriction* of a broader abortion right be construed to “make lawful an abortion that is currently unlawful” *unless* the act was misinterpreted to (1) override § 13-3603, the only provision in Arizona or federal law at the time that made an elective abortion before fifteen weeks’ gestation “currently unlawful” or (2) otherwise repeal more restrictive abortion statutes.⁶ Thus, the provision must mean that the legislature “d[id] not intend [S.B. 1164] to make lawful an abortion that is currently unlawful [under § 13-3603 or any other statute more restrictive than S.B. 1164].” This is the only interpretation that is internally consistent with, and does not defeat, the remainder of S.B. 1164’s construction provision. And it helps that the legislature identified precisely which statute it meant to preserve: § 13-3603.

¶30 Hazelrigg argues, and we agree, that the court of appeals misconstrued the legislature’s express intent embodied in S.B. 1164 by holding that the statutory scheme demonstrates that the legislature enacted S.B. 1164 with the design “to restrict—but not to eliminate—elective abortions.” *Brnovich*, 254 Ariz. at 406 ¶ 16, 524 P.3d at 267. That was the statute’s effect, but the court of appeals divines a legislative purpose in a vacuum. At the time of S.B. 1164’s passage when *Roe* was still in effect, the legislature was devoid of authority to ban elective abortions without running afoul of the Supremacy Clause. Indeed, the legislature’s previous attempt to restrict elective abortion after twenty weeks’ gestation was enjoined.

See [Isaacson v. Horne](#), 716 F.3d 1213, 1231 (9th Cir. 2013). It is no surprise that the legislature merely intended “to restrict—but not to eliminate—elective abortions.” It could do no more. Further, at that time, abortion up to fifteen *146 **901 weeks’ gestation was already legal in Arizona, so there was no reason for the legislature to codify in statute a right that already existed under federal constitutional law.

¶31 In context, S.B. 1164 was not a legislative attempt to preserve a right to abortion in Arizona; instead, it was a significant legislative restriction on elective abortion. It is a strained interpretation, indeed, that transforms S.B. 1164—a legislative limitation of elective abortion and an express preservation of a statutory ban on all elective abortions—into an independent statutory authority for elective abortion that overrides § 13-3603 and survives *Roe*’s demise. *See, e.g., Roberts v. State*, 253 Ariz. 259, 267 ¶ 25, 512 P.3d 1007, 1015 (2022) (noting that the “historical sequence” of statutory enactments and judicial decisions may inform statutory interpretation). We do not interpret the act to negate its own purpose. *See* [King v. Burwell](#), 576 U.S. 473, 493, 135 S.Ct. 2480, 192 L.Ed.2d 483 (2015).

D.

¶32 The court of appeals and Planned Parenthood’s interpretation of S.B. 1164 is particularly dubious in light of Arizona’s additional statutory provision that our laws “shall be interpreted and construed to acknowledge, on behalf of an unborn child at every stage of development, all rights, privileges and immunities available to other persons, citizens and residents of this state, subject only to the Constitution of the United States and decisional interpretations thereof by the United States Supreme Court.” [A.R.S. § 1-219\(A\)](#).⁷ This statute further illustrates that access to abortion in Arizona is, and remains, confined to a federal constitutional right beyond the reach of Arizona’s legislature. [Section 1-219\(A\)](#), left untouched by § 36-2322, establishes the public policy of the state, provides additional interpretive guidance, and belies the notion that the legislature intended to create independent statutory authority for elective abortion.

¶33 Moreover, S.B. 1164’s construction provision mirrors provisions in numerous other bills codified in Title 36, demonstrating the consistency, gravity, and clarity of the legislature’s intent not to independently grant a right or authorize access to abortion. *See, e.g.,* 2009 Ariz. Sess. Laws ch. 172, § 6 (1st Reg. Sess.); 2010 Ariz. Sess. Laws ch. 111, §

1 (2d Reg. Sess.); 2011 Ariz. Sess. Laws ch. 9, § 4 (1st Reg. Sess.); 2011 Ariz. Sess. Laws ch. 10, § 8 (1st Reg. Sess.); 2012 Ariz. Sess. Laws ch. 250, § 11 (2d Reg. Sess.); 2021 Ariz. Sess. Laws ch. 286, § 17 (1st Reg. Sess.).

E.

¶34 Planned Parenthood argues that the legislature's failure to include an express statutory trigger provision repealing § 36-2322 upon *Roe*'s reversal evinces the legislature's implicit intent to create an independent statutory authority for elective abortion up to fifteen weeks' gestation that effectively repeals § 13-3603. Planned Parenthood emphasizes the import of the legislature's omission because S.B. 1164 otherwise mirrors "Mississippi's 15-week law," which included an express statutory trigger. See *Miss. Code Ann. § 41-41-191(8) (2018)*. We are unpersuaded.

¶35 Planned Parenthood and the dissent make much of the fact that Mississippi's statutes, which largely parallel Arizona's statutes at issue here, contain a "trigger provision" that specifies applicability of certain abortion provisions only in the event that *Roe* is overturned, whereas Arizona's do not. Under the divergent circumstances of the two state laws, the difference is of no consequence.

¶36 In 2007, Mississippi enacted *Mississippi Code Annotated § 41-41-45(2)*, which provides in relevant part: "No abortion shall be performed or induced in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape." It was *this* law that included the express trigger ***147 **902** provision, which provided that it would take effect ten days following a determination by the state attorney general that *Roe* was overturned and the statute would be constitutional. 2007 Miss. Laws ch. 441, § 6. Including an express trigger provision made sense given that *Roe* was in effect when *Mississippi Code Annotated § 41-41-45* was enacted.

¶37 Of course, § 13-3603, the Arizona near-analog to § 41-41-45, does not have a trigger provision, for a simple and obvious reason: it was first enacted 109 years before *Roe*. Its subsequent recodifications, even after *Roe*, make clear the legislature's determination to keep it on the books. A trigger provision would serve utterly no purpose. And even the dissent acknowledges that § 13-3603 has never been repealed and, following *Dobbs*, should be given effect. *Infra* ¶¶ 65, 88–91.

¶38 Mississippi subsequently enacted, among other laws restricting abortion, a fifteen-week gestational limit on abortions in 2018. *Miss. Code Ann. § 41-41-191*. This statute, like the similar § 36-2322(B), does *not* contain an express trigger provision. Rather, it contains a subsection entitled "Construction," which provides in relevant part: "Nothing in this section shall be construed as creating or recognizing a right to abortion or as altering generally accepted medical standards. It is not the intention of this section to make lawful an abortion that is otherwise unlawful," and "[a]n abortion that complies with this section, but violates any other law is unlawful." *Miss. Code Ann. § 41-41-191(8)*.

¶39 The bulk of this language is virtually identical to the construction provision in Arizona law—except that the Arizona language explicitly identifies one statute in particular that it does not "[r]epeal by implication or otherwise": § 13-3603. Mississippi's fifteen-week provision that "[a]n abortion that complies with [it], but violates any other law is unlawful"—which is absent from § 36-2322(B)'s construction provision—is not dispositive, as the dissent contends. *Infra* ¶ 96. Just as the Mississippi fifteen-week law implicitly yields to the enforceability of § 41-41-45, Arizona's fifteen-week law—§ 36-2322(B)—conforms its application to § 13-3603's enforceability. To the extent the dissent suggests such language and construction serve as a trigger provision in the Mississippi statute, *infra* ¶¶ 94–95, it would obviously play the same role in the Arizona statute—indeed, even more so, by identifying a particular statute that is left intact.

¶40 Regardless, the absence of an express trigger provision is not dispositive here. We typically do not infer legislative intent from silence. *Cf. Sw. Paint & Varnish Co. v. Ariz. Dep't of Env't Quality*, 194 Ariz. 22, 25 ¶ 21, 976 P.2d 872, 875 (1999) (noting that legislative acquiescence by silence is "limited to instances in which the legislature has considered and declined to reject the relevant judicial interpretation"). Second, in light of Title 36's genesis as the statutory mechanism to restrict and regulate abortion in response to *Roe*, *Dobbs*' elimination of a federal constitutional right to abortion removed the sole authority for elective abortion in Arizona necessitating many Title 36 regulations, including § 36-2322. Third, although the legislature did not include the express trigger provision that appears in Mississippi's law, it was not silent on the issue. Despite the dissent's requirement of an express trigger provision, *infra* ¶¶ 93–96, we conclude that the legislature made its intent known. The legislature's

unwavering and unqualified affirmative maintenance of a statutory ban on elective abortion since 1864 (albeit enjoined since 1973), S.B. 1164's construction provision that the legislature did not intend to repeal § 13-3603 in passing § 36-2322, and § 1-219(A)'s public policy pronouncement that the rights of the "unborn child" were limited only by the federal Constitution and the Supreme Court's interpretation of it, effectively constitute a discernible comprehensive trigger provision in the event of *Roe*'s demise.

F.

¶41 Planned Parenthood urges that we divine legislative intent from statements of "numerous public officials," namely the former Governor, the Maricopa County Attorney, and the former Attorney General, concerning the meaning of § 36-2322. This reed is too thin to bear the interpretive weight Planned Parenthood places upon it. "We believe the best policy is not to consider *148 **903 nonlegislators' statements to determine the legislature's intent concerning the specific application of a proposed statute, unless the circumstances provide sufficient guarantees that the statements reflect legislators' views." *Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 270, 872 P.2d 668, 674 (1994). Here, we do not find these expressed opinions particularly illuminating or relevant as to legislative intent or the meaning of § 36-2322. As Hazelrigg notes, legislative and non-legislative statements support both parties' interpretations. At most, conflicting statements made by public officials illustrate the novelty of the interpretative task presented to us by the legislature.

G.

¶42 Planned Parenthood contends that, like the court of appeals, we must harmonize §§ 13-3603 and 36-2322 to give effect to each. *See, e.g., UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 329 ¶ 11, 26 P.3d 510, 512 (2001) ("When two statutes appear to conflict, we will attempt to harmonize their language to give effect to each."). We disagree. Our conclusion that the legislature did not intend to create a privilege secured by law to obtain or perform an abortion obviates the need to harmonize §§ 13-3603 and 36-2322. Harmonization between these laws may be accomplished only by repealing § 13-3603 in contravention of the legislature's express intent and engaging in untenable statutory interpretation such as excising physicians from the plain meaning of "person" in § 13-3603, defined as "a human

being" in A.R.S. § 13-105(30). And indeed, despite purporting to harmonize the statutes, the dissent's treatment of § 13-3603 all but nullifies it. We decline to do so. *See Schatz v. Allen Matkins Leck Gamble & Mallory LLP*, 45 Cal.4th 557, 87 Cal.Rptr.3d 700, 198 P.3d 1109, 1120 (2009) ("Courts 'will infer the repeal of a statute only when ... a subsequent act of the legislature clearly is intended to occupy the entire field covered by a prior enactment.' " (alteration in original) (citation omitted)).

¶43 *Roe*'s recognition of a right to an abortion was not absolute, and many states—including Arizona—legislatively restricted the time, place, and manner in which an abortion could be performed. Title 36 and the corresponding construction provisions were passed under *Roe*'s authority, and thus, must be interpreted through the mutating lens of the Supreme Court's abortion jurisprudence. *See Aguilar*, 209 Ariz. at 47 ¶ 23, 97 P.3d at 872. Through this lens it becomes clear that Title 36 is merely Arizona's statutory mechanism for restricting and regulating *Roe*'s abortion right. And, as Planned Parenthood concedes, Arizona has never independently created a statutory right to abortion. We will not "amend a statute judicially [nor] read implausible meaning into express statutory language" given the absence of an abortion right in Arizona jurisprudence. *Kyle v. Daniels*, 198 Ariz. 304, 306 ¶ 7, 9 P.3d 1043, 1045 (2000). Therefore, because the federal constitutional right to abortion that overrode § 13-3603 no longer exists, the statute is now enforceable, prospectively prohibiting abortion unless necessary to save a woman's life. *See § 13-3603*.

II.

¶44 We next consider the viability of the remaining portions of Title 36 in light of Planned Parenthood's contention that simultaneous enforcement of § 13-3603 and Title 36 implicates physicians' due process right to notice of potential criminal and regulatory liability for abortion-related conduct.

A.

¶45 We first clarify the effect of our Opinion on Title 36. Any portion of Title 36 solely applicable to elective abortion under the defunct federal constitutional right arguably may no longer be operative simply for want of purpose; what does not exist cannot be regulated. We refrain, however, from crafting an advisory opinion as to the operability of any Title

36 provision not squarely before us. The enforceability of Title 36 provisions must be revisited by the legislature or adjudicated by the courts as controversies arise.

¶46 Section 36-2322, however, is before us. We hold that it remains enforceable even though it was enacted solely to curtail the federal abortion right by criminalizing physicians' *149 **904 performance of abortion after fifteen weeks' gestation and adding other regulatory requirements concerning abortions performed due to "a medical emergency." §§ 36-2322(C)(1)–(7), -2324(A). Although we conclude that the legislature enacted § 36-2322 to curtail elective abortion in lieu of enforcement of § 13-3603 that was then-enjoined under *Roe*, we do not attempt to—nor have we been requested to—divine the legislature's intent in passing § 36-2322's additional substantive criminal and regulatory provisions that exceed the scope of § 13-3603's ban on elective abortion. If, in light of § 13-3603's enforceability, a decision is to be made to rescind any provision in § 36-2322, it is the legislature's prerogative.

¶47 Various other Title 36 provisions, in addition to § 36-2322, regulating abortion-related conduct and entailing criminal and regulatory sanctions remain relevant when § 13-3603's elective abortion ban is enforceable. For example, Title 36's abortion licensing requirements, A.R.S. § 36-449.02, reporting requirements, A.R.S. §§ 36-2161 to -2164, and emergency consent requirements, A.R.S. § 36-2153(C), may apply to abortions necessary to save a woman's life. Moreover, other statutory provisions such as A.R.S. § 36-2302, which proscribes, subject to statutory exceptions, "use of a human fetus or embryo ... [resulting from an abortion] for animal or human research," remain relevant because they may implicate all abortion-related activity.

B.

¶48 Planned Parenthood contends that § 13-3603 and Title 36's abortion-related criminal and regulatory provisions cannot coexist without implicating due process because the overlapping laws do not adequately apprise physicians of the contours of their criminal liability. We note that Planned Parenthood's primary due process concern centers on the co-existence of criminal provisions in §§ 13-3603 and 36-2322, but its due process argument extends to § 13-3603's potential overlap with other Title 36 criminal provisions.

¶49 *United States v. Batchelder*, 442 U.S. 114, 99 S.Ct. 2198, 60 L.Ed.2d 755 (1979), a unanimous Supreme Court decision by Justice Thurgood Marshall, deals with precisely this question. In *Batchelder*, the Court rejected a claim that two federal criminal statutes could not coexist because Congress intended to enact two independent gun control statutes, each enforceable on its own terms. 442 U.S. at 123–24, 99 S.Ct. 2198 ("This Court has long recognized that when an act violates more than one criminal statute," the decisions of "[w]hether to prosecute and what charge[s] to file ... generally rest in the prosecutor's discretion."). The Court determined that one statute cannot be interpreted as implicitly repealing another statute merely because a defendant's conduct might violate both statutes. *Id.* at 122, 99 S.Ct. 2198. The Court reasoned that, "it is 'not enough to show that the two statutes produce differing results when applied to the same factual situation.' " *Id.* (quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 155, 96 S.Ct. 1989, 48 L.Ed.2d 540 (1976)). "Rather, the legislative intent to repeal must be manifest in the 'positive repugnancy between the provisions.' " *Id.* (quoting *United States v. Borden Co.*, 308 U.S. 188, 199, 60 S.Ct. 182, 84 L.Ed. 181 (1939)).

¶50 Our jurisprudence accords with *Batchelder*. We have consistently upheld the principle that the legislature may proscribe the same conduct through multiple laws and our criminal statutes are replete with examples of multiple laws applying to the same conduct. *See, e.g.*, A.R.S. § 13-116 ("An act or omission which is made punishable in different ways by different sections of the laws may be punished under both"); *State v. Jones*, 235 Ariz. 501, 504 ¶ 13, 334 P.3d 191, 194 (2014) ("The same conduct may result in different offenses"); *Anderjeski v. City Court of Mesa*, 135 Ariz. 549, 550, 663 P.2d 233, 234 (1983) ("Although arising out of one act, the statutes describe two separate and distinct offenses."); *State v. Culver*, 103 Ariz. 505, 507–08, 446 P.2d 234, 236–37 (1968) (holding criminal statutes merely prohibiting the same conduct did not conflict where there was no positive repugnancy between the two laws); *State v. O'Brien*, 123 Ariz. 578, 583–84, 601 P.2d 341, 346–47 (App. 1979) ("A specific statute does not supplant an earlier *150 **905 general statute unless all provisions are covered; that is, where the specific statute is narrower, the general one is not repealed. Where a single act violates more than one statute and there is no evidence of legislative intent to repeal one of them, the government has the option of prosecuting under either." (internal citations omitted)); *State v. Lopez*, 174 Ariz. 131, 143, 847 P.2d 1078, 1090 (1992) ("When conduct can be prosecuted under two or more statutes, the prosecutor

has the discretion to determine which statute to apply.”). “So long as overlapping criminal provisions clearly define the conduct prohibited and the punishment authorized, the notice requirements of the Due Process Clause are satisfied.” *Batchelder*, 442 U.S. at 123, 99 S.Ct. 2198.

¶51 Here, § 13-3603 prohibits “a person” from performing any abortion “unless it is necessary to save [a woman's] life” and punishes a violation of the statute “by imprisonment in the state prison for not less than two years nor more than five years.” Section 36-2322(B), “[e]xcept in a medical emergency,” proscribes a physician from performing an abortion after fifteen weeks’ gestation and deems a violation of the statute a class 6 felony under § 36-2324. Thus, as in *Batchelder*, these statutes create overlapping criminal liability, but they also on their face “clearly define the conduct prohibited and the punishment authorized.” 442 U.S. at 123, 99 S.Ct. 2198. The fact there is overlap between the two statutes does not violate due process notice requirements. *Id.*

¶52 In addition to overlapping criminal statutes, Planned Parenthood argues that § 13-3603’s criminal provision and Title 36’s regulatory scheme present physicians performing abortions with an unnavigable array of criminal and regulatory requirements. We disagree. Multi-title statutory regulation of conduct, particularly business and professional activity, is hardly unique to abortion. For example, employers confronting marijuana impairment at work are tasked with consulting both Title 23, Chapter 2, Article 14—the Drug Testing of Employees Act—and Title 36, Chapter 28.1—the Arizona Medical Marijuana Act. And, as Hazelrigg notes, doctors, lawyers, securities brokers, and commodities traders, among other professions, are also permissibly subject to overlapping criminal, civil, and regulatory laws. As long as these legal requirements clearly define prohibited conduct and the sanction, they do not implicate due process notice requirements. See *Batchelder*, 442 U.S. at 123, 99 S.Ct. 2198. We do not conclude that a physician’s regulatory compliance burden in this arena is constitutionally distinguishable from any other regulated professional’s legal obligations.

¶53 In light of this Opinion, physicians are now on notice that all abortions, except those necessary to save a woman’s life, are illegal, see § 13-3603, and that additional criminal and regulatory sanctions may apply to abortions performed after fifteen weeks’ gestation, see §§ 36-2322, -2324, -2325. Physicians are tasked with otherwise comporting their conduct with Title 36’s requirements. See § 13-116; see also *Lopez*, 174 Ariz. at 143, 847 P.2d at 1090. The application of §

13-3603 and Title 36 to physicians’ conduct does not facially implicate constitutional due process concerns.⁸ Our holding, of course, does not foreclose a physician from raising an as-applied due process challenge on facts, and with a developed factual record, that are not before us.

III.

¶54 The dissent contends that the majority “errs by finding § 36-2322(B) ambiguous and then using the construction [provision] to interpret the statute in a way unsupported by its plain textual meaning,” *infra* ¶ 73, and also misplaces our focus “on whether § 36-2322(B) grants an affirmative right to an abortion akin to *Roe*’s recognition of a constitutional *151 **906 right,” *infra* ¶ 76. We address these points in turn.

¶55 We begin with the dissent’s assertion that § 36-2322(B) is unambiguous, which forecloses any consideration of Arizona’s abortion statutory history or the legislature’s clear statements of the statute’s intended effect on § 13-3603. *Infra* ¶ 73. The dissent misconstrues the nature of the ambiguity. There is no dispute that § 36-2322(B) unambiguously criminalizes physicians’ performance of elective abortion after fifteen weeks’ gestation. But the statute is silent and otherwise ambiguous as to its intended effect on § 13-3603—the sole issue before us. See Part I, B ¶¶ 21–22. Invocation of a menagerie of rules of statutory construction, *infra* ¶ 80, with which we agree and follow when applicable, does not change the fact that § 36-2322(B) is ambiguous most importantly not for what it says, but for what it does not say. See, e.g., *State v. Sweet*, 143 Ariz. 266, 269–70, 693 P.2d 921, 924–25 (1985) (“The problem in interpreting the statute at issue is not that certain words or groups of words have more than one meaning, but it is the failure to include necessary words which causes confusion as to the scope of the statute.”). Because the statute’s text does not reveal its effect on § 13-3603, it is ambiguous. *Id.* And because it is ambiguous, we may consider the construction provision in determining § 36-2322(B)’s effect on § 13-3603. See *Sakrison v. Pierce*, 66 Ariz. 162, 172, 185 P.2d 528 (1947) (noting that the policy section of an act “would be controlling” in interpreting “an operative portion of the statute that was ambiguous or of doubtful meaning or application”).

¶56 Given § 36-2322(B)’s ambiguity concerning its effect on § 13-3603, we turn to the dissent’s curious claim that we misplace our focus “on whether § 36-2322(B) grants an

affirmative right to an abortion akin to *Roe*'s recognition of a constitutional right." *Infra* ¶ 76. The dissent subtly, but critically, misconstrues our reasoning. To clarify, the issue before us is not whether, in the abstract, abortion not expressly proscribed by statute is legally permissible; it is whether § 36-2322(B)'s proscription on elective abortion after fifteen weeks' gestation created statutory authorization for abortion *before* fifteen weeks' gestation that repeals or limits § 13-3603's total ban on elective abortions. Viewed through this lens, the dissent's unremarkable claim that "[p]roscribing conduct does not require the legislature to grant people an affirmative right to engage in conduct falling outside the proscription," *infra* ¶ 76, the corollary observation that "the legislature does not affirmatively grant a right by decriminalizing conduct," *infra* ¶ 78 (emphasis omitted), and an illustration of these principles involving driving under the speed limit, *infra* ¶ 77, have no import. Here, our focus on whether § 36-2322(B)—in context rather than in a legal and historical vacuum—grants an affirmative right or statutory authorization or otherwise effectively repeals § 13-3603 is the question before us.

¶57 The dissent relies on *United States v. Vuitch*, 402 U.S. 62, 91 S.Ct. 1294, 28 L.Ed.2d 601 (1971), a pre-*Roe* case, for the proposition that physicians may perform "abortions that are not expressly outlawed." *Infra* ¶ 71. *Vuitch* is distinguishable; it does not elucidate the issue before us. In *Vuitch*, the Supreme Court, in upholding the District of Columbia's abortion ban, noted that abortions performed pursuant to the statutory exception for abortions necessary to preserve a mother's life or health were "legal." 402 U.S. at 69–71, 91 S.Ct. 1294. The Court's recognition that an act is legal if performed pursuant to an express statutory exception to a proscribed act is unsurprising, but it has no relevance here. As noted, the issue in this case is not whether an abortion not expressly proscribed by law may be performed lawfully, it is whether § 36-2322(B)'s proscription on elective abortion after fifteen weeks' gestation created statutory authorization to perform other abortions in violation of an existing statute, thus repealing or limiting § 13-3603. *Vuitch* simply did not address the effect of a law on a pre-existing statute.

¶58 The dissent, employing the general/specific canon, contends that § 36-2322(B) merely operates as an exception to § 13-3603 and "does not repeal any aspect of § 13-3603" because it "negates § 13-3603 only in its application to the situation that § 36-2322(B) covers." *Infra* ¶¶ 87–89. Not so. "Repeal" *152 **907 means to "abrogat[e] ... an existing law." *Repeal*, Black's Law Dictionary (11th

ed. 2019). As the dissent acknowledges, "a physician who performs an abortion in compliance with § 36-2322(B) nevertheless violates § 13-3603." *Infra* ¶ 85. The dissent's interpretation renders lawful what is a crime under § 13-3603. Thus, under the dissent's approach, § 36-2322(B) effectively repeals and supplants § 13-3603. The dissent's reasoning is tenable only to the extent that it discounts statutory history, the legislature's public policy pronouncement in § 1-219(A), and the construction provision that the legislature did not intend § 36-2322(B) to "repeal, by implication or otherwise, section 13-3603." Although the dissent asserts that we elevate the construction provision over the statute's text in discerning the legislature's intent concerning § 36-2322(B)'s ambiguous effect on § 13-3603, *infra* ¶ 79, we decline to apply the general/specific canon to ignore the legislature's plain statement in the approved bill that it did not intend for § 36-2322(B) to repeal § 13-3603, precisely the result obtained under the dissent's statutory harmonization analysis.

¶59 The dissent notes that the legislature's statement of intent concerning § 36-2322(B) described its objective "to restrict the practice of nontherapeutic or elective abortion to the period up to fifteen weeks of gestation," but that, in the dissent's view, "[n]othing suggests an intent to make abortions permitted under § 36-2322(B) unlawful upon *Roe*'s demise." *Infra* ¶ 105. The legislature's statement of intent and construction provision are not logically inconsistent. The intent statement expressed what the legislature intended § 36-2322(B) to do—restrict elective abortion after fifteen weeks' gestation through penalties specified in Title 36—and the construction provision expressed what the legislature did *not* intend the law to do—repeal § 13-3603, "by implication or otherwise."

¶60 Finally, the dissent invokes the adage that the legislature does not ordinarily "hide elephants in mouseholes," which means that the legislature "does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions," *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001). *Infra* ¶ 66. The dissent asserts that *Whitman* supports its contention that the Arizona Legislature could not have intended that, if *Roe* was overruled, the state would enforce § 13-3603, which was enjoined solely due to *Roe*'s recognition of a federal constitutional right to abortion. *Infra* ¶ 66. But here, the elephant is not hidden in a mousehole; rather, the elephant is standing in the room, albeit perhaps in a corner, despite the dissent's refusal to acknowledge it.

¶61 We do not, as the dissent implies, rest our conclusion solely on the construction provision. In interpreting § 36-2322(B)'s ambiguity on its effect on § 13-3603, we consider Title 36's genesis as the statutory mechanism to restrict and regulate abortion in response to *Roe*, the legislature's unwavering and unqualified affirmative maintenance of a statutory ban on elective abortion since 1864 (albeit enjoined since 1973), § 1-219(A)'s pronouncement of the state's public policy essentially to restrict abortion to the extent permitted by "the Constitution of the United States and decisional interpretations thereof by the United States Supreme Court" and, finally, S.B. 1164's construction provision that clearly states that the legislature did not intend to repeal § 13-3603 by passing § 36-2322(B). See Part I, E ¶ 40. It is the dissent's interpretation—deliberately blind to Arizona's relevant statutory history, public policy pronouncement, and the legislature's explicit construction provision contradicting the dissent's conclusion—that is strained. The only elephant hiding in a mousehole is the dissent's contention that the legislature's curtailment of access to elective abortion in § 36-2322 and its accompanying express preservation of a statutory ban on all elective abortions was intended to create an independent statutory authority for elective abortion that vitiates § 13-3603 and survives *Roe*'s demise. See Part I, C ¶ 31.

IV.

¶62 Hazelrigg requests attorney fees and costs under the private attorney general doctrine. Under the private attorney general doctrine, we may award attorney fees "to a party who has vindicated a right *153 **908 that: (1) benefits a large number of people; (2) requires private enforcement; and (3) is of societal importance." *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 8 ¶ 26, 308 P.3d 1152, 1159 (2013) (quoting *Arnold v. Ariz. Dep't of Health Servs.*, 160 Ariz. 593, 609, 775 P.2d 521, 537 (1989)). Despite Hazelrigg's intervenor status, private enforcement was not required to resolve this case. In fact, then-Attorney General Brnovich initiated the trial court litigation, and Yavapai County Attorney Dennis McGrane sought to intervene. Therefore, because this case did not require private enforcement, we decline to award attorney fees and costs under the private attorney general doctrine.

CONCLUSION

¶63 The abortion issue implicates morality and public policy concerns, and invariably inspires spirited debate and engenders passionate disagreements among citizens. A policy matter of this gravity must ultimately be resolved by our citizens through the legislature or the initiative process. Today, we decline to make this weighty policy decision because such judgments are reserved for our citizens. Instead, we merely follow our limited constitutional role and duty to interpret the law as written. See *Ariz. Const. art 3*; *Ariz. Sch. Bds. Ass'n v. State*, 252 Ariz. 219, 229 ¶ 45, 501 P.3d 731, 741 (2022) ("We respect the role of the legislature in the discharge of its constitutional duties ... and we heed our constitution's fundamental premise that the division of powers necessarily impels judicial restraint, particularly in the realm of lawmaking."). For the reasons discussed, the legislature has demonstrated its consistent design to restrict elective abortion to the degree permitted by the Supremacy Clause and an unwavering intent since 1864 to proscribe elective abortions absent a federal constitutional right—precisely what it intended and accomplished in § 36-2322. To date, our legislature has never affirmatively created a right to, or independently authorized, elective abortion. We defer, as we are constitutionally obligated to do, to the legislature's judgment, which is accountable to, and thus reflects, the mutable will of our citizens.

¶64 We affirm the trial court's judgment vacating the injunction of § 13-3603, vacate the court of appeals' opinion and stay of enforcement of § 13-3603, and remand to the trial court for potential consideration of the remaining constitutional challenges to § 13-3603 alleged in Planned Parenthood's complaint for declaratory relief. Although we lift the stay on enforcement of § 13-3603, we do so with two caveats. First, § 13-3603 may be enforced prospectively only. Second, we stay enforcement of § 13-3603 for fourteen calendar days from the filing date of this Opinion to permit the parties, on remand, to determine whether to pursue remaining issues raised in the trial court and, if so, to request further stay relief at the trial court's discretion.

TIMMER, VCJ., joined by BRUTINEL, CJ., dissenting:

¶65 Whether women have a federal constitutional right to terminate a pregnancy before fetal viability has been a hotly debated and extraordinarily divisive issue in Arizona and, indeed, in our entire country. Yet, after the Supreme Court ended the debate in June 2022 by issuing *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 231–32, 142 S.Ct. 2228, 213 L.Ed.2d 545 (2022), to overrule

Roe v. Wade, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), the Arizona Legislature stood pat. During its 2023 session, the legislature did not (1) repeal A.R.S. § 36-2322(B), which exempts physicians from prosecution if they perform abortions when a fetus has a gestational age less than fifteen weeks or if the pregnant woman would otherwise suffer substantial and irreversible health consequences; (2) repeal or curtail other abortion-regulating statutes in Title 36; or (3) clarify the impact of A.R.S. § 13-3603, the near-total abortion ban that lay dormant since *Roe* issued in 1973, on multiple modern-era statutes. Instead, the legislature purposely chose to leave all these statutes fully intact and simultaneously operational.

¶66 Nevertheless, relying on a statutory construction note tucked within a session law predating *Dobbs*, the majority interprets § 36-2322(B) as providing that if *Roe* was overruled, the state would turn back the *154 **909 clock to 1973 by enforcing the near-total abortion ban against physicians, even if they comply with § 36-2322(B) by performing elective abortions before the fifteen-week gestation point or performing abortions when necessary to prevent serious impairment to the pregnant woman's health. I strongly disagree. As the adage goes, the legislature does not ordinarily “hide elephants in mouseholes.” See *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001); *Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, 330 ¶ 30, 266 P.3d 349, 356 (2011) (Bales, J., dissenting). And the legislature neither did so nor could do so here with a session law note existing wholly apart from statutory text. Sections 13-3603 and 36-2322(B) can and should be interpreted harmoniously to permit their joint enforcement until the legislature or the people, through the initiative process, say otherwise. This means physicians should be permitted to lawfully perform abortions before the fifteen-week gestation point or when necessary to preserve the pregnant woman's health. (Notably, both laws would remain subject to challenge under Arizona's constitution. That challenge is not at issue here.) Respectfully, I dissent.

A. Both A.R.S. § 13-3603 And A.R.S. § 36-2322(B) Are Clear And Unambiguous, Making Judicial Interpretation Unnecessary And Inappropriate.

¶67 Section 13-3603, the near-total abortion ban enjoined as unconstitutional by the court of appeals in 1973 after *Roe*, has remained essentially unchanged since 1865:

A person who provides, supplies or administers to a pregnant woman, or procures such woman to take any medicine, drugs or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, *unless it is necessary to save her life*, shall be punished by imprisonment in the state prison for not less than two years nor more than five years.

(Emphasis added); see also Howell Code, ch. 10, § 45 (1865). Section 13-3603 is unambiguous, and no one suggests otherwise. Any person who performs an abortion or assists in one must be imprisoned for at least two years and not more than five years. The statute uses the above-italicized conditional clause to identify the only exception to the total ban: when “it is necessary to save [the pregnant woman's] life.” Otherwise, the prohibition applies regardless of the pregnancy's duration, whether it resulted from rape or incest, and even if a physician concludes that continuing the pregnancy would substantially and irreversibly impair the woman's health.

¶68 Since 2000, A.R.S. § 36-2301.01(A)(1) has prohibited physicians from “knowingly perform[ing] an abortion of a viable fetus” unless “necessary to preserve the life or health of the [pregnant] woman.” See 2000 Ariz. Sess. Laws ch. 365, § 2 (2d Reg. Sess.). In 2022, the legislature enacted § 36-2322(B) to further restrict when a physician may perform an abortion. See 2022 Ariz. Sess. Laws ch. 105, § 1 (2d Reg. Sess.) (leaving § 36-2301.01(A) in place and operational). At that time, the Supreme Court was still considering *Dobbs*, which concerned the constitutionality of Mississippi's “Gestational Age Act” (an act containing a statute nearly identical to § 36-2322). Section 36-2322(B) went into effect three months after the opinion in *Dobbs* issued and provides as follows: “*Except in a medical emergency*, a physician may not intentionally or knowingly perform, induce or attempt to perform or induce an abortion *if* the probable gestational age of the unborn human being has been determined to be greater than fifteen weeks.”⁹ (Emphasis added.) A physician who violates § 36-2322(B) is guilty of a class 6 felony, which is punishable by up to two years’ imprisonment, and

the state will suspend or revoke the physician's license to practice *155 **910 medicine. See A.R.S. §§ 36-2324(A), -2325(A); 13-702(D).

¶69 I disagree with the majority that § 36-2322(B) is ambiguous. See *supra* ¶¶ 21–22. That statute has only one reasonable meaning, and we should apply it. See *Glazer v. State*, 237 Ariz. 160, 163 ¶ 12, 347 P.3d 1141, 1144 (2015). We start with the statute's text “because it is the most reliable indicator of a statute's meaning.” *State v. Holle*, 240 Ariz. 300, 302 ¶ 11, 379 P.3d 197, 199 (2016). If the legislature's intent is “readily discernable from the face of the statute,” we do not resort to other methods of statutory interpretation, like examining a statute's context, history, or purpose. See *id.*; *Franklin v. CSAA Gen. Ins. Co.*, 255 Ariz. 409, 411 ¶ 8, 532 P.3d 1145, 1147 (2023). Nor do we attempt to divine and give effect to the legislature's unexpressed intent or look to session laws to manufacture ambiguity where none exists. See *Holle*, 240 Ariz. at 302 ¶ 11, 379 P.3d at 199.

¶70 Like § 13-3603, the territorial-era abortion ban, § 36-2322(B) uses conditional words to precisely identify conduct that is lawful and therefore permissible. Specifically, a physician commits a crime only “if” the physician performs an abortion when the fetus has a gestational age greater than fifteen weeks “[e]xcept in a medical emergency.” § 36-2322(B) (emphasis added). By default, all other physician-performed abortions are permissible and lawful under the provision, assuming the physician complies with other statutes not before us.¹⁰ See A.R.S. § 13-103(A) (“No conduct or omission constitutes an offense ... unless it is an offense ... under this title or under another statute or ordinance.”). The statute has no other reasonable interpretation.

¶71 *United States v. Vuitch*, 402 U.S. 62, 91 S.Ct. 1294, 28 L.Ed.2d 601 (1971), supports this plain-meaning interpretation. There, the Supreme Court addressed the District of Columbia's indictment of a physician under the district's abortion ban. *Id.* at 63–64, 91 S.Ct. 1294. Similar to Arizona's territorial-era abortion ban, the District of Columbia's ban prohibited abortions on threat of a multi-year prison term “unless the same were done as necessary for the preservation of the mother's life or health.” See *id.* at 68, 91 S.Ct. 1294 (quoting D.C. Code § 22-201 (1901)). The issue was whether the statute was unconstitutionally vague. See *id.* at 63–64, 91 S.Ct. 1294. The Court upheld the statute, reasoning in part that the ban's exception constituted an element of the crime the government must prove rather

than an affirmative defense. See *id.* at 71, 91 S.Ct. 1294. In doing so, the Court characterized abortions falling within the life-or-health exception as “legal,” and elaborated as follows:

The statute does not outlaw all abortions, but only those which are not performed under the direction of a competent, licensed physician, and those not necessary to preserve the mother's life or health When Congress passed the District of Columbia abortion law in 1901 and amended it in 1953, it expressly authorized physicians to perform such abortions as are necessary to preserve the mother's “life or health.”

See *id.* at 69–70, 91 S.Ct. 1294. Like the District of Columbia's ban, § 36-2322(B) clearly permits physicians to lawfully perform abortions that are not expressly outlawed.

¶72 The majority agrees that this is the logical, plain reading of § 36-2322. See *supra* ¶ 21. Nevertheless, because the statute does not explain how it operates alongside § 13-3603, the majority finds that § 36-2322(B)'s conditional language can also be reasonably interpreted as “merely acknowledg[ing] the existence of a contemporaneous federal constitutional *156 **911 right to abortion under *Roe*,” which forced the legislature to “qualify the circumstances under which a physician may be penalized.” See *supra* ¶¶ 21–22, 55. Finding the statute therefore ambiguous, the majority then examines secondary principles—including, most prominently, the construction note in the session law that enacted § 36-2322 and other statutes. See *supra* ¶¶ 23–31.

¶73 In my view, the majority errs by finding § 36-2322(B) ambiguous and then using the construction note to interpret the statute in a way unsupported by its plain textual meaning. First, nothing in the statutory text even hints that § 36-2322(B)'s identification of legal, and therefore permissible, abortions depends on *Roe*'s continuing enforceability. And no language suggests that any aspect of § 36-2322(B) would become inoperative if the Supreme Court overruled *Roe*.

¶74 Second, § 36-2322's failure to explain its effect on § 13-3603 does not cloud the plain meaning of § 36-2322(B)'s

enacted text. The authorities cited by the majority do not support that a statute's silence about its *impact* on the operation of a different statute creates an ambiguity in textual meaning. See *S. Ariz. Home Builders Ass'n v. Town of Marana*, 254 Ariz. 281, 286 ¶ 31, 522 P.3d 671, 676 (2023); *Stambaugh v. Killian*, 242 Ariz. 508, 509 ¶ 7, 398 P.3d 574, 575 (2017); *State v. Sweet*, 143 Ariz. 266, 269–70, 693 P.2d 921, 924–25 (1985). Notably, the majority does not identify any unclear language in § 36-2322(B) resulting from its silence concerning § 13-3603. There simply is no “textual ambiguity,” as the majority claims. See *supra* ¶ 21. Section 36-2322(B) has a single, plain meaning that is not made ambiguous by § 13-3603’s existence or by the existence of other statutes outlawing abortions in defined circumstances. See Part I, D ¶ 99. The conflict between the statutes only comes into play in deciding whether one repeals the other or whether they can be harmonized. See Part I, C–D ¶¶ 85–91. It does not transform § 36-2322(B)’s plain language into ambiguous text that needs further interpretation.

¶75 Third, § 36-2322(B)’s conditional language cannot logically reflect a forced accommodation to *Roe*, as the majority concludes, because *Roe* would not have tolerated the after-fifteen-week ban. *Roe* held that women have a due process right to terminate a pregnancy before the fetus becomes viable and to obtain that abortion without the government's undue interference. See *Roe*, 410 U.S. at 164, 93 S.Ct. 705; see also *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 846, 873, 876–77, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992) (reaffirming *Roe*’s central holding but replacing its rigid trimester framework with an “undue burden” test to determine whether abortion regulations are permissible). Viability at the time *Roe* was decided was around twenty-eight weeks, and in 2022 was suggested to be twenty-three or twenty-four weeks. See *Dobbs*, 597 U.S. at 276, 142 S.Ct. 2228. Also, the Supreme Court stressed after *Roe* that determining precisely when viability is reached must be left to the attending physician in each case, and neither a legislature nor a court could establish viability in terms of gestational weeks or other factors. See *Colautti v. Franklin*, 439 U.S. 379, 388–89, 99 S.Ct. 675, 58 L.Ed.2d 596 (1979), *abrogated by Dobbs*, 597 U.S. 215, 142 S.Ct. 2228, 213 L.Ed.2d 545. For that reason—as the legislature undoubtedly knew when it enacted § 36-2322(B)—the Ninth Circuit Court of Appeals invalidated A.R.S. § 36-2159, which banned elective abortions after twenty weeks.¹¹ See *Isaacson v. Horne*, 716 F.3d 1213, 1225–26 (9th Cir. 2013). But for *Dobbs*, the more-restrictive after-fifteen-week ban would undoubtedly have met the same fate. In short, *Roe* did not

force the legislature to allow abortions up to the fifteen-week gestation point.

¶76 Fourth, the majority's focus on whether § 36-2322(B) grants an affirmative right to an abortion akin to *Roe*’s recognition of a constitutional right is misplaced. See *supra* ¶ 22 (“Section 36-2322’s text in isolation, therefore, does not resolve the fundamental issue before us: whether the statute creates independent statutory authority for abortion intended to repeal or restrict § 13-3603”); ¶ 23 (“To determine if Title 36 creates a right to abortion, or otherwise provides independent statutory authority to perform *157 **912 the procedure ... we must consider S.B. 1164’s construction provision.”); ¶ 42 (concluding “the legislature did not intend to create a privilege secured by law to obtain or perform an abortion” by enacting § 36-2322(B)). Section 36-2322(B) proscribes abortions performed by physicians under particular circumstances. As previously explained, see Part I, A ¶¶ 70–71, § 36-2322(B) provides that all other abortions performed by physicians are necessarily lawful and permitted under the criminal law because they are not proscribed. See § 13-103(A). Proscribing conduct does not require the legislature to grant people an affirmative right to engage in conduct falling outside the proscription, and the majority does not cite any authority suggesting otherwise. Notably, two years before *Roe* and without considering whether women had a right to a pre-viability abortion, the Supreme Court in *Vuitch* interpreted the District of Columbia’s abortion ban as providing that abortions falling within the life-or-health exception are permitted and lawful. Likewise, at a time when women lacked a federal constitutional or statutory right to an abortion, the legislature enacted what is now § 13-3603, which permits women to obtain abortions to save their lives. Doing so did not grant women a statutory *right* to an abortion under those circumstances.

¶77 An example raised at oral argument illustrates the point. I can legally drive thirty-five miles per hour when the speed limit is forty-five miles per hour. But the law establishing the speed limit does not grant me an affirmative right to drive thirty-five miles per hour; I simply will not be ticketed for doing so. Likewise, under § 36-2322(B), women do not need an affirmative right to terminate a pregnancy for a physician to perform an abortion either before the fifteen-week gestation point or to prevent the pregnant woman from suffering serious health conditions; the physician simply will not be prosecuted for doing so.

¶78 Too, the legislature does not affirmatively grant a right by *decriminalizing* conduct. For example, in 2021, the legislature repealed [A.R.S. § 13-3604](#), which had provided that a woman who has an abortion that is not necessary to save her life shall be imprisoned from one to five years. *See* 2021 Ariz. Sess. Laws ch. 286, § 3 (1st Reg. Sess.). And when enacting [§ 36-2322](#), the legislature provided that the “pregnant woman on whom an abortion is performed, induced or attempted in violation of [§ 36-2322](#) may not be prosecuted for conspiracy” to violate the statute. [§ 36-2324\(B\)](#). By affirmatively declining to hold women criminally responsible for seeking or obtaining an abortion, the legislature did not grant women a right to seek an abortion; it simply decided the state would not prosecute women for doing so. The majority misses the mark by asking and then answering whether [§ 36-2322\(B\)](#) grants a limited right to abortion.

¶79 Fifth, the majority incorrectly elevates the construction note in [§ 36-2322\(B\)](#)’s session law to equal its text. Instead of using the note as a tool in interpreting any ambiguous language in the statutory text, the majority incorrectly uses the note to *create* an ambiguity in the text. *See supra* ¶ 22 (“[A]ny interpretation of the statute that ignores or minimizes the impact of *Dobbs*’ disavowal of a federal constitutional abortion right runs headlong into the construction provision of Senate Bill 1164 ... the genesis of [§ 36-2322](#) and part of what the legislature enacted.”); *id.* (“We must interpret the statute in its proper context” which “requires us to reconcile the legislature’s construction provision, which specifically preserves [§ 13-3603](#), and the text of [§ 36-2322](#)”); ¶ 24 (“The construction provision is part of the bill that legislators [had] before them and approve[d], and has the same force of law as codified law.”); ¶ 25 (stating the Court must consider the construction note to discern [§ 36-2322\(B\)](#)’s meaning “because [the construction note] is part of the bill the legislature approved”).

¶80 The “construction” note, which—despite its title—expresses only legislative intent and provides absolutely no insight on what the legislature meant by any language in the statute, is emphatically not part of the statutory text. *See* 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg. Sess.). We have repeatedly stressed that declarations of legislative intent in an enactment are “devoid of operative effect.” *See* *158 **913 *Redgrave v. Ducey*, 251 Ariz. 451, 457 ¶ 22, 493 P.3d 878, 884 (2021) (concluding that if statutory text conflicts with a statement of purpose or intent, “the text must prevail”); *Cronin v. Sheldon*, 195 Ariz. 531, 538 ¶ 30, 991 P.2d 231, 238 (1999) (“The preamble [stating legislative purpose and

intent] is devoid of operative effect.”); *Sakrison v. Pierce*, 66 Ariz. 162, 172, 185 P.2d 528 (1947) (stating that the policy section of an act would be controlling only “if we were called upon to interpret an operative portion of the statute that was ambiguous or of doubtful meaning” and emphasizing that “the policy of the law is not controlling and can be considered only where the statute is ambiguous” (quoting 59 C.J.S., *Statutes*, § 602 for the latter quote)). The majority ignores this principle.

¶81 We have also consistently emphasized that if a statute has a plain textual meaning, we simply apply it rather than construe it by examining secondary sources. *See, e.g., Mussi v. Hobbs*, 255 Ariz. 395, 402 ¶ 34, 532 P.3d 1131, 1138 (2023) (“It is a basic principle that courts will not read into a statute something which is not within the manifest intention of the legislature *as indicated by the statute itself*.” (emphasis added) (quoting *Town of Scottsdale v. State ex. rel. Pickrell*, 98 Ariz. 382, 386, 405 P.2d 871 (1965))); *S. Ariz. Home Builders Ass’n*, 254 Ariz. at 286 ¶ 31, 522 P.3d at 676 (“Statutory interpretation requires us to determine the meaning of the words the legislature chose to use.”); *City of Mesa v. Killingsworth*, 96 Ariz. 290, 294, 394 P.2d 410 (1964) (“Where the statute is unambiguous, the courts will only apply the language used and not interpret, for the statute speaks for itself.”). We hold the legislature to its enacted statutory text, and the majority therefore errs by using the construction note to vary [§ 36-2322\(B\)](#)’s plain language. *See Roberts v. State*, 253 Ariz. 259, 266 ¶ 20, 512 P.3d 1007, 1014 (2022) (quoting *City of Phoenix v. Donofrio*, 99 Ariz. 130, 133, 407 P.2d 91 (1965)) (stating “courts will not read into a statute something which is not within the manifest intention of the legislature *as gathered from the statute itself*” (emphasis added)); *In re McLauchlan*, 252 Ariz. 324, 326 ¶ 15, 502 P.3d 975, 977 (2022) (“Legislative history is not a substitute for clear legislative language”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56–58 (2012) (noting the supremacy of statutory text and explaining that statutory purpose “sheds light only on deciding which of various *textually permissible meanings* should be adopted”).

¶82 For all these reasons, it is simply implausible to interpret [§ 36-2322\(B\)](#)’s conditional language as merely acknowledging *Roe*’s restriction on the state’s ability to prohibit pre-viability abortions. The statute says what it means and means what it says: The state will prosecute physicians for performing abortions after the fetus reaches fifteen weeks in age unless a medical emergency requires the procedure. The state will not prosecute physicians for performing abortions before the

fetus reaches fifteen weeks in age. These abortions are lawful. There is no room for misunderstanding.

¶83 My colleagues accuse me of “deliberately blind[ing]” myself to legislative history and the legislature’s construction note in interpreting § 36-2322(D). See *supra* ¶ 61. Not so. With eyes wide open, I fulfill the legislature’s intent by giving plain meaning to the language actually enacted. I decline to engage in the guesswork needed to engraft onto § 36-2322(B)’s straightforward language a meaning the legislature may or may not have intended had it anticipated the Supreme Court would overrule *Roe*.

¶84 But what effect does a reinvigorated § 13-3603 have on § 36-2322(B)? The majority does not address whether the statutes can be harmonized, as the court of appeals held. See *Planned Parenthood Ariz., Inc. v. Brnovich*, 254 Ariz. 401, 405 ¶ 13, 524 P.3d 262, 266 (App. 2022). Because it concludes that § 36-2322(B) does not create a legal privilege to obtain or perform an abortion, the majority finds no conflict and thus “[no] need to harmonize” the two statutes. See *supra* ¶ 42. I disagree, so I turn to that issue.

B. Sections 13-3603 And 36-2322(B) Conflict.

¶85 The conflict between §§ 13-3603 and 36-2322(B) is readily apparent. On the one hand, § 13-3603 criminalizes performing any abortions, unless necessary to save the pregnant *159 **914 woman’s life. On the other hand, § 36-2322(B) criminalizes physician-performed abortions only when the physician performs an abortion after the fetus is fifteen weeks of age and a medical emergency does not necessitate the procedure. Consequently, a physician who performs an abortion in compliance with § 36-2322(B) nevertheless violates § 13-3603, unless the abortion was necessary to save the pregnant woman’s life. In that situation, the statutes operate inconsistently and therefore conflict. See *State v. Jones*, 235 Ariz. 501, 503 ¶ 8, 334 P.3d 191, 193 (2014); see also *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 7 ¶ 24, 308 P.3d 1152, 1158 (2013) (holding that a conflict exists when statutes cannot be read “to give each effect and meaning”).

C. Section 36-2322(B) Operates As An Exception To § 13-3603.

¶86 We have repeatedly stated that courts have a duty to harmonize statutes to rectify conflicts, as far as possible, and

avoid construing one statute as impliedly repealing another. See, e.g., *State v. Rice*, 110 Ariz. 210, 213, 516 P.2d 1222, 1225 (1973); *State Land Dep’t. v. Tucson Rock & Sand Co.*, 107 Ariz. 74, 77, 481 P.2d 867, 870 (1971); *Ard v. State*, 102 Ariz. 221, 224, 427 P.2d 913, 916 (1967). Reconciling any contradictions “giv[es] force and meaning to all statutes involved.” *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, 333 ¶ 28, 26 P.3d 510, 516 (2001).

¶87 The conflict between the statutes here is reconciled by applying the general/specific canon. That canon is not used to discern the *meaning* of statutory language but instead directs the *operation* of conflicting provisions. See *Guard./Conserv. of Denton*, 190 Ariz. 152, 157, 945 P.2d 1283, 1288 (1997). It provides that “[w]hen ‘two conflicting statutes cannot operate contemporaneously, the more recent, specific statute governs over an older, more general statute.’ ” *Jones*, 235 Ariz. at 503 ¶ 8, 334 P.3d at 193 (quoting *UNUM Life Ins. Co.*, 200 Ariz. at 333 ¶ 29, 26 P.3d at 516); see also *State v. Santillanes*, 256 Ariz. 534, 539–40 ¶ 20, 541 P.3d 1150, 1155–56 (2024) (recognizing the canon); Scalia & Garner 183 (“If there is a conflict between a general provision and a specific provision, the specific provision prevails.”).

¶88 As the more specific and recent statute, § 36-2322(B) applies in circumstances governed by it. See *Jones*, 235 Ariz. at 503 ¶¶ 8, 11, 334 P.3d at 193; *Guard./Conserv. of Denton*, 190 Ariz. at 157, 945 P.2d at 1288; *Lemons v. Superior Court*, 141 Ariz. 502, 505, 687 P.2d 1257, 1260 (1984). Because § 13-3603 is the more general statute, outlawing almost all abortions, § 36-2322(B) operates as an exception to § 13-3603’s near-total ban. See *State v. Cassius*, 110 Ariz. 485, 487, 520 P.2d 1109, 1111 (1974) (“Where a statute first expresses a general intent, and later an inconsistent particular intent, such particular intent will be taken as an exception to the general intent, and both will stand.”).

¶89 To be clear, § 36-2322(B) does not repeal any aspect of § 13-3603. See Scalia & Garner 184 (“Note that the general/specific canon does not mean that the existence of a contradictory specific provision voids the general provision. Only its application to cases covered by the specific provision is suspended; it continues to govern all other cases.”). Instead, § 36-2322(B) negates § 13-3603 “only in its application to the situation that [§ 36-2322(B)] covers.” *Id.* at 185. Contrary to the majority’s characterization, see *supra* ¶ 42, applying § 36-2322(B) as an exception to § 13-3603 does not “repeal” any part of the latter statute. See *Cassius*, 110 Ariz. at 487, 520 P.2d at 1111 (finding that a later criminal statute operates

as an exception to a conflicting general statute, neither statute is repealed, and “each is given full effect”).

¶90 So, if a physician performs an abortion at the thirteen-week gestation point as permitted by § 36-2322(B), the state cannot prosecute the physician under § 13-3603. Section 36-2322(B) operates as an exception, just like § 13-3603’s exception for abortions performed to save the pregnant woman’s life. But if the physician performs an abortion at the sixteen-week gestation point and without a medical emergency in violation of § 36-2322(B), the state may prosecute the physician under either § 13-3603 or § 36-2322(B). See *160 **915 *United States v. Batchelder*, 442 U.S. 114, 123–24, 99 S.Ct. 2198, 60 L.Ed.2d 755 (1979) (“[W]hen an act violates more than one criminal statute, the Government may prosecute[] under either so long as it does not discriminate against any class of defendants.”); *State v. Romero*, 130 Ariz. 142, 147, 634 P.2d 954, 959 (1981) (concluding “[t]here is no question that the Legislature could proscribe the conduct covered by [two different statutes]” so long as the state did not use an “unjustifiable selection standard”). No exception to prosecution would exist under either statute. And, of course, the state may prosecute any non-physician, including other medical professionals, for performing an abortion in violation of § 13-3603.

¶91 Resolving the conflict in this way recognizes that each statute is given full effect as parts of a single statutory scheme governing abortions. See *Fleming v. State Dep’t of Pub. Safety*, 237 Ariz. 414, 417 ¶ 12, 352 P.3d 446, 449 (2015) (“[W]hen statutes relate to the same subject matter, we construe them together as though they constitute one law”). It does not matter that the provisions are in different statutory chapters or that § 13-3603 lay largely dormant for decades until reinvigorated by *Dobbs*. See *State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970). Related statutes “must be construed as one system governed by one spirit and policy.” *Id.*

¶92 The majority’s position neutralizes most of Title 36, which regulates and restricts abortions and abortion clinics, and impliedly repeals the part of § 36-2322(B) permitting physicians to lawfully perform abortions before the fetus is fifteen weeks old or in a medical emergency. But viewing § 36-2322(B) as an exception to § 13-3603, as I do, avoids impliedly repealing any statute and results in a single, cohesive legislative scheme. See *Fleming*, 237 Ariz. at 417, 352 P.3d at 449.

D. Neither The Construction Note Nor Any Other Law Triggers § 36-2322(B)’s Nullification Upon *Roe*’s Demise and § 13-3603’s reanimation.

¶93 The only way to conclude that § 36-2322(B) is not given full effect as an exception to § 13-3603 is if the legislature had enacted a “trigger clause” abrogating § 36-2322(B) upon *Roe*’s demise. Indisputably, the legislature did not expressly do so. Nevertheless, the majority finds “a discernible comprehensive trigger provision” by considering the legislature’s continuing recognition of § 13-3603, the session law’s construction note, and A.R.S. § 1-219(A), which states that laws should be interpreted as acknowledging that a fetus has the same rights as all persons. See *supra* ¶ 40. My colleagues then conclude *Dobbs* pulled this trigger by “remov[ing] the sole authority for elective abortion in Arizona,” thereby abrogating § 36-2322(B). See *supra* ¶¶ 40, 43.

¶94 Before addressing the majority’s reasoning, it is useful to consider what constitutes a trigger clause. Mississippi’s abortion scheme provides an example. In 2007, the Mississippi Legislature enacted a law banning all abortions “except in the case where necessary for the preservation of the mother’s life or where the pregnancy was caused by rape.” Miss. Code Ann. § 41-41-45(2). *Roe*, of course, would have abrogated that ban. Consequently, the Mississippi Legislature made the law effective ten days *after* the Mississippi Attorney General publishes a determination that the Supreme Court has overruled *Roe* and the ban would probably be upheld by that Court as constitutional. See 2007 Miss. Laws ch. 441, §§ 4, 6. Those circumstances would automatically “trigger” the almost total ban on abortion.

¶95 Mississippi’s fifteen-week gestation statute, in turn, has a provision in its text triggering the statute’s own demise upon § 41-41-45(2)’s effective date. Mississippi Code § 41-41-191(8) provides that “[a]n abortion that complies with this section, but violates any other state law, is unlawful.” Thus, if Mississippi’s near-total abortion ban became effective as certified by the Mississippi Attorney General, abortions previously permitted by § 41-41-191 would become “unlawful” without further legislative action. The Mississippi Legislature explicitly directed what would occur if the Supreme Court overruled *Roe* as certified by the Mississippi Attorney General: the state’s near-total ban would go into effect and abortions complying with the fifteen-week gestation statute would *161 **916 nevertheless become unlawful as violating the new near-total ban.

¶96 Neither § 36-2322(B) nor any other Arizona law has trigger language like § 41-41-191(8)'s clause. The majority characterizes the session law construction note as "virtually identical" to Mississippi's § 41-41-191(8) and asserts either both must have a trigger clause or neither do. *See supra* ¶ 39. But the majority refuses to recognize and give weight to the crucial, operative language that *explicitly* triggers § 41-41-191's demise upon its conflict with another statute. *See id.* Critically, unlike Mississippi's legislature, our legislature opted not to provide that an abortion that complies with § 36-2322(B) "but violates any other state law," including § 13-3603, makes the abortion "unlawful." And in my view, the construction note, together with § 13-3603's continued existence and § 1-219(A)'s interpretation directive acknowledging fetal rights, cannot be dressed up as a comparable trigger clause.

¶97 The legislature included § 36-2322(B) within a new article entitled "Gestational Limit on Abortion." *See* 2022 Ariz. Sess. Laws ch. 105 (2d Reg. Sess.). Nothing in the statutory text even arguably constitutes a trigger clause. The construction note contained within the session law provides:

This act does not:

1. Create or recognize a right to abortion or alter generally accepted medical standards. The Legislature does not intend this act to make lawful an abortion that is currently unlawful.
2. Repeal, by implication or otherwise, section 13-3603, Arizona Revised Statutes, or any other applicable state law regulating or restricting abortion.

See 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg. Sess.). Nothing in this note conditions § 36-2322(B)'s effectiveness on whether or not the Supreme Court overrules *Roe*. And it certainly would have been easy to include that condition in a sentence or two if the legislature had intended that result. *See* Scalia & Garner at 181–82 (highlighting "[t]he familiar 'easy-to-say-so-if-that-is-what-was-meant' rule of statutory interpretation" (quoting *Commissioner v. Beck's Estate*, 129 F.2d 243, 245 (2d Cir. 1942))). Undoubtedly, the legislature knew how to use trigger clauses because it has explicitly inserted them into other abortion-related session laws. *See, e.g.,* 1999 Ariz. Sess. Laws ch. 311, §§ 12, 13 (1st Reg. Sess.) (calling for the conditional repeal and the conditional enactment of statutory provisions triggered by a court finding that the statutory definition of "abortion

clinics" is unconstitutional). And the Arizona Legislature in 2022 followed a drafting manual explaining how to word such provisions. *See* Ariz. Legis. Bill Drafting Manual § 4.4 at 30–32 (2021–2022) (explaining conditional enactments and repeals and providing sample language not found in § 36-2322 or the construction note); *see also* A.R.S. § 41-1304(A) (charging a council of legislators with providing bill-drafting services to improve the quality of legislation).

¶98 The majority reaches the opposite conclusion, but I do not find its reasoning persuasive. First, the construction note's statement that the act including § 36-2322(B) does not "[c]reate or recognize" women's right to abortion does not mean a revived § 13-3603 serves to make unlawful all abortions that comply with § 36-2322(B). As previously explained, the legislature does not have to affirmatively grant women a right to an abortion to criminalize or not criminalize performing abortions in some situations. *See* Part I, A ¶¶ 76–78. Thus, the legislature did not affirmatively grant the right by permitting anyone to perform a lawful abortion if necessary to save a pregnant woman's life, *see* § 13-3603, or by permitting physicians to perform lawful abortions before the fifteen-week gestation point or in a medical emergency, *see* § 36-2322(B).

¶99 Second, the note's statement that "[t]he Legislature does not intend this act to make lawful an abortion that is currently unlawful" did not trigger § 36-2322(B)'s abrogation upon *Roe*'s demise. The majority concludes that the only "currently unlawful" abortions are ones proscribed by § 13-3603 because only that provision is more restrictive than § 36-2322(B). *See supra* ¶ 29. Thus, because nearly all abortions under § 13-3603 are unlawful, the majority reasons that abortions performed before the fifteen-week gestation point or in a medical emergency per *162 **917 § 36-2322(B) became "unlawful" when the injunction was lifted on § 13-3603. *See supra* ¶ 29.

¶100 The majority's factual premise is incorrect because the legislature included *all* abortion laws within the "currently unlawful" clause and not just those more restrictive than § 36-2322(B). *See* 2022 Ariz. Sess. Laws ch. 105, § 2 (2d Reg. Sess.) ("The Legislature does not intend this act to make lawful an abortion that is currently unlawful."). Many statutes other than § 13-3603 criminalize abortions. And unlike § 13-3603, those statutes operated without restriction when the legislature enacted § 36-2322(B), making abortions performed in violation of those provisions "currently unlawful." *See* A.R.S. § 13-3603.01 (proscribing

partial-birth abortions unless necessary to save the life of the pregnant woman); § 36-2152(A) (prohibiting physicians from performing abortions on minors without parental consent or judicial authorization); § 36-2301.01 (prohibiting a physician from “knowingly perform[ing] an abortion of a viable fetus” except in a medical emergency); § 13-3603.02(A)(1) (proscribing abortions committed when a physician knows the woman is seeking to avoid having a baby with a genetic abnormality or of a particular race or gender).

¶101 Notably, at the time the legislature enacted § 36-2322(B), abortions up to the fifteen-week gestation point and those performed in a medical emergency were *not* “currently unlawful” under § 13-3603 because that statute had been enjoined for more than fifty years. It would be downright bizarre for the legislature to have enacted § 36-2322(B) while simultaneously intending to make “unlawful” abortions complying with that statute.

¶102 For all these reasons, it is implausible to conclude the legislature planted within the construction note a bombshell of reverting to a near-total ban on abortion—including those to preserve a woman's health—by using the term “currently unlawful” as referring to abortions made unlawful by a long-enjoined § 13-3603 rather than currently operative statutes making certain abortions unlawful. See *Whitman*, 531 U.S. at 468, 121 S.Ct. 903; *Estate of Braden ex rel. Gabaldon*, 228 Ariz. at 330 ¶ 30, 266 P.3d at 356 (Bales, J., dissenting). If the legislature intended otherwise, it could have easily said so.

¶103 Third, the note's statement that the act including § 36-2322(B) does not repeal § 13-3603 or other provisions “regulating or restricting abortions” does not mean that abortions permitted under § 36-2322(B) become unlawful if *Roe* is overruled and § 13-3603 is no longer enjoined. As previously explained, § 13-3603 does not have to be repealed for § 36-2322(B) to operate. See Part I, C ¶¶ 86–92. Both statutes can remain fully intact and operate as one cohesive act. And by explicitly keeping other statutes “regulating or restricting abortions” intact, the legislature signaled its intention to maintain a single, cohesive system in which *all* statutes remain fully operational. Under the majority's view, maintaining other statutes “restricting abortions” would be impossible because § 13-3603's near-total ban would engulf those provisions without exception.

¶104 Fourth, § 1-219(A) provides no authority for concluding that abortions permitted under § 36-2322(B) would become unlawful under § 13-3603 if *Roe* was overruled. Section

1-219(A) is an interpretation provision and is not substantive. Because no language in the construction note can be interpreted as a trigger clause, § 1-219(A) adds nothing and does not support the majority's position.

¶105 In sum, unlike Mississippi's legislature, our legislature did not include a trigger clause in the act containing § 36-2322(B). Any lingering doubt is further removed by considering the legislature's express statement of intent. In it, the legislature makes several findings of fact concerning gestation and the state's legitimate interests in protecting potential new life and the health of a pregnant woman. See 2022 Ariz. Sess. Laws ch. 105, § 3(A) (2d Reg. Sess.). It then affirmatively states what it intends to accomplish: “This Legislature intends through this act and any rules and policies adopted hereunder, to restrict the practice of nontherapeutic or elective abortion to the period up to fifteen weeks of gestation.” See 2022 Ariz. Sess. Laws ch. 105, § 3(B) (2d Reg. Sess.). Nothing suggests an intent to make abortions permitted *163 **918 under § 36-2322(B) unlawful upon *Roe*'s demise.

CONCLUSION

¶106 All agree the legislature enacted § 36-2322(B) in hopes the Supreme Court in *Dobbs* would uphold Mississippi's similar Gestational Age Act. See Governor's Approval Message, 2022 Ariz. Sess. Laws ch. 105 (2d Reg. Sess.) (“This very issue is pending before the United States Supreme Court now in *Dobbs v. Jackson Women's Health Organization*.”). But the legislature perhaps got more than it expected when *Dobbs* overruled *Roe*. Some, most, or even all legislators in 2022 would have included a trigger clause repealing § 36-2322(B) and other Title 36 laws if they foresaw that *Roe* would be overruled and the injunction on § 13-3603 lifted. But the legislature did not *state* that intent in any statute or session law, and we should not speculate about what it would have done. Justice Antonin Scalia and Bryan Garner, considered by many to be leading scholars in statutory interpretation, call doing otherwise as following, “[t]he false notion that when a situation is not quite covered by a statute, the court should reconstruct what the legislature would have done had it confronted the issue.” *Id.* at 350 (quoting Frank H. Easterbrook, *Statutes' Domains*, 50 U. Chi. L. Rev. 533, 547–48 (1983)).

¶107 What the legislature did express in plain language was a statutory scheme that includes both [§ 13-3603](#) and [§ 36-2322\(B\)](#). I would therefore apply the latter statute as an exception to the former, leaving both fully intact and operative. This would mean physicians could perform abortions up to the fifteen-week gestation point or to preserve the pregnant woman's health without incurring harsh criminal penalties. If the legislature or the people desire a different result, either could enact a new law.

¶108 The majority's opinion today will undoubtedly be derided by many as result-oriented or a reflection of individual justices' ideology. My dissenting opinion will

probably spark similar criticism. That is the cross borne by all judges in controversial social-issue cases like this one. But nothing is further from the truth. In upholding our oaths to follow the laws of this state, we simply disagree—vehemently—about what those laws mean. And in my view, the majority mistakenly returns us to the territorial-era abortion statute last operative in 1973. I would leave it to the people and the legislature to determine Arizona's course in the wake of *Roe*'s demise. With great respect for my colleagues, I dissent.

All Citations

257 Ariz. 137, 120 Arizona Cases Digest 4, 545 P.3d 892, Med & Med GD (CCH) P 308,036

Footnotes

- 1 Justice William G. Montgomery has recused himself from this case.
- 2 References to "Title 36" pertain strictly to the abortion statutes codified in title 36, chapters 20 and 23, §§ 36-2151 through -2164, and §§ 36-2301 through -2326.
- 3 [Section 13-3603](#) provides:

A person who provides, supplies or administers to a pregnant woman, or procures such woman to take any medicine, drugs or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of such woman, unless it is necessary to save her life, shall be punished by imprisonment in the state prison for not less than two years nor more than five years.
- 4 Planned Parenthood further contends that [§ 36-2322](#) should be read to exempt "medical emergency" situations from the gestational age requirement and to criminalize abortions after fifteen weeks. This interpretation is reasonable, but we do not address it further because it has no bearing on whether the statute creates an independent statutory authorization for physicians to perform elective abortions before fifteen weeks' gestation that overrides [§ 13-3603](#), which is the issue before us.
- 5 Penalties for violating [§ 36-2322](#) include a criminal class 6 felony conviction and medical license suspension or revocation. See [A.R.S. §§ 36-2324\(A\)](#), -2325(A).
- 6 S.B. 1164's ban on elective abortion after fifteen weeks' gestation was the most temporally restrictive abortion statute. This construction provision conceivably may also apply to other non-temporal statutory abortion restriction statutes. See, e.g., [A.R.S. § 36-2152\(A\)](#) (requiring parental consent or judicial authorization for abortions on minors); [A.R.S. § 13-3603.02\(A\)\(1\)](#) (prohibiting physicians from performing an abortion when a physician knows the purpose is based on genetic abnormality or race or gender).
- 7 [Section 1-219\(A\)](#) is preliminarily enjoined in federal court from enforcement "as applied to abortion care that is otherwise permissible under Arizona law." *Isaacson v. Brnovich*, 610 F. Supp. 3d 1243, 1257 (D. Ariz.

2022). Thus, the injunction has no bearing on this Court's authority to consider § 1-219(A) in interpreting the statutes before us or to determine whether abortion is permissible under Arizona law.

- 8 Pima County Attorney's Office argues that § 13-3603's "necessary to save [a pregnant woman's] life" exception to the ban on abortion "would violate due process because it does not provide physicians clarity on how they should conform their conduct to the law in life- and health-threatening situations." We decline to address this argument here because it is beyond the scope of the issue before us, a factual record was not developed in the trial court, and neither the trial court nor the court of appeals ruled on this issue. See *Hawkins v. Allstate Ins. Co.*, 152 Ariz. 490, 503, 733 P.2d 1073, 1086 (1987).
- 9 A "medical emergency" occurs when a physician makes a "good faith clinical judgment" that the pregnant woman suffers a medical condition that "necessitate[s] the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function." A.R.S. § 36-2321(7). "Major bodily function[s]" include "functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions." § 36-2321(6).
- 10 Even when a physician complies with § 36-2322(B), the physician nevertheless commits a crime if he performs an abortion on a minor without receiving parental consent or judicial authorization. See A.R.S. § 36-2152(A). The physician also commits a crime by performing an abortion while knowing the woman is seeking to avoid having a baby with a genetic abnormality or of a particular race or gender. See A.R.S. § 13-3603.02(A)(1). The federal district court preliminarily enjoined § 13-3603.02(A)(1) as it concerns genetic abnormalities because the provision is likely unconstitutionally vague and imposed an undue burden on a woman's—now abrogated—federal constitutional right to terminate a pre-viability pregnancy. See *Isaacson v. Brnovich*, 563 F. Supp. 3d 1024, 1047 (D. Ariz. 2021).
- 11 Nevertheless, as with § 13-3603, the legislature has never repealed § 36-2159.