APPENDIX TO *AMICUS CURIAE BRIEF*

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Puc 203.25 Burden and Standard of Proof. Unless otherwise specified by law, the party seeking relief through a petition, application, motion or complaint shall bear the burden of proving the truth of any factual proposition by a preponderance of the evidence.

Source. *#8657-A, eff 6-10-06*

Puc 203.26 Order of Procedure. In hearings on petitions, the petitioner shall have the opportunity to open and close any part of the presentation.

Source. *#8657-A, eff 6-10-06*

Puc 203.27 Administrative Notice.

(a) The commission shall take administrative notice when a party presents one or more of the following:

(1) Any fact which could be judicially noticed in the courts of New Hampshire;

(2) The relevant portion of the record of other proceedings before the commission;

(3) Generally recognized technical or scientific facts within the commission's specialized knowledge; and

(4) Codes or standards that have been adopted by an agency of the United States, of New Hampshire or of another state, or by a nationally recognized organization or association.

(b) The commission shall notify parties either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed.

(c) The commission shall afford parties an opportunity to contest the material so noticed.

Source. *#8657-A, eff 6-10-06*

Puc 203.28 Views and Inspections. The commission shall take a view or conduct an inspection of any property which is the subject of a hearing before the commission if requested by a party, or on its own motion, if the commission shall have determined that the view or inspection will assist the commission in reaching a determination in the hearing.

Source. *#8657-A, eff 6-10-06*

Puc 203.29 Recess and Adjournment. The commission shall recess, adjourn or continue any hearing if to do so will promote the orderly and efficient conduct of the proceeding.

Source. *#8657-A, eff 6-10-06*

Puc 203.30 Reopening the Record.

(a) The commission shall, on its own motion or at the request of a party, authorize filing of exhibits after the close of a hearing if the commission finds that late submission of additional evidence will enhance its ability to resolve the matter in dispute.

(b) Any party requesting authorization to file an exhibit after the close of a hearing shall make its request:

(1) Orally before the close of the hearing; or

(2) If the hearing has concluded, by motion, pursuant to Puc 203.06.

TITLE LV
PROCEEDINGS IN SPECIAL CASES

CHAPTER 541-A
ADMINISTRATIVE PROCEDURE ACT

Section 541-A:33

541-A:33 Evidence; Official Notice in Contested Cases. –

I. All testimony of parties and witnesses shall be made under oath or affirmation administered by the presiding officer.

II. The rules of evidence shall not apply in adjudicative proceedings. Any oral or documentary evidence may be received; but the presiding officer may exclude irrelevant, immaterial or unduly repetitious evidence. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidence offered may be made and shall be noted in the record. Subject to the foregoing requirements, any part of the evidence may be received in written form if the interests of the parties will not thereby be prejudiced substantially.

III. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

IV. A party may conduct cross-examinations required for a full and true disclosure of the facts.

V. Official notice may be taken of any one or more of the following:

(a) Any fact which could be judicially noticed in the courts of this state.

(b) The record of other proceedings before the agency.

(c) Generally recognized technical or scientific facts within the agency's specialized knowledge.

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

VI. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Source. 1994, 412:1, eff. Aug. 9, 1994.

TITLE LV
PROCEEDINGS IN SPECIAL CASES

CHAPTER 541
REHEARINGS AND APPEALS IN CERTAIN CASES

Section 541:13

541:13 Burden of Proof. – Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.

Source. 1913, 145:18. PL 239:11. 1937, 107:24; 133:85. RL 414:13.

COMMITTEE REPORT

COMMITTEE: SCIENCE, TECHNOLOGY AND ENERGY

BILL NUMBER: SB 106-FN

TITLE: relative to competition among telecommunications providers.

DATE: April 13, 1995 CONSENT CALENDAR YES ____ NO __X__

__*__ OUGHT TO PASS

____ OUGHT TO PASS WITH AMENDMENT

____ INEXPEDIENT TO LEGISLATE

____ RE-REFER

____ REFER TO COMMITTEE FOR INTERIM STUDY

(AVAILABLE ONLY IN SECOND YEAR OF BIENNIUM)

STATEMENT OF INTENT

(Include Committee Vote)

This bill allows increased competition for local telecommunications services. New Hampshire will be better positioned to move forward with the national trend toward additional competition in the telecommunications industry. The Public Utilities Commission will still have to find each proposed change to have public benefit. All affected telecommunications providers supported this bill.

Vote 14-0.

Reps. Jeffrey C. MacGillivray and
Jeb E. Bradley

FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

SCIENCE, TECHNOLOGY AND ENERGY

SB 106-FN, relative to competition among telecommunications providers.
OUGHT TO PASS

This bill allows increased competition for local telecommunications services. New Hampshire will be better positioned to move forward with the national trend toward additional competition in the telecommunications industry. The Public Utilities Commission will still have to find each proposed change to have public benefit. All affected telecommunications providers supported this bill.
Vote 14-0.

Reps. Jeffrey C. MacGillivray and
Jeb E. Bradley

FOR THE COMMITTEE

SB 106

Reps. Jeffrey C. MacGillivray and Jeb E. Bradley for S, T, & E:

This bill allows increased competition for local telecommunications services. New Hampshire will be better positioned to move forward with the national trend toward additional competition in the telecommunications industry. The Public Utilities Commission will still have to find each proposed change to have public benefit. All affected telecommunications providers supported this bill. Vote 14-0.

Jeffrey C. MacGillivray

Jeb Bradley

5481/3

COMMITTEE REPORT

COMMITTEE: SCIENCE, TECHNOLOGY AND ENERGY

BILL NUMBER: SB-106

TITLE: & Competition - Telecommunications

DATE: CONSENT CALENDAR YES ___ NO X

X OUGHT TO PASS

___ OUGHT TO PASS WITH AMENDMENT

___ INEXPEDIENT TO LEGISLATE

___ RE-REFER

___ REFER TO COMMITTEE FOR INTERIM STUDY

(AVAILABLE ONLY IN SECOND YEAR OF BIENNIUM)

STATEMENT OF INTENT

(Include Committee Vote)

Vote .

Rep. R. J. Rosen
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

Sutherland Statutes and Statutory Construction

Database updated September 2009

Norman J. Singer and J.D. Shambie Singer

Part
V. Statutory Interpretation

Subpart
A. Principles and Policies

Chapter
46. Literal Interpretation

§ 46:6. Each word given effect

"It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute."[1] A statute should be construed so that effect is given to all its provisions,[1.5] so that no part will be inoperative or superfluous,[2] void or insignificant,[3] and so that one section will not destroy another unless the provision is the result of obvious mistake or error.[4] No clause, sentence or word shall be construed as superfluous, void or insignificant if a construction can be found which will give force to and preserve all the words of the statute.[5] While every word of a statute must be presumed to have been used for a purpose, it is also the case that every word excluded from a statute must be presumed to have been excluded for a purpose.[6] But it has been said that words and clauses which are present in a statute only through inadvertence can be disregarded if they are repugnant to what is found, on the basis of other indicia, to be the legislative intent.[7] The same words used twice in the same act are presumed to have the same meaning.[8] Likewise, courts do not construe different terms within a statute to embody the same meaning.[8.5] However, it is possible to interpret an imprecise term differently in two separate sections of a statute which have different purposes.[9] Yet when the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.[10] In like manner, where the legislature has employed a term in one place and excluded it in another, it should not be implied where excluded.[11] The use of different terms within similar statutes generally implies that different meanings were intended.[12]

[FN1] **United States.** Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 115 S. Ct. 1447, 131 L. Ed. 2d 328, Fed. Sec. L. Rep. (CCH) P 98,681 (1995); United States v. Menasche, 348 U.S. 528, 75 S. Ct. 513, 99 L. Ed. 615 (1955); Helton v. Fauver, 930 F.2d 1040 (3d Cir. 1991); U.S. Army Engineer Center v. Federal Labor Relations Authority, 762 F.2d 409, 119 L.R.R.M. (BNA) 2854 (4th Cir. 1985); Arredondo v. U.S., 120 F.3d 639, 1997 FED App. 0239P (6th Cir. 1997)); Lyons v. Ohio Adult Parole Authority, 105 F.3d 1063, 1997 FED App. 0025P (6th Cir. 1997) and (implied overruling on other grounds recognized by,Lake Cumberland Trust, Inc. v. U.S. E.P.A., 954 F.2d 1218, 22 Envtl. L. Rep. 20558 (6th Cir. 1992), opinion modified on reh'g, (Apr. 10, 1992); Director, Office of Workers' Compensation Programs, U.S. Dept. of Labor v. Goudy, 777 F.2d 1122 (6th Cir. 1985); U.S. v. Talley, 16 F.3d 972 (8th Cir. 1994); Northwest Forest Resource Council v. Glickman, 82 F.3d 825, 34 Fed. R. Serv. 3d 1243, 26 Envtl. L. Rep. 20983 (9th Cir. 1996), as amended on denial of reh'g, (May 30, 1996); Spiegel v. Ryan, 946 F.2d 1435 (9th Cir. 1991); Boise Cascade Corp. v. U.S.

E.P.A., 942 F.2d 1427, 33 Env't. Rep. Cas. (BNA) 1693, 22 Envtl. L. Rep. 20007 (9th Cir. 1991); Tabor v. Ulloa, 323 F.2d 823 (9th Cir. 1963) ("... [a] legislature is presumed to have used no superfluous words"); American Stores Co. v. American Stores Co. Retirement Plan, 928 F.2d 986, 13 Employee Benefits Cas. (BNA) 1809 (10th Cir. 1991); Abourezk v. Reagan, 785 F.2d 1043 (D.C. Cir. 1986) and judgment aff'd, 484 U.S. 1, 108 S. Ct. 252, 98 L. Ed. 2d 1 (1987); Central & Southern Motor Freight Tariff Ass'n v. U.S., 757 F.2d 301 (D.C. Cir. 1985); National Ass'n of Recycling Industries, Inc. v. I. C. C., 660 F.2d 795, 212 (D.C. Cir. 1981); In re Permanent Surface Min. Regulation Litigation, 653 F.2d 514, 15 Env't. Rep. Cas. (BNA) 1802, 11 Envtl. L. Rep. 20941 (D.C. Cir. 1981); Texas State Com'n for the Blind v. U.S., 796 F.2d 400 (Fed. Cir. 1986); Masayesva for and on Behalf of Hopi Indian Tribe v. Zah, 792 F. Supp. 1172 (D. Ariz. 1992); In re Roxford Foods Litigation, 790 F. Supp. 987 (E.D. Cal. 1991); Rincon Band of Mission Indians v. San Diego County, 324 F. Supp. 371 (S.D. Cal. 1971), judgment rev'd on other grounds, 495 F.2d 1 (9th Cir. 1974); Gary v. U.S., 708 F. Supp. 1188, 89-1 U.S. Tax Cas. (CCH) P 9269, 71A A.F.T.R.2d 93-5115 (D. Colo. 1989); Arvin-Edison Water Storage Dist. v. Hodel, 610 F. Supp. 1206 (D.D.C. 1985); Miller v. Callahan, 964 F. Supp. 939, 53 Soc. Sec. Rep. Serv. 563, Unempl. Ins. Rep. (CCH) P 15785B (D. Md. 1997); Bryant v. Better Business Bureau of Greater Maryland, Inc., 923 F. Supp. 720, 15 A.D.D. 798, 5 A.D. Cas. (BNA) 625, 70 Fair Empl. Prac. Cas. (BNA) 870 (D. Md. 1996); Allende v. Shultz, 605 F. Supp. 1220 (D. Mass. 1985); Matter of Bell, 215 B.R. 266 (Bankr. N.D. Ga. 1997); In re Dow Corning Corp., 215 B.R. 346, 31 Bankr. Ct. Dec. (CRR) 954, 32 Collier Bankr. Cas. 2d (MB) 151 (Bankr. E.D. Mich. 1997), opinion supplemented, 215 B.R. 526, 31 Bankr. Ct. Dec. (CRR) 1144 (Bankr. E.D. Mich. 1997); Hewlett-Packard Co. v. U.S., 41 Fed. Cl. 99, 42 Cont. Cas. Fed. (CCH) P 77318 (1998).

Wherever reasonable, the court will adopt the construction which gives effect to all provisions of the statute. Ferrara & DiMercurio, Inc. v. St. Paul Mercury Ins. Co., 169 F.3d 43, 2001 A.M.C. 1320 (1st Cir. 1999); State of Ala. ex rel. Baxley v. Tennessee Valley Authority, 467 F. Supp. 791 (N.D. Ala. 1979), judgment rev'd on other grounds, 636 F.2d 1061 (5th Cir. 1981); Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Atty. for Western Dist. of Mich., 46 F. Supp. 2d 689, 51 Fed. R. Evid. Serv. 1419 (W.D. Mich. 1999); Melrose Associates, L.P. v. U.S., 43 Fed. Cl. 124 (1999), opinion supplemented on other grounds, 45 Fed. Cl. 56 (1999), aff'd, 4 Fed. Appx. 936 (Fed. Cir. 2001) and aff'd, 4 Fed. Appx. 936 (Fed. Cir. 2001); Abramson v. U.S., 42 Fed. Cl. 621, 6 Wage & Hour Cas. 2d (BNA) 801 (1998).

The text of the Bevill Amendment juxtaposes the terms "determination" and "regulation" signifying that the two terms were intended to have distinct meanings; American Portland Cement Alliance v. E.P.A., 101 F.3d 772, 43 Env't. Rep. Cas. (BNA) 1705, 27 Envtl. L. Rep. 20535 (D.C. Cir. 1996).

Rosenberg v. XM Ventures, 274 F.3d 137, Fed. Sec. L. Rep. (CCH) P 91641 (3d Cir. 2001); In re Luongo, 259 F.3d 323, 38 Bankr. Ct. Dec. (CRR) 43, 2001-2 U.S. Tax Cas. (CCH) P 50527, 88 A.F.T.R.2d 2001-5752 (5th Cir. 2001).

In re Sullivan, 238 B.R. 230 (Bankr. D. Mass. 1999); Shoshone Indian Tribe of Wind River Reservation, Wyoming v. U.S., 51 Fed. Cl. 60, 163 O.G.R. 241 (2001), aff'd, 364 F.3d 1339, 163 O.G.R. 259 (Fed. Cir. 2004), cert. denied, 544 U.S. 973, 125 S. Ct. 1824, 161 L. Ed. 2d 723 (2005) and cert. denied, 544 U.S. 973, 125 S. Ct. 1826, 161 L. Ed. 2d 723 (2005); Chaney v. U.S., 45 Fed. Cl. 309, 84 A.F.T.R.2d 99-7137 (1999); Pangelinan v. Gutierrez, 2000 Guam 11, 2000 WL 263216 (Guam 2000), decision aff'd, 276 F.3d 539 (9th Cir. 2002).

U.S. v. Lillyblad, 56 M.J. 636 (N.M.C.C.A. 2001).

Arevalo v. Ashcroft, 344 F.3d 1 (1st Cir. 2003); Shoshone Indian Tribe of Wind River Reservation v. U.S., 364 F.3d 1339, 163 O.G.R. 259 (Fed. Cir. 2004), cert. denied, 544 U.S. 973, 125 S. Ct. 1824, 161 L. Ed. 2d 723 (2005) and cert. denied, 544 U.S. 973, 125 S. Ct. 1826, 161 L. Ed. 2d 723 (2005); Hamilton v. Werner Co., 268 F. Supp. 2d 1085 (S.D. Iowa 2003); Grand Traverse Band of Ottawa and Chippewa Indians v.

U.S. Attorney For Western Dist. of Michigan, 198 F. Supp. 2d 920 (W.D. Mich. 2002), aff'd, 369 F.3d 960, 2004 FED App. 0151P (6th Cir. 2004); U.S. v. Mills, 186 F. Supp. 2d 965 (E.D. Wis. 2002).

Butler v. U.S., 442 F. Supp. 2d 1311, 28 Int'l Trade Rep. (BNA) 1961 (Ct. Int'l Trade 2006); Clark v. Arizona, 126 S. Ct. 2709, 165 L. Ed. 2d 842 (U.S. 2006); Chippewa Cree Tribe of the Rocky Boy's Reservation v. U.S., 69 Fed. Cl. 639 (2006).

Alabama. Davis v. Gobble-Fite Lumber Co., Inc., 592 So. 2d 202 (Ala. 1991); Carroll v. Alabama Public Service Commission, 281 Ala. 559, 206 So. 2d 364, 72 Pub. Util. Rep. 3d (PUR) 525 (1968).

If there is irreconcilable conflict between different provisions in the same act, the later in order of arrangement is given effect. State v. Crenshaw, 287 Ala. 139, 249 So. 2d 622 (1971).

Alaska. Peninsula Marketing Ass'n v. Rosier, 890 P.2d 567 (Alaska 1995); City of Kenai v. Kenai Peninsula Newspapers, Inc., 642 P.2d 1316 (Alaska 1982); Libby v. City of Dillingham, 612 P.2d 33 (Alaska 1980).

Municipality of Anchorage v. Repasky, 34 P.3d 302, 158 Ed. Law Rep. 822 (Alaska 2001); Fancyboy v. Alaska Village Elec. Co-op., Inc., 984 P.2d 1128 (Alaska 1999); State v. Roberts, 999 P.2d 151 (Alaska Ct. App. 2000); Zamora v. Reinstein, 185 Ariz. 272, 915 P.2d 1227 (1996); State v. Garza Rodriguez, 164 Ariz. 107, 791 P.2d 633 (1990); Torrez v. State Farm Mut. Auto. Ins. Co., 130 Ariz. 223, 635 P.2d 511 (Ct. App. Div. 1 1981).

Arkansas. Cupp v. Frazier's Heirs, 239 Ark. 77, 387 S.W.2d 328 (1965).

California. Kilgore v. Younger, 30 Cal. 3d 770, 180 Cal. Rptr. 657, 640 P.2d 793, 8 Media L. Rep. (BNA) 1886 (1982); California Housing Finance Agency v. E.R. Fairway Associates I, 37 Cal. App. 4th 1508, 44 Cal. Rptr. 2d 591 (3d Dist. 1995); Rodriguez v. Superior Court, 14 Cal. App. 4th 1260, 18 Cal. Rptr. 2d 120 (5th Dist. 1993), as modified, (Apr. 30, 1993); Flint v. Sacramento County Employees' Retirement Assn., 164 Cal. App. 3d 659, 210 Cal. Rptr. 439 (3d Dist. 1985); Campbell v. Armstrong, 26 Cal. App. 3d 1, 102 Cal. Rptr. 583 (1st Dist. 1972), opinion vacated on other grounds, 9 Cal. 3d 482, 107 Cal. Rptr. 777, 509 P.2d 689 (1973); County of Sacramento v. Superior Court, 20 Cal. App. 3d 469, 97 Cal. Rptr. 771 (3d Dist. 1971).

Curle v. Superior Court, 24 Cal. 4th 1057, 103 Cal. Rptr. 2d 751, 16 P.3d 166 (2001); San Diego Police Officers' Assn. v. City of San Diego Civil Service Com., 104 Cal. App. 4th 275, 128 Cal. Rptr. 2d 248, 19 I.E.R. Cas. (BNA) 715 (4th Dist. 2002), as modified, (Dec. 11, 2002) and as modified on denial of reh'g, (Jan. 9, 2003).

Colorado. Bulow v. Ward Terry & Co., 155 Colo. 560, 396 P.2d 232 (1964); Adams-Arapahoe County School Dist. No. 28J v. Wolf, 30 Colo. App. 117, 489 P.2d 348 (1971); Lee v. City and County of Denver, 29 Colo. App. 256, 482 P.2d 389 (1971).

Connecticut. Hartford Elec. Light Co. v. Water Resources Commission, 162 Conn. 89, 291 A.2d 721, 3 Env't. Rep. Cas. (BNA) 1953, 2 Envtl. L. Rep. 20253 (1971); State v. Briggs, 161 Conn. 283, 287 A.2d 369 (1971); Archibald v. Sullivan, 152 Conn. 663, 211 A.2d 692 (1965); State ex rel. Sloane v. Reidy, 152 Conn. 419, 209 A.2d 674 (1965); DeCilla v. Zoning Bd. of Appeals of City of New Haven, 27 Conn. Supp. 112, 231 A.2d 543 (C.P. 1967).

Delaware. Keeler v. Harford Mut. Ins. Co., 672 A.2d 1012 (Del. 1996), as amended, (Mar. 11, 1996); State

v. Croce, 1997 WL 524070 (Del. Super. Ct. 1997).

District of Columbia. Shelton v. U.S., 721 A.2d 603 (D.C. 1998); Zhou v. Jennifer Mall Restaurant, Inc., 699 A.2d 348 (D.C. 1997); Tenants Council of Tiber Island-Carrollsburg Square v. District of Columbia Rental Accommodations Commission, 426 A.2d 868 (D.C. 1981).

Florida. Gretz v. Florida Unemployment Appeals Com'n, 572 So. 2d 1384 (Fla. 1991); State v. Putnam County Development Authority, 249 So. 2d 6, 2 Env't. Rep. Cas. (BNA) 1638, 1 Envtl. L. Rep. 20339 (Fla. 1971); Greenhut Const. Co. v. Henry A. Knott, Inc., 247 So. 2d 517 (Fla. Dist. Ct. App. 1st Dist. 1971).

The word "felony" when it appears in a state statute is bound to be interpreted according to the meaning assigned by the state constitution. Shields v. Smith, 404 So. 2d 1106 (Fla. Dist. Ct. App. 1st Dist. 1981).

The deliberate use of different terms in different portions of the same statute is strong evidence that it intended different meanings. Ocasio v. Bureau of Crimes Compensation Division of Workers' Compensation, 408 So. 2d 751 (Fla. Dist. Ct. App. 3d Dist. 1982).

Georgia. Martin v. Fairburn Banking Co., 218 Ga. App. 803, 463 S.E.2d 507 (1995); Cofer v. Gurley, 146 Ga. App. 420, 246 S.E.2d 436 (1978) (overruled on other grounds by, Williams v. Cofer, 246 Ga. 344, 271 S.E.2d 486 (1980)).

Hawaii. Bragg v. State Farm Mut. Auto. Ins. Co., 81 Haw. 302, 916 P.2d 1203 (1996); State v. Kwak, 80 Haw. 297, 909 P.2d 1112 (1995).

Idaho. George W. Watkins Family v. Messenger, 118 Idaho 537, 797 P.2d 1385 (1990); Idaho Power Co. v. Idaho Public Utilities Commission, 102 Idaho 744, 639 P.2d 442 (1981).

Illinois. Best v. Taylor Mach. Works, 179 Ill. 2d 367, 228 Ill. Dec. 636, 689 N.E.2d 1057, Prod. Liab. Rep. (CCH) P 15123 (1997); People v. Fabing, 143 Ill. 2d 48, 155 Ill. Dec. 816, 570 N.E.2d 329 (1991); Morris v. Broadview, Inc., 385 Ill. 228, 52 N.E.2d 769 (1944); Estep v. Illinois Dept. of Public Aid, 115 Ill. App. 3d 644, 71 Ill. Dec. 402, 450 N.E.2d 1281 (1st Dist. 1983); Tan v. Tan, 3 Ill. App. 3d 671, 279 N.E.2d 486 (1st Dist. 1972).

Indiana. Meridian Mortg. Co., Inc. v. State, 182 Ind. App. 328, 395 N.E.2d 433 (1979); Engle v. City of Indianapolis, 151 Ind. App. 344, 279 N.E.2d 827 (1972); In re Adoption of Chaney, 128 Ind. App. 603, 150 N.E.2d 754 (1958).

Iowa. Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co., 606 N.W.2d 376 (Iowa 2000); Miller v. Westfield Ins. Co., 606 N.W.2d 301 (Iowa 2000); Iowa Ass'n of School Boards v. Iowa Public Employment Relations Bd., 400 N.W.2d 571, 37 Ed. Law Rep. 691 (Iowa 1987); Bork v. Richardson, 289 N.W.2d 622 (Iowa 1980); State v. Wiederien, 709 N.W.2d 538 (Iowa 2006).

Kansas. Felten Truck Line, Inc. v. State Bd. of Tax Appeals, 183 Kan. 287, 327 P.2d 836 (1958).

Louisiana. Hoffpauir v. City of Crowley, 241 So. 2d 67 (La. Ct. App. 3d Cir. 1970), writ denied, 257 La. 457, 242 So. 2d 578 (1971); Jarrell v. Gordy, 162 So. 2d 577 (La. Ct. App. 3d Cir. 1964); State v. Orleans Parish School Bd., 118 So. 2d 471 (La. Ct. App., Orleans 1960).

A court is free to consider the spirit of the law only when its expressions are dubious. Benoit v. Benoit, 379

So. 2d 270 (La. Ct. App. 3d Cir. 1979).

Williams v. Abadie, 857 So. 2d 1118 (La. Ct. App. 4th Cir. 2003); Breaux v. Lafourche Parish Council, 851 So. 2d 1173 (La. Ct. App. 1st Cir. 2003), writ denied, 860 So. 2d 1163 (La. 2003); Chelette v. Valentine, 747 So. 2d 69 (La. Ct. App. 3d Cir. 1999), writ denied, 751 So. 2d 253 (La. 1999).

Maryland. Fisher v. Bethesda Discount Corp., 221 Md. 271, 157 A.2d 265 (1960); Doneski v. Comptroller of Treasury, 91 Md. App. 614, 605 A.2d 649 (1992).

Massachusetts. Town Crier, Inc. v. Chief of Police of Weston, 361 Mass. 682, 282 N.E.2d 379 (1972); Commissioner of Corporations and Taxation v. Chilton Club, 318 Mass. 285, 61 N.E.2d 335 (1945); Bartlett v. Greyhound Real Estate Finance Co., 41 Mass. App. Ct. 282, 669 N.E.2d 792 (1996); Wolfe v. Gormally, 440 Mass. 699, 802 N.E.2d 64 (2004).

Michigan. Feld v. Robert & Charles Beauty Salon, 435 Mich. 352, 459 N.W.2d 279 (1990); State ex rel. Wayne County Prosecuting Attorney v. Levenburg, 406 Mich. 455, 280 N.W.2d 810 (1979) (abrogated on other grounds by, Michigan ex rel. Wayne County Prosecutor v. Bennis, 447 Mich. 719, 527 N.W.2d 483 (1994)) ("assignation" is not synonymous with "prostitution"); Stowers v. Wolodzko, 386 Mich. 119, 191 N.W.2d 355 (1971); Mason County Civil Research Council v. Mason County, 343 Mich. 313, 72 N.W.2d 292 (1955); People v. McDaniel, 256 Mich. App. 165, 662 N.W.2d 101 (2003), appeal dismissed, 692 N.W.2d 387 (Mich. 2005) and (abrogated on other grounds by, People v. Francisco, 474 Mich. 82, 711 N.W.2d 44 (2006)); Great Lakes Sales, Inc. v. State Tax Com'n, 194 Mich. App. 271, 486 N.W.2d 367 (1992).

Missouri. Vocational Services, Inc. v. Developmental Disabilities Resource Bd., 5 S.W.3d 625 (Mo. Ct. App. W.D. 1999); State ex rel. Wright v. Carter, 319 S.W.2d 596 (Mo. 1958); Wehmeier v. Public School Retirement System of Missouri, 631 S.W.2d 893, 4 Ed. Law Rep. 315 (Mo. Ct. App. E.D. 1982); McRoberts v. McRoberts, 555 S.W.2d 682 (Mo. Ct. App. 1977); Welborn v. Southern Equipment Co., 386 S.W.2d 432 (Mo. Ct. App. 1964), transferred to Mo. S. Ct., 395 S.W.2d 119 (Mo. 1965)

Montana. Yurkovich v. Industrial Acc. Bd., 132 Mont. 77, 314 P.2d 866 (1957).

"The legislature does not perform useless acts." Kish v. Montana State Prison, 161 Mont. 297, 505 P.2d 891 (1973).

Nebraska. State v. Glover, 212 Neb. 713, 325 N.W.2d 155 (1982); Rose v. Hooper, 175 Neb. 645, 122 N.W.2d 753 (1963); School Dist. No. 228 of Holt County v. State Bd. of Ed., 164 Neb. 148, 82 N.W.2d 8 (1957); State v. Bartley, 39 Neb. 353, 58 N.W. 172 (1894).

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Illinois. Estep v. Illinois Dept. of Public Aid, 115 Ill. App. 3d 644, 71 Ill. Dec. 402, 450 N.E.2d 1281 (1st Dist. 1983); Mission Hills Condominium M-4 Ass'n v. Penachio, 97 Ill. App. 3d 305, 52 Ill. Dec. 916, 422 N.E.2d 1125 (1st Dist. 1981).

Iowa. George H. Wentz, Inc. v. Sabasta, 337 N.W.2d 495 (Iowa 1983) (overruled on other grounds by, Henriksen v. Younglove Const., 540 N.W.2d 254 (Iowa 1995)) (overruled on other grounds by, Henriksen v. Younglove Const., 540 N.W.2d 254 (Iowa 1995)); Miller v. Marshall County, 641 N.W.2d 742 (Iowa 2002).

Maryland. If the intent of the statute can be discerned from the words utilized in the enactment, with the terminology chosen being given its ordinary and popularly understood meaning, the court need look no further as that clearly expressed intention will control. Andrews v. City of Greenbelt, 293 Md. 69, 441 A.2d 1064 (1982).

Massachusetts. Com. v. Gagnon, 387 Mass. 567, 441 N.E.2d 753 (1982), on reh'g, 387 Mass. 768, 443 N.E.2d 407 (1982).

Michigan. People v. Dziuba, 139 Mich. App. 789, 363 N.W.2d 33 (1984).

Missouri. In re Hough's Estate, 457 S.W.2d 687 (Mo. 1970).

New Jersey. Raybestos-Manhattan, Inc. v. Glaser, 144 N.J. Super. 152, 365 A.2d 1 (Ch. Div. 1976), judgment aff'd, 156 N.J. Super. 513, 384 A.2d 176 (App. Div. 1978).

A statute should not be interpreted so as to make it meaningless. McGlynn v. New Jersey Public Broadcasting Authority, 88 N.J. 112, 439 A.2d 54, 7 Media L. Rep. (BNA) 2446, 27 A.L.R.4th 322 (1981).

North Dakota. Trinity Medical Center, Inc. v. Holum, 544 N.W.2d 148 (N.D. 1996).

Oklahoma. It is asserted that the word "shop" means "a small retail store." To adopt such a definition would render the word "store" in the ordinance meaningless. Robison v. Ray, 1981 OK 141, 637 P.2d 108 (Okla. 1981).

Oregon. Murphy v. Nilsen, 19 Or. App. 292, 527 P.2d 736 (1974).

Rhode Island. In re Bernard H., 557 A.2d 864 (R.I. 1989).

Utah. Brickyard Homeowners' Ass'n Management Committee v. Gibbons Realty Co., 668 P.2d 535 (Utah 1983).

Washington. Metcalf v. State, Dept. of Motor Vehicles, 11 Wash. App. 819, 525 P.2d 819 (Div. 1 1974).

Where uncertainty arises from words used by the legislature, a statutory section under construction should be read in context with the entire act and meaning ascribed to it that avoids strained or absurd consequences. State v. Taylor, 30 Wash. App. 844, 638 P.2d 630 (Div. 1 1982), judgment rev'd on other grounds, 97 Wash. 2d 724, 649 P.2d 633 (1982).

Wisconsin. Milwaukee County v. Department of Industry, Labor and Human Relations Commission, 80 Wis. 2d 445, 259 N.W.2d 118 (1977).

West Virginia. For a Presidential order or Proclamation to create a legal holiday in West Virginia as defined in the state statute that allows him to do so, the President must make his intent clear in his order or proclamation by either citing clear authority to create a holiday or using the applicable language of the statute, and by expressing that the holiday is one for all citizens (claim that proclamation commemorating the death of President Richard Nixon established a legal holiday within West Virginia). Mitchell v. City of Wheeling, 202 W. Va. 85, 502 S.E.2d 182 (1998).

Dickerson, Lifestyles of the Not-So-Rich or Famous: The Role of Choice and Sacrifice in Bankruptcy, 45

Buff L Rev 629 (1997); Fausey, Does the United Nations' Use of Collective Sanctions to Protect Human Rights Violate Its Own Human Rights Standards, 10 Conn J Int'l L 193 (1994); Martin, Conspiratorial Children? The Intersection of the Federal Juvenile Delinquency Act and the Federal Conspiracy Law, 74 BU L Rev 859 (1994).

Cardiff, Conflict in the California Coastal Act: Sand and Seawalls, 38 Cal. W. L. Rev. 255 (2001).

Katz, Blumenthal v. Barnes: Civil Common Law Powers of the State Attorney General in the Charitable Sector, 17 Qinnipiac Prob L. J. 383 (2004).

Wasson, Taking Biologics for Granted? Takings, Trade Secreta, and Off-Patent Biological Products, 2005 Duke L & Tech Rev 4 (2005). Yates, Collins & Chin, A War on Drugs or a War on Immigrants? Expanding the Definition of "Drug Trafficking" in Determining Aggravated Felon Status for Noncitizens, 64 Md. L. Rev. 875 (2005).

[FN5] Cullen, Reverse Age Discrimination Suits and the Age Discrimination in Employment Act, 18 St. John's L Legal Comment 271 (2003).

United States. Chickasaw Nation v. U.S., 2002-1 C.B. 718, 534 U.S. 84, 122 S. Ct. 528, 151 L. Ed. 2d 474, 2001-2 U.S. Tax Cas. (CCH) ¶50765, 2001-2 U.S. Tax Cas. (CCH) P 70172, 88 A.F.T.R.2d 2001-6967 (2001); Aeroquip-Vickers, Inc. v. C.I.R., 347 F.3d 173, 2003-2 U.S. Tax Cas. (CCH) P 50693, 92 A.F.T.R.2d 2003-6555, 2003 FED App. 0370P (6th Cir. 2003).

Padgett v. Nicholson, 19 Vet. App. 133 (2005), revoked in part on other grounds, 19 Vet. App. 84 (2005) and opinion withdrawn, 19 Vet. App. 334 (2005), rev'd and remanded on other grounds, 473 F.3d 1364 (Fed. Cir. 2007); Lederman v. U.S., 2007 WL 1114137 (D.D.C. 2007), adhered to on reconsideration, 539 F. Supp. 2d 1 (D.D.C. 2008).

Alaska. City of St. Mary's v. St. Mary's Native Corp., 9 P.3d 1002 (Alaska 2000).

California. Kroupa v. Sunrise Ford, 77 Cal. App. 4th 835, 92 Cal. Rptr. 2d 42 (2d Dist. 1999), as modified, (Jan. 20, 2000).

Colorado. People v. Keller, 985 P.2d 65 (Colo. Ct. App. 1999), judgment rev'd on other grounds, 29 P.3d 290 (Colo. 2000).

Hawaii. Tax Appeal of County of Maui v. KM Hawaii Inc., 81 Haw. 248, 915 P.2d 1349 (1996).

Idaho. State v. Barnes, 133 Idaho 378, 987 P.2d 290 (1999).

Iowa. Miller v. Marshall County, 641 N.W.2d 742 (Iowa 2002).

New Jersey. Estate of Frost v. Director, Div. of Taxation, 22 N.J. Tax 537, 2005 WL 3100065 (2005); D'Annunzio v. Prudential Ins. Co. of America, 192 N.J. 110, 927 A.2d 113, 26 I.E.R. Cas. (BNA) 686, 154 Lab. Cas. (CCH) P 60457 (2007).

North Carolina. In seeking to discover and give effect to the legislative intent, an act must be considered as a whole, and noone of its provisions shall be deemed uuseless or redundant if they can reasonably be considered as adding something to the act which is in harmony with its purpose. Living Centers-Southeast,

Inc. v. N.C. Dept. of Health and Human Services, Div. of Facility Services, Certificate of Need Section, 138 N.C. App. 572, 532 S.E.2d 192 (2000).

South Dakota. Gloe v. Iowa Mut. Ins. Co., 2005 SD 29, 694 N.W.2d 238 (S.D. 2005).

Utah. State v. Maestas, 2002 UT 123, 63 P.3d 621 (Utah 2002); State v. Anderson, 2007 UT App 304, 169 P.3d 778 (Utah Ct. App. 2007).

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Jacobs, Disclosure and remedies Under the Securities Laws, Part I. Introduction, Ch. 4. Statutory Protection Prior to 10b-5-Exchange Act Provisions, VII. Section 15 of the Exchange Act. § 4:7 Generally (2004 Database updated).

[FN6] Wasson, Taking Biologics for Granted? Takings, Trade Secreta, and Off-Patent Biological Products, 2005 Duke L & Tech Rev 4 (2005).

United States. Chickasaw Nation v. U.S., 2002-1 C.B. 718, 534 U.S. 84, 122 S. Ct. 528, 151 L. Ed. 2d 474, 2001-2 U.S. Tax Cas. (CCH) ¶50765, 2001-2 U.S. Tax Cas. (CCH) P 70172, 88 A.F.T.R.2d 2001-6967 (2001).

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Aeroquip-Vickers, Inc. v. C.I.R., 347 F.3d 173, 2003-2 U.S. Tax Cas. (CCH) P 50693, 92 A.F.T.R.2d 2003-6555, 2003 FED App. 0370P (6th Cir. 2003); Universal Const. Co., Inc. v. Occupational Safety and Health Review Com'n, 182 F.3d 726, 18 O.S.H. Cas. (BNA) 1769, 1999 O.S.H. Dec. (CCH) P 31861 (10th Cir. 1999); Shamshoum v. Bombay Cafe, 257 F. Supp. 2d 777 (D.N.J. 2003); Office Max, Inc. v. U.S., 309 F. Supp. 2d 984, 2004-1 U.S. Tax Cas. (CCH) P 70216, 93 A.F.T.R.2d 2004-1190 (N.D. Ohio 2004), aff'd, 428 F.3d 583, 2005-2 U.S. Tax Cas. (CCH) P 70246, 96 A.F.T.R.2d 2005-6824, 2005 FED App. 0435P (6th Cir. 2005); Shoshone Indian Tribe of the Wind River Reservation, Wyoming v. U.S., 56 Fed. Cl. 639, 163 O.G.R. 316 (2003); Dudley v. Putnam Inv. Funds, 472 F. Supp. 2d 1102 (S.D. Ill. 2007), appeal dismissed, 495 F.3d 366 (7th Cir. 2007).

Alaska. Ganz v. Alaska Airlines, Inc., 963 P.2d 1015, 4 Wage & Hour Cas. 2d (BNA) 1527, 136 Lab. Cas. (CCH) P 58457 (Alaska 1998); McGee v. State, 162 P.3d 1251 (Alaska 2007).

California. Arden Carmichael, Inc. v. County of Sacramento, 93 Cal. App. 4th 507, 113 Cal. Rptr. 2d 248 (3d Dist. 2001).

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Connecticut. Celentano v. Oaks Condominium Ass'n, 265 Conn. 579, 830 A.2d 164 (2003); Office of Consumer Counsel v. Department of Public Utility Control, Util. L. Rep. ¶26794, 2001 WL 1231684 (Conn. Super. Ct. 2001).

Louisiana. Chelette v. Valentine, 747 So. 2d 69 (La. Ct. App. 3d Cir. 1999), writ denied, 751 So. 2d 253 (La. 1999).

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[FN7] Mehrbani, Substantive Due Process Claims in the Land-Use Context: The Need for a Simple and Intelligent Stadard of Review, 35 Envtl L Rev 209 (2005).

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Bohac v. Department of Agriculture, 239 F.3d 1334, 17 I.E.R. Cas. (BNA) 434 (Fed. Cir. 2001); Little Six, Inc. v. U.S., 229 F.3d 1383, 2000-2 U.S. Tax Cas. (CCH) P 70155, 86 A.F.T.R.2d 2000-6450 (Fed. Cir. 2000).

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Alaska. Homer Elec. Ass'n v. Towsley, 841 P.2d 1042 (Alaska 1992).

Delaware. Selective Ins. Co. v. Lyons, 681 A.2d 1021 (Del. 1996); Bestemps v. Gibbs, 1998 WL 960759 (Del. Super. Ct. 1998).

Georgia. Department of Transp. v. Petkas, 189 Ga. App. 633, 377 S.E.2d 166 (1988).

Hawaii. State v. March, 94 Haw. 250, 11 P.3d 1094 (2000).

Louisiana. Jordan v. LeBlanc & Broussard Ford, Inc., 332 So. 2d 534 (La. Ct. App. 3d Cir. 1976).

New Jersey. Pine Belt Chevrolet, Inc. v. Jersey Cent. Power and Light Co., 132 N.J. 564, 626 A.2d 434 (1993).

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North Carolina. State v. Coffey, 336 N.C. 412, 444 S.E.2d 431 (1994).

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Finn, The Public Interest and Bell Entry into Long-Distance Under Section 271 of the Communications Act, 5 CommLaw Conspectus 203 (1997).

[FN8] **United States.** Gustafson v. Alloyd Co., Inc., 513 U.S. 561, 115 S. Ct. 1061, 131 L. Ed. 2d 1, Fed. Sec. L. Rep. (CCH) P 98,531 (1995); Victoria Sales Corp. v. Emery Air Freight, Inc., 917 F.2d 705 (2d Cir. 1990); Sheppard v. Riverview Nursing Center, Inc., 88 F.3d 1332, 71 Fair Empl. Prac. Cas. (BNA) 218, 68 Empl. Prac. Dec. (CCH) P 44111, 35 Fed. R. Serv. 3d 522 (4th Cir. 1996); U.S. v. Richards, 67 F.3d 1531 (10th Cir. 1995), opinion vacated on reh'g en banc on other grounds, 87 F.3d 1152 (10th Cir. 1996); ICC Industries, Inc. v. U.S., 5 Fed. Cir. (T) 78, 812 F.2d 694 (1987); Miller v. Callahan, 964 F. Supp. 939, 53 Soc. Sec. Rep. Serv. 563, Unempl. Ins. Rep. (CCH) P 15785B (D. Md. 1997).

If the same words are interpreted the same way and this gives rise to a widely variant interpretation, the court can give the word its various interpretations. Director, Office of Workers' Compensation Programs, U. S. Dept. of Labor v. Forsyth Energy, Inc., 666 F.2d 1104 (7th Cir. 1981).

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Unless there is apparent legislative intent suggesting the words should not be consistently defined. Mirabella v. Retirement Bd. of County Employees' Annuity and Ben. Fund of Cook County, 198 Ill. App. 3d 971, 145 Ill. Dec. 68, 556 N.E.2d 686 (1st Dist. 1990).

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[FN9] **United States.** Vanscoter v. Sullivan, 920 F.2d 1441 (9th Cir. 1990); Abbott Laboratories v. Young, 920 F.2d 984, 17 U.S.P.Q.2d 1027 (D.C. Cir. 1990).

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[FN11] **United States.** Universal Const. Co., Inc. v. Occupational Safety and Health Review Com'n, 182 F.3d 726, 18 O.S.H. Cas. (BNA) 1769, 1999 O.S.H. Dec. (CCH) P 31861 (10th Cir. 1999); Berkley v. U.S., 48 Fed. Cl. 361 (2000), rev'd, 287 F.3d 1076 (Fed. Cir. 2002); California v. U.S., 47 Fed. Cl. 688 (2000), rev'd and remanded on other grounds, 271 F.3d 1377, 32 Envtl. L. Rep. 20360 (Fed. Cir. 2001).

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New Jersey. Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 708 A.2d 401 (1998).

Oregon. Using a term in one section and not in another section of the same statute indicates that the legislature purposefully intended the omission. State v. Tarrence, 161 Or. App. 583, 985 P.2d 225 (1999).

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[FN12] **United States.** Cunningham v. Scibana, 259 F.3d 303 (4th Cir. 2001); Brown v. Ford Motor Co., 10 Fed. Appx. 39, 2001 WL 285072 (4th Cir. 2001); U.S. v. Williams, 340 F.3d 1231 (11th Cir. 2003).

Faus Group, Inc. v. U.S., 358 F. Supp. 2d 1244, 27 Int'l Trade Rep. (BNA) 1045 (Ct. Int'l Trade 2004); U.S. v. Pabon-Cruz, 391 F.3d 86 (2d Cir. 2004); Wachovia Bank v. Schmidt, 388 F.3d 414 (4th Cir. 2004), cert. granted, 545 U.S. 1113, 125 S. Ct. 2904, 162 L. Ed. 2d 293 (2005) and judgment rev'd on other grounds, 546 U.S. 303, 126 S. Ct. 941, 163 L. Ed. 2d 797, 97 A.F.T.R.2d 2006-530 (2006); Union of Needletrades, Industrial and Textile Employers, AFL-CIO, CLC v. U.S. I.N.S., 202 F. Supp. 2d 265 (S.D. N.Y. 2002), judgment aff'd, 336 F.3d 200 (2d Cir. 2003); Doe v. Chao, 346 F. Supp. 2d 840 (W.D. Va. 2004), aff'd in part, rev'd in part and remanded on other grounds, 435 F.3d 492, Unempl. Ins. Rep. (CCH) P 17736B (4th Cir. 2006).

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Sutherland Statutes and Statutory Construction

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Part
V. Statutory Interpretation

Subpart
A. Principles and Policies

Chapter
45. Criteria of Interpretation

§ 45:2. The problem of ambiguity

A frequently encountered rule of statutory interpretation asserts that a statute, clear and unambiguous on its face, need not and cannot be interpreted by a court and that only statutes which are of doubtful meaning are subject to the process of statutory interpretation.[1] As has been declared in a number of cases: "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion."[2] A basic rule of statutory construction is that the clear and express language of a statute cannot be abrogated by statements in congressional debates during a bill's enactment.[3] Ambiguity exists when a statute is capable of being understood by reasonably well-informed persons in two or more different senses.[4]However, this rule is deceptive in that it implies that words have intrinsic meanings. A word is merely a symbol which can be used to refer to different things.[5] Difficult questions of statutory interpretation ought not to be decided by the bland invocation of abstract jurisprudential maxims. Accepted rules of statutory construction can provide helpful guidance in uncovering the most likely intent of the legislature.[6] For example the word "automobile" has fairly determinate content and is not likely to cause great difficulty in interpretation; but the word "bill" may refer to an evidence of indebtedness, to currency, to a petition, to a person's name, to the anatomy of a bird, a portion of a cap and a host of other objects, and may need "interpretation" and "construction." It is impossible to determine the referent of the word without a knowledge of the facts involved in its use. A word such as "gnork" may stand as a symbol for no immediately recognizable object or idea. Even a word for a numerical quantity has been found by a court, to refer to a quantity other than the one it usually stands for.[7] It is only through custom, usage, and convention that language acquires established meanings.[8]

The assertion in a judicial opinion that a statute needs no interpretation because it is "clear and unambiguous" is in reality evidence that the court has already considered and construed the act. [8.5] It may also signify that the court is unwilling to consider evidence bearing on the question how the statute should be construed, and is instead declaring its effect on the basis of the judge's own uninstructed and unrationalized impression of its meaning.[9] It is also widely acknowledged that a statute is ambiguous only when it is capable of being understood by reasonably well-informed persons in either of two or more senses.[10] Because issues concerning what a statute means or what a legislature intended are essentially issues of fact, even though they are decided by the judge and not by a jury, a court should never exclude relevant and probative evidence from consideration.[11]It has also been held that statutory construction is a question of law, not fact, and where the lower court rules on a question of law, it is not a matter of discretion.[12]

A well-drafted statute should reduce the frequency of disputes about interpretation. Because all future circumstances cannot be anticipated by even the most far-sighted legislator the necessity for judicial interpretation can never be completely eliminated. Before the true meaning of a statute can be determined where there is genuine uncertainty concerning its applications, consideration must be given to the problem in society to which the legislature addressed itself.[13] Prior legislative consideration of the problem, the legislative history of the statute under litigation and the operation and administration of the statute prior to litigation are of equal importance.[14]

When a court declares a statute ambiguous, it asserts that some of the words used may refer to several objects and the manner of their use does not disclose the particular objects to which the words refer.[15] Legislation is ambiguous only when well-informed persons may reasonably disagree as to its meaning.[16]

A word is a symbol which directs the reader to a referent, but in this case the reference is not sufficiently accurate to make the referent determinate for the litigation before the court.[17] It is then the function of the court to make the referent clear or as clear as possible from the information and evidence which is presented to it.[18] In Massachusetts, for example, it has been held that if there is an ambiguity in the statute, preexisting common law can be used to construe the language.[19]

This and nothing more is the problem and method of interpretation. In some cases the issue may be resolved with little effort and the process of interpretation may go unmentioned in the judicial opinion. In other cases the problem may be difficult and many pages may be necessary to disclose the basis of the court's judgment in selecting a particular meaning.

[FN1] **United States.** Jay v. Boyd, 351 U.S. 345, 76 S. Ct. 919, 927, 100 L. Ed. 1242 (1956) ("But we must adopt the plain meaning of a statute, however severe the consequences."); Ex parte Collett, 337 U.S. 55, 69 S. Ct. 944, 93 L. Ed. 1207, 10 A.L.R.2d 921 (1949); Packard Motor Car Co. v. N.L.R.B., 330 U.S. 485, 67 S. Ct. 789, 91 L. Ed. 1040, 19 L.R.R.M. (BNA) 2397, 12 Lab. Cas. (CCH) P 51240 (1947); Hamilton v. Rathbone, 175 U.S. 414, 20 S. Ct. 155, 44 L. Ed. 219 (1899); U.S. v. Turner, 246 F.2d 228 (2d Cir. 1957); Bondholders Protective Committee v. I. C. C., 432 F.2d 268 (3d Cir. 1970); United Services Auto. Ass'n v. Perry, 102 F.3d 144 (5th Cir. 1996); General Elec. Co. v. Southern Const. Co., 383 F.2d 135 (5th Cir. 1967); Birmingham v. Rucker's Imperial Breeding Farm of Ottumwa, Iowa, 152 F.2d 837, 34 A.F.T.R. (P-H) P 653 (C.C.A. 8th Cir. 1945); Christner v. Poudre Val. Co-op. Ass'n, 235 F.2d 946, 38 L.R.R.M. (BNA) 2371, 30 Lab. Cas. (CCH) P 70119 (10th Cir. 1956); U.S. v. Mock, 143 F. Supp. 661 (N.D. Cal. 1956); Wallace v. Chafee, 323 F. Supp. 902 (S.D. Cal. 1971), judgment rev'd on other grounds, 451 F.2d 1374 (9th Cir. 1971); American President Lines, Limited v. US, 162 F. Supp. 732, 1959 A.M.C. 986 (D. Del. 1958), judgment aff'd, 265 F.2d 552, 1959 A.M.C. 1686 (3d Cir. 1959); McGlotten v. Connally, 338 F. Supp. 448, 72-1 U.S. Tax Cas. (CCH) P 9185, 72-1 U.S. Tax Cas. (CCH) P 12827, 29 A.F.T.R.2d 72-378 (D.D.C. 1972); General Cigar Co. v. Lancaster Leaf Tobacco Co., 323 F. Supp. 931 (D. Md. 1971); Horsey v. Stone & Webster Engineering Corp., 162 F. Supp. 649 (W.D. Mich. 1958); Printz v. U.S., 854 F. Supp. 1503 (D. Mont. 1994), aff'd in part, rev'd in part on other grounds, dismissed in part on other grounds, 66 F.3d 1025 (9th Cir. 1995), rev'd on other grounds, 521 U.S. 898, 117 S. Ct. 2365, 138 L. Ed. 2d 914 (1997).Strachan Shipping Co. v. Hollis, 323 F. Supp. 1122, 1971 A.M.C. 9 (S.D. Tex. 1970), aff'd in part, rev'd in part on other grounds, 460 F.2d 1108, 1972 A.M.C. 1935, 19 A.L.R. Fed. 793 (5th Cir. 1972).

An interpretation acknowledged to be "contrary" to the "overriding purpose" of the Social Security Act was adopted when it was considered to be the "only reasonable" one. Pleasant v. Richardson, 450 F.2d 749 (5th Cir. 1971).

Wilson v. U.S. Parole Com'n, 193 F.3d 195 (3d Cir. 1999).

Alabama. Dennis v. Pendley, 518 So. 2d 688 (Ala. 1987); James v. Todd, 267 Ala. 495, 103 So. 2d 19 (1957); Hawkins v. State, 549 So. 2d 552 (Ala. Crim. App. 1989).

Alaska. Chokwak v. Worley, 912 P.2d 1248 (Alaska 1996); Tuckfield v. State, 805 P.2d 982 (Alaska Ct. App. 1991).

Alaska. P.F. West, Inc. v. Superior Court of State of Ariz., In and For Pima County, 139 Ariz. 31, 676 P.2d 665 (Ct. App. Div. 2 1984).

California. Redevelopment Agency of City of Sacramento v. Malaki, 216 Cal. App. 2d 480, 31 Cal. Rptr. 92 (3d Dist. 1963).

According to one court, "Where a word has clear meaning the Legislature cannot change it. ... " People v. Kukkanen, 248 Cal. App. 2d Supp. 899, 56 Cal. Rptr. 620 (App. Dep't Super. Ct. 1967).

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Idaho. Higginson v. Westergard, 100 Idaho 687, 604 P.2d 51 (1979).Tway v. Williams, 81 Idaho 1, 336 P.2d 115 (1959).

Illinois. Doyle v. Rhodes, 101 Ill. 2d 1, 77 Ill. Dec. 759, 461 N.E.2d 382 (1984); Salmons v. Dutz, 16 Ill. App. 2d 356, 148 N.E.2d 17 (3d Dist. 1958).Mason v. Cutkomp, 15 Ill. App. 2d 378, 146 N.E.2d 382 (2d Dist. 1957).

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Iowa. Cowman v. Hansen, 250 Iowa 358, 92 N.W.2d 682 (1958) (overruled on other grounds by, Lewis v.

State, 256 N.W.2d 181, 95 A.L.R.3d 1221 (Iowa 1977)).Mallory v. Jurgena, 250 Iowa 16, 92 N.W.2d 387 (1958); Dingman v. City of Council Bluffs, 249 Iowa 1121, 90 N.W.2d 742 (1958).

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Kentucky. Duvall v. Garrett, 457 S.W.2d 263 (Ky. 1970) (legislative "purpose" not considered where statute is unambiguous).

Louisiana. State v. Marsh, 233 La. 388, 96 So. 2d 643 (1957).

Maryland. Maryland Nat. Bank v. Comptroller of Treasury, 264 Md. 536, 287 A.2d 291 (1972).Armco Steel Corp. v. State Tax Commission, 221 Md. 33, 155 A.2d 678 (1959); County Treasurer and Collector of Taxes for Caroline County v. State Tax Commission, 219 Md. 652, 150 A.2d 452 (1959).

Massachusetts. Boston Five Cents Sav. Bank v. Assessors of Boston, 317 Mass. 694, 59 N.E.2d 454 (1945); Larkin v. Charlestown Sav. Bank, 7 Mass. App. Ct. 178, 386 N.E.2d 790 (1979).

Michigan. Jones v. Grand Ledge Public Schools, 349 Mich. 1, 84 N.W.2d 327 (1957); Gregory Boat Co. v. City of Detroit, 37 Mich. App. 673, 195 N.W.2d 290 (1972).Collins v. Motorists Mut. Ins. Co., 36 Mich. App. 424, 194 N.W.2d 148 (1971).

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A statute that is clear and unambiguous is not open to construction or interpretation and may not be interpreted other than through its express language. DeHart v. Bambrick, 177 N.J. Super. 541, 427 A.2d 113 (App. Div. 1981).

New Mexico. State ex rel. Helman v. Gallegos, 117 N.M. 346, 871 P.2d 1352 (1994).Weiser v. Albuquerque Oil & Gasoline Co., 64 N.M. 137, 325 P.2d 720 (1958).

New York. Tishman v. Sprague, 293 N.Y. 42, 55 N.E.2d 858 (1944); Roosevelt Raceway, Inc. v. Monaghan, 22 Misc. 2d 776, 199 N.Y.S.2d 195 (Sup 1960), order aff'd, 11 A.D.2d 206, 202 N.Y.S.2d 646 (1st Dep't 1960), order rev'd, 9 N.Y.2d 293, 213 N.Y.S.2d 729, 174 N.E.2d 71 (1961).Bryant Park Bldg., Inc. v. Frutkin, 10 Misc. 2d 198, 167 N.Y.S.2d 184 (Mun. Ct. 1957).

North Carolina. Perrell v. Beaty Service Co., 248 N.C. 153, 102 S.E.2d 785 (1958).

North Dakota. Gipson v. First Nat. Bank of Bismarck, 97 N.W.2d 671 (N.D. 1959).

Ohio. Schneider v. Masheter, 120 Ohio App. 318, 29 Ohio Op. 2d 159, 202 N.E.2d 320 (10th Dist. Franklin County 1964).Village of Gahanna v. Amburgey, 116 Ohio App. 105, 21 Ohio Op. 2d 396, 187 N.E.2d 396 (10th Dist. Franklin County 1962); Wadsworth v. Dambach, 99 Ohio App. 269, 59 Ohio Op. 47, 133 N.E.2d 158 (6th Dist. Ottawa County 1954).

Statutes cannot be "restricted, constricted, qualified, narrowed, enlarged or abridged" when they are clear on their face. O'Dell v. O'Dell, 55 Ohio App. 2d 149, 9 Ohio Op. 3d 296, 380 N.E.2d 723 (4th Dist. Scioto County 1977).

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South Dakota. Vitek v. Bon Homme County Bd. of Com'rs, 2002 SD 100, 650 N.W.2d 513 (S.D. 2002).

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Texas. Coalition of Texans with Disabilities v. Smith, 1999 WL 816734 (Tex. App. Austin 1999).

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Virginia. Winston v. City of Richmond, 196 Va. 403, 83 S.E.2d 728 (1954).

Washington. Nisqually Delta Ass'n v. City of DuPont, 103 Wash. 2d 720, 696 P.2d 1222 (1985).

West Virginia. State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars, 144 W. Va. 137, 107 S.E.2d 353 (1959).Kinsey v. Kinsey, 143 W. Va. 574, 103 S.E.2d 409 (1958); Charles Town Raceway, Inc. v. West Virginia Racing Commission, 143 W. Va. 257, 101 S.E.2d 60 (1957).

It does not follow from the fact that parties disagree as to the meaning or application of a statute that it necessarily is either ambiguous or of doubtful, uncertain or obscure meaning. In re Resseger's Estate, 152 W. Va. 216, 161 S.E.2d 257 (1968).

Wisconsin. Fox v. Catholic Knights Ins. Soc., 2003 WI 87, 263 Wis. 2d 207, 665 N.W.2d 181 (2003).Honeywell, Inc. v. Aetna Cas. & Sur. Co., 52 Wis. 2d 425, 190 N.W.2d 499 (1971); Alexander v. Farmers Mut. Auto. Ins. Co., 25 Wis. 2d 623, 131 N.W.2d 373 (1964).

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Cf. U. S. v. Brewster, 408 U.S. 501, 92 S. Ct. 2531, 33 L. Ed. 2d 507 (1972) (literal meaning given to the constitutional provision giving a "speech and debate" privilege to members of Congress); Holy Trinity Church v. U.S., 143 U.S. 457, 12 S. Ct. 511, 36 L. Ed. 226 (1892); U.S. v. DeRosier, 473 F.2d 749 (5th Cir. 1973) The court read the Public Accommodations Section of theCivil Rights Act of 1964, particularly the term "place of entertainment", according to its generally accepted meaning so as to give full effect to Congress' overriding purpose of eliminating discriminatory denials of access to facilities ostensibly open to the general public.

Contra. It has been held that ambiguity is not necessarily, in all cases, "a condition precedent to interpretation." Rota v. Brotherhood of Ry., Airline and S. S. Clerks, 338 F. Supp. 1176, 80 L.R.R.M. (BNA) 2450, 68 Lab. Cas. (CCH) P 12784 (E.D. Pa. 1972).Sacramento County v. Hickman, 66 Cal. 2d 841, 59 Cal. Rptr. 609, 428 P.2d 593 (1967).

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[FN2] **United States.** Caminetti v. U.S., 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917); Small v. Britton, 500 F.2d 299 (10th Cir. 1974); Zerilli v. Evening News Ass'n, 628 F.2d 217, 6 Media L. Rep. (BNA) 1530 (D.C. Cir. 1980); Kline v. Maritrans CP, Inc., 791 F. Supp. 455, 1993 A.M.C. 655 (D. Del. 1992).Conoco, Inc. v. Skinner, 781 F. Supp. 298, 1992 A.M.C. 2408 (D. Del. 1991), aff'd, 970 F.2d 1206, 1992 A.M.C. 2816 (3d Cir. 1992); Victory Highway Village, Inc. v. Weaver, 480 F. Supp. 71 (D. Minn. 1979); Harness v. Day, 428 F. Supp. 18 (W.D. Okla. 1976).

Where statutory language is plain and admits of no more than one meaning, the duty of interpretation does not arise and rules which are to aid doubtful meanings need no discussion. McCord v. Bailey, 636 F.2d 606 (D.C. Cir. 1980).

Alaska. Roderick v. Sullivan, 528 P.2d 450 (Alaska 1974) (disavowed by, State v. Alex, 646 P.2d 203 (Alaska 1982)) (citing text).

Arkansas. State v. Conley, 270 Ark. 139, 603 S.W.2d 415 (1980).

California. In re Arturo H., 42 Cal. App. 4th 1694, 51 Cal. Rptr. 2d 5, 107 Ed. Law Rep. 914 (1st Dist. 1996).

Colorado. People v. Houcks, 75 P.3d 1155 (Colo. Ct. App. 2003).Norton v. Leadville Corp., 43 Colo. App. 527, 610 P.2d 1348, Blue Sky L. Rep. (CCH) P 71555, Fed. Sec. L. Rep. (CCH) P 97522 (1979).

Delaware. Snowden v. State, 677 A.2d 33 (Del. 1996).Matter of Mayors Estate, 385 A.2d 734 (Del. Ch. 1978).

Florida. City of Ocoee v. Central Florida Professional Fire Fighters Ass'n, Local 2057, IAFF, 389 So. 2d 296 (Fla. Dist. Ct. App. 5th Dist. 1980).

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New Mexico. State ex rel. Helman v. Gallegos, 114 N.M. 414, 839 P.2d 624 (Ct. App. 1992), decision rev'd on other grounds, 117 N.M. 346, 871 P.2d 1352 (1994).

Washington. North Coast Air Services, Ltd. v. Grumman Corp., 111 Wash. 2d 315, 759 P.2d 405, Prod. Liab. Rep. (CCH) P 11933 (1988).Nisqually Delta Ass'n v. City of DuPont, 103 Wash. 2d 720, 696 P.2d 1222 (1985).

Wisconsin. Wisconsin Dept. of Revenue v. Milwaukee Mut. Ins. Co., 105 Wis. 2d 705, 314 N.W.2d 920 (Ct. App. 1981).

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Flood, "Kennewick Man" or "Ancient One"? —A Matter of Interpretation, 63 Mont. L. Rev. 39 (2002); Patry on Copyright § 2:14.

[FN3] **Idaho.** Sheppard v. Sheppard, 104 Idaho 1, 655 P.2d 895 (1982).

[FN4] **United States.** United Services Auto. Ass'n v. Perry, 92 F.3d 295 (5th Cir. 1996), opinion withdrawn and superseded on other grounds, 102 F.3d 144 (5th Cir. 1996); U.S. v. Tomison, 969 F. Supp. 587 (E.D. Cal. 1997); In re Andover Togs, Inc., 231 B.R. 521 (Bankr. S.D. N.Y. 1999); Tallman v. Brown, 7 Vet. App. 453, 99 Ed. Law Rep. 467 (1995), judgment rev'd on other grounds, 105 F.3d 613, 116 Ed. Law Rep. 882 (Fed. Cir. 1997).

Florida Conference Ass'n of Seventh-Day Adventists v. Kyriakides, 151 F. Supp. 2d 1223, 2001 A.M.C. 2860, 57 Fed. R. Evid. Serv. 555 (C.D. Cal. 2001).

In re Geneva Steel Co., 281 F.3d 1173, 39 Bankr. Ct. Dec. (CRR) 47, Bankr. L. Rep. (CCH) P 78606 (10th Cir. 2002).

U.S. v. Miles, 228 F. Supp. 2d 1130, 187 A.L.R. Fed. 723 (E.D. Cal. 2002), rev'd on other grounds, 130 Fed. Appx. 108 (9th Cir. 2005); U.S. v. Selby, 333 F. Supp. 2d 367 (D. Md. 2004).Washington State Dept. of Services for the Blind v. U.S., 58 Fed. Cl. 781 (2003).

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Alaska. Chokwak v. Worley, 912 P.2d 1248 (Alaska 1996).

California. People v. Bostick, 46 Cal. App. 4th 287, 53 Cal. Rptr. 2d 760 (1st Dist. 1996), as modified on denial of reh'g, (June 27, 1996).

Colorado. Slack v. Farmers Ins. Exchange, 5 P.3d 280 (Colo. 2000); Allstate Ins. Co. v. Schneider Nat. Carriers, Inc., 942 P.2d 1352 (Colo. Ct. App. 1997), judgment aff'd, 961 P.2d 465 (Colo. 1998)

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Hawaii. Southern Foods Group, L.P. v. State, Dept. of Educ., 89 Haw. 443, 974 P.2d 1033 (1999); Hill v. Inouye, 90 Haw. 76, 976 P.2d 390 (1998), as amended on reconsideration, (Jan. 13, 1999) (This opinion has not been released for publication in the permanent law reports as a petition for reconsideration in the Supreme Court is pending). Kim v. Contractors License Bd., 88 Haw. 264, 965 P.2d 806 (1998).

State v. Toyomura, 80 Haw. 8, 904 P.2d 893 (1995); Housing Finance and Development Corp. v. Castle, 79 Haw. 64, 898 P.2d 576 (1995).

Illinois. People v. Jameson, 162 Ill. 2d 282, 205 Ill. Dec. 90, 642 N.E.2d 1207 (1994); People v. Holloway, 275 Ill. App. 3d 736, 212 Ill. Dec. 47, 656 N.E.2d 200 (1st Dist. 1995), judgment aff'd, 177 Ill. 2d 1, 224 Ill. Dec. 498, 682 N.E.2d 59 (1997).

Massachusetts. Cohen v. Liberty Mut. Ins. Co., 41 Mass. App. Ct. 748, 673 N.E.2d 84 (1996); AT&T v. Automatic Sprinkler Appeals Bd., 52 Mass. App. Ct. 11, 750 N.E.2d 505 (2001)

Missouri. Martinez v. State, 24 S.W.3d 10 (Mo. Ct. App. E.D. 2000); State v. Haskins, 950 S.W.2d 613 (Mo. Ct. App. S.D. 1997); State v. Meggs, 950 S.W.2d 608 (Mo. Ct. App. S.D. 1997).

Oklahoma. In re J.L.M., 2005 OK 15, 109 P.3d 336 (Okla. 2005).

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[FN5] **Alabama.** Hawkins v. State, 549 So. 2d 552 (Ala. Crim. App. 1989).

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Connecticut. Doe v. Institute of Living, Inc., 175 Conn. 49, 392 A.2d 491 (1978) (citing text).

Washington. North Coast Air Services, Ltd. v. Grumman Corp., 111 Wash. 2d 315, 759 P.2d 405, Prod. Liab. Rep. (CCH) P 11933 (1988).

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Moy, Moy's Walker on Patents, Part II. Patentability and Validity. Ch 4. Patent Claims, II. Claim Theory, A. Central vs. Peripheral Claiming (4th Ed, 2004).

[FN6] **United States.** New Jersey Air Nat. Guard v. Federal Labor Relations Authority, 677 F.2d 276, 110 L.R.R.M. (BNA) 2554 (3d Cir. 1982); Tallman v. Brown, 7 Vet. App. 453, 99 Ed. Law Rep. 467 (1995), judgment rev'd on other grounds, 105 F.3d 613, 116 Ed. Law Rep. 882 (Fed. Cir. 1997); Chickasaw Nation v. U.S., 2002-1 C.B. 718, 534 U.S. 84, 122 S. Ct. 528, 151 L. Ed. 2d 474, 2001-2 U.S. Tax Cas. (CCH) P 50765, 2001-2 U.S. Tax Cas. (CCH) P 70172, 88 A.F.T.R.2d 2001-6967 (2001).

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Hawaii. Government Employees Ins. Co. v. Dang, 89 Haw. 8, 967 P.2d 1066 (1998).

Wisconsin. State v. Black, 188 Wis. 2d 639, 526 N.W.2d 132 (1994).

[FN7] **United States.** U.S. v. Awadallah, 202 F. Supp. 2d 55 (S.D. N.Y. 2002), rev'd on other grounds, 349 F.3d 42, 2 A.L.R. Fed. 2d 705 (2d Cir. 2003), cert. denied, 543 U.S. 1056, 125 S. Ct. 861, 160 L. Ed. 2d 781 (2005).

Kentucky. A statutory prescription that "four" votes of a board of education were necessary in order to remove a school superintendent from office has been held to require a greater number of votes than four in the case of a board having a larger number of members than was usual in the state. Wesley v. Board of Ed. of Nicholas County, 403 S.W.2d 28 (Ky. 1966).

[FN8] **United States.** Barber v. Gonzales, 347 U.S. 637, 74 S. Ct. 822, 98 L. Ed. 1009 (1954); Transcontinental & Western Air v. Civil Aeronautics Bd., 336 U.S. 601, 69 S. Ct. 756, 93 L. Ed. 911 (1949); Algoma Plywood & Veneer Co. v. Wisconsin Employment Relations Bd., 336 U.S. 301, 69 S. Ct. 584, 93 L. Ed. 691, 23 L.R.R.M. (BNA) 2402, 16 Lab. Cas. (CCH) P 65013 (1949); U.S. v. Evans, 333 U.S. 483, 68 S. Ct. 634, 92 L. Ed. 823 (1948); Order of Ry. Conductors of America v. Swan, 329 U.S. 520, 67 S. Ct. 405, 91 L. Ed. 471, 19 L.R.R.M. (BNA) 2180, 12 Lab. Cas. (CCH) P 51235 (1947); Rosenman v. U.S., 323 U.S. 658, 65 S. Ct. 536, 89 L. Ed. 535, 45-1 U.S. Tax Cas. (CCH) P 10165 (1945); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 65 S. Ct. 335, 89 L. Ed. 414 (1945); Addison v. Holly Hill

Fruit Products, 322 U.S. 607, 64 S. Ct. 1215, 88 L. Ed. 1488, 153 A.L.R. 1007 (1944); Stout v. Hancock, 146 F.2d 741 (C.C.A. 4th Cir. 1944); Thomas v. U.S., 189 F.2d 494 (6th Cir. 1951); U.S. v. Korpan, 237 F.2d 676, 56-2 U.S. Tax Cas. (CCH) P 9935, 50 A.F.T.R. (P-H) P 517 (7th Cir. 1956), judgment rev'd on other grounds, 1957-2 C.B. 783, 354 U.S. 271, 77 S. Ct. 1099, 1 L. Ed. 2d 1337, 57-2 U.S. Tax Cas. (CCH) P 9760, 51 A.F.T.R. (P-H) P 53 (1957).Jones v. Liberty Glass Co., 159 F.2d 316, 47-1 U.S. Tax Cas. (CCH) P 9133, 35 A.F.T.R. (P-H) P 674 (C.C.A. 10th Cir. 1947), judgment rev'd on other grounds, 332 U.S. 524, 68 S. Ct. 229, 92 L. Ed. 142, 48-1 U.S. Tax Cas. (CCH) P 9113, 36 A.F.T.R. (P-H) P 377 (1947).

Alabama. Hawkins v. State, 549 So. 2d 552 (Ala. Crim. App. 1989).

Kansas. Northern Natural Gas Co. v. Bender, 208 Kan. 135, 490 P.2d 399 (1971) (tax statutes and statute pertaining to actions for collection of taxes).

Massachusetts. Com. v. Slome, 321 Mass. 713, 75 N.E.2d 517 (1947).Commissioner of Corporations and Taxation v. Chilton Club, 318 Mass. 285, 61 N.E.2d 335 (1945); Trustees of New York, N.H. & H.R. Co. v. City of New Bedford, 315 Mass. 154, 52 N.E.2d 324 (1943).

New Jersey. Weinacht v. Board of Chosen Freeholders of Bergen County, 3 N.J. 330, 70 A.2d 69 (1949).

See Ogden and Richards, The Meaning of Meaning, p 257 (1936).

[FN8.5] Patry on Copyright § 2:10.

[FN9] **New Mexico.** Gutierrez v. City of Albuquerque, 1998-NMSC-027, 125 N.M. 643, 964 P.2d 807 (1998); State ex rel. Helman v. Gallegos, 117 N.M. 346, 871 P.2d 1352 (1994).

Vermont. "... so long as the meanings of words are not absolutes, so long as the content of words varies according to context, custom and usage, interpretation is implicit whenever a statute is read, even though the interpretative function is unexpressed." American Oil Co. v. State Highway Bd., 122 Vt. 496, 177 A.2d 358 (1962).

Wisconsin. Wisconsin Dept. of Revenue v. Nagle-Hart, Inc., 70 Wis. 2d 224, 234 N.W.2d 350 (1975).

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Langbein, What ERISA Means by "Equitable": The Supreme Court's Trail of Error in Russell, Mertens, and the Great West, 103 Colum L. Rev. 1317 (2003).

[FN10] **Illinois.** Williams v. Staples, 208 Ill. 2d 480, 281 Ill. Dec. 524, 804 N.E.2d 489 (2004).

Michigan. People v. Adair, 452 Mich. 473, 550 N.W.2d 505 (1996).

Mayor of City of Lansing v. Michigan Public Service Com'n, 470 Mich. 154, 680 N.W.2d 840 (2004).

Missouri. Martinez v. State, 24 S.W.3d 10 (Mo. Ct. App. E.D. 2000).

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Owens, Local Government Authority to Implement Smart Growth Programs: Dillon's Rule, Legislative Reform, and the Current State of Affairs in North Carolina, 35 Wake Forest L. Rev. 671 (2000).

[FN11] **United States.** In cases of ambiguity under the Alaska Native Claims Settlement Act, the statute is to be construed in favor of the Indians, to avoid constitutional questions, to avoid taking vested rights and nonretroactivity; but such rules constitute only guidelines, are not substantive laws, and should not be used to defeat the obvious intent of a legislative body. U.S. v. Atlantic Richfield Co., 612 F.2d 1132 (9th Cir. 1980).

District of Columbia. Board of Directors, Washington City Orphan Asylum v. Board of Trustees, Washington City Orphan Asylum, 798 A.2d 1068 (D.C. 2002).

Hawaii. Validity of the statute is determined on the facts of each situation. Korean Buddhist Dae Won Sa Temple of Hawaii v. Sullivan, 87 Haw. 217, 953 P.2d 1315 (1998).

Michigan. People v. Adair, 452 Mich. 473, 550 N.W.2d 505 (1996).

New York. In case of ambiguity, consequences that would result from different interpretations may be considered. Town of Smithtown v. Moore, 11 N.Y.2d 238, 228 N.Y.S.2d 657, 183 N.E.2d 66 (1962).

South Dakota. Validity of the statute is determined on the facts of each situation. State Theatre Co. v. Smith, 276 N.W.2d 259 (S.D. 1979) (overruled on other grounds by, Cary v. City of Rapid City on other grounds, 1997 SD 18, 559 N.W.2d 891 (S.D. 1997)).

See Magnolia Petroleum Co. v. Carter Oil Co., 218 F.2d 1 (10th Cir. 1954); Air Reduction Co. v. Hickel, 420 F.2d 592 (D.C. Cir. 1969); Pepsodent Co. v. Krauss Co., 56 F. Supp. 922 (E.D. La. 1944); Day v. North Am. Rayon Corp., 140 F. Supp. 490 (E.D. Tenn. 1956); Geter v. U. S. Steel Corp., 264 Ala. 94, 84 So. 2d 770, 772 (1956); Consolidated Freightways Corp. of Del. v. Nicholas, 258 Iowa 115, 137 N.W.2d 900 (1965) (extrinsic evidence as to legislative intent inadmissible where no uncertainty exists in provisions of statute).Williams v. Williams, 23 N.Y.2d 592, 298 N.Y.S.2d 473, 246 N.E.2d 333 (1969); People on Complaint of Hughes v. Ziegler, 29 Misc. 2d 429, 214 N.Y.S.2d 177 (Magis. Ct. 1961); Wadsworth v. Dambach, 99 Ohio App. 269, 59 Ohio Op. 47, 133 N.E.2d 158 (6th Dist. Ottawa County 1954); Southern Pac. Co. v. Brown, 207 Or. 222, 295 P.2d 861 (1956); State ex rel. City of West Allis v. Dieringer, 275 Wis. 208, 81 N.W.2d 533 (1957).

Utah. Summit Water Distribution Co. v. Summit County, 2005 UT 73, 123 P.3d 437, 2005-2 Trade Cas. (CCH) P 74999 (Utah 2005)

[FN12] **District of Columbia.** Board of Directors, Washington City Orphan Asylum v. Board of Trustees, Washington City Orphan Asylum, 798 A.2d 1068 (D.C. 2002).

Missouri. State ex rel. Igoe v. Bradford, 611 S.W.2d 343 (Mo. Ct. App. W.D. 1980).

[FN13] **Connecticut.** State v. Poirier, 19 Conn. App. 1, 559 A.2d 1183 (1989).

Michigan. Belanger v. Warren Consol. School Dist., Bd. of Educ., 432 Mich. 575, 443 N.W.2d 372, 55 Ed.

Law Rep. 273 (1989).

Link, When a Sting is Overkill, An Argument for the Discharge of Punitive Damages in Bankruptcy, 94 Colum L Rev 2724 (1994); Von Kaenel, Willful Blindness: A Permissible Substitute for Actual Knowledge Under the Money Laundering Control Act? 71 Wash ULQ 1189 (1993); Wrage, Taking Aim at Canned Hunts Without Catching Game Ranches in the Crossfire, 30 Loyola LA L Rev 893 (1997).

Tew, Establishing Uniformity: The Need for a Per Se Rule Against the Grouping of Money Laundering and Fraud Counts Under the Federal Sentencing Guidelines, 42 Wm. & Mary L. Rev. 1077 (2001); Lacy, You Are Not as Old as You Think: Making the Case for Reverse Age Discrimination Under the ADEA, 26 Berkeley J. Emp. & Lab. L. 363 (2005).

[FN14] **United States.** National Woodwork Mfrs. Ass'n v. N. L. R. B., 386 U.S. 612, 87 S. Ct. 1250, 18 L. Ed. 2d 357, 64 L.R.R.M. (BNA) 2801, 55 Lab. Cas. (CCH) P 11842 (1967); Maneja v. Waialua Agr. Co., 349 U.S. 254, 75 S. Ct. 719, 99 L. Ed. 1040 (1955); Shapiro v. U.S., 335 U.S. 1, 68 S. Ct. 1375, 92 L. Ed. 1787 (1948); Clark v. Uebersee Finanz-Korporation, A.G., 332 U.S. 480, 68 S. Ct. 174, 92 L. Ed. 88 (1947); Helvering v. Griffiths, 318 U.S. 371, 63 S. Ct. 636, 87 L. Ed. 843, 43-1 U.S. Tax Cas. (CCH) P 9319, 30 A.F.T.R. (P-H) P 403 (1943); U.S. v. Monia, 317 U.S. 424, 63 S. Ct. 409, 87 L. Ed. 376 (1943); Broddie v. Gardner, 258 F. Supp. 753 (N.D. Ind. 1966).U.S. v. Kurzenknabe, 136 F. Supp. 17 (D.N.J. 1955); Radio-Television Training Ass'n v. U.S., 143 Ct. Cl. 416, 163 F. Supp. 637 (1958).

Arkansas. "[W]hen a statute is silent on a point, its interpretation is best developed case by case, when genuinely adversary arguments can be considered against a background of actual facts." Liberty Mut. Ins. Co. v. Billingsley, 256 Ark. 947, 511 S.W.2d 476 (1974).

California. California Mfrs. Assn. v. Public Utilities Com., 24 Cal. 3d 836, 157 Cal. Rptr. 676, 598 P.2d 836 (1979).

Connecticut. State v. Campbell, 180 Conn. 557, 429 A.2d 960 (1980); Lee v. Lee, 145 Conn. 355, 143 A.2d 154 (1958); O'Donnell v. Rindfleisch, 13 Conn. App. 194, 535 A.2d 824 (1988).

Illinois. People ex rel. Bell v. New York Cent. R. Co., 10 Ill. 2d 612, 141 N.E.2d 38 (1957); McQueeney v. Catholic Bishop of Chicago, 21 Ill. App. 2d 553, 159 N.E.2d 43, 80 A.L.R.2d 796 (1st Dist. 1959).

Maryland. Mackie v. Mayor and Com'rs of Town of Elkton, 265 Md. 410, 290 A.2d 500 (1972).Tyrie v. Baltimore County, 215 Md. 135, 137 A.2d 156 (1957).

Michigan. Hamilton v. Superior Mushroom Co., 91 Mich. App. 52, 282 N.W.2d 831 (1979).

New Jersey. Accountemps Div. of Robert Half of Philadelphia, Inc. v. Birch Tree Group, Ltd., 115 N.J. 614, 560 A.2d 663 (1989).State v. Brown, 22 N.J. 405, 126 A.2d 161 (1956) (criminal statute);

Pennsylvania. Rossiter v. Whitpain Tp., 404 Pa. 201, 170 A.2d 586 (1961).

Texas. Rylander v. Associated Technics Co., Inc., 987 S.W.2d 947 (Tex. App. Austin 1999); Craft v. Craft, 579 S.W.2d 506 (Tex. Civ. App. Dallas 1979), writ refused n.r.e., 580 S.W.2d 814 (Tex. 1979).

Vermont. In re Cartmell's Estate, 120 Vt. 228, 138 A.2d 588 (1958).

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See Chs 48, 49, 50, 55.

[FN15] **United States.** Pillsbury v. United Engineering Co., 342 U.S. 197, 72 S. Ct. 223, 96 L. Ed. 225, 17 Cal. Comp. Cas. (MB) 38, 1952 A.M.C. 6 (1952).U.S. v. Evans, 333 U.S. 483, 68 S. Ct. 634, 92 L. Ed. 823 (1948); I. C. C. v. Parker, 326 U.S. 60, 65 S. Ct. 1490, 89 L. Ed. 2051, 59 Pub. Util. Rep. (NS) 199 (1945); N.L.R.B. v. Hearst Publications, 322 U.S. 111, 64 S. Ct. 851, 88 L. Ed. 1170, 14 L.R.R.M. (BNA) 614, 8 Lab. Cas. (CCH) P 51179 (1944) (overruled in part on other grounds by, Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 112 S. Ct. 1344, 117 L. Ed. 2d 581, 14 Employee Benefits Cas. (BNA) 2625 (1992)); Harrison v. Northern Trust Co., 317 U.S. 476, 63 S. Ct. 361, 87 L. Ed. 407, 43-1 U.S. Tax Cas. (CCH) P 10004, 30 A.F.T.R. (P-H) P 375 (1943).

Alabama. Ex parte University of South Alabama, 761 So. 2d 240 (Ala. 1999).

Delaware. Coastal Barge Corp. v. Coastal Zone Indus. Control Bd., 492 A.2d 1242 (Del. 1985).Shy v. State, 459 A.2d 123 (Del. 1983) (citing text);

Indiana. Shettle v. Meeks, 465 N.E.2d 1136 (Ind. Ct. App. 1984).

Maryland. Mackie v. Mayor and Com'rs of Town of Elkton, 265 Md. 410, 290 A.2d 500 (1972).

Massachusetts. Allen v. City of Cambridge, 316 Mass. 351, 55 N.E.2d 925 (1944).

Michigan. When reasonable minds may differ regarding the meaning of a statute, the courts must look to the object of the statute, the harm it is designed to remedy, and apply a reasonable construction that best accomplishes the purpose of the statute. In re Forfeiture of $1,923,235, 247 Mich. App. 547, 637 N.W.2d 247 (2001).

North Dakota. When a statute is ambiguous, meaning it is susceptible to more than one interpretation, courts may resort to extrinsic aids to determine legislative intent, such as legislative history. State v. One 1990 Chevrolet Pickup, VIN 1GCDK14K8LZ185153, 523 N.W.2d 389 (N.D. 1994).

Washington. Spirit or purpose of legislation should prevail over expressed but inept language. State v. Douty, 20 Wash. App. 608, 581 P.2d 1074 (Div. 1 1978), judgment rev'd, 92 Wash. 2d 930, 603 P.2d 373 (1979); Fraternal Order of Eagles, Tenino Aerie No. 564 v. Grand Aerie of Fraternal Order of Eagles, 148 Wash. 2d 224, 59 P.3d 655 (2002).

Wisconsin. Evangelical Alliance Mission v. Village of Williams Bay, 54 Wis. 2d 187, 194 N.W.2d 646 (1972).Wisconsin Fertilizer Ass'n v. Karns, 52 Wis. 2d 309, 190 N.W.2d 513 (1971).

Wyoming. Natrona County v. Casper Air Service, 536 P.2d 142 (Wyo. 1975).

See River Wear Commissioners v. Adamson, LR, 2 AC 743 (1877).

Nonlegislative Intent as an Aid to Statutory Interpretation, 49 Colum L Rev 676 (1949).

[FN16] **Alaska.** Higginbottom v. State, 203 Ariz. 139, 51 P.3d 972 (Ct. App. Div. 1 2002).

SFPP, L.P. v. Arizona Dept. of Revenue, 210 Ariz. 151, 108 P.3d 930 (Ct. App. Div. 1 2005), review denied, (Sept. 27, 2005).

Utah. State v. Bradshaw, 2004 UT App 298, 99 P.3d 359 (Utah Ct. App. 2004), cert. granted, 109 P.3d 804 (Utah 2005) and decision rev'd on other grounds, 2006 UT 87, 152 P.3d 288 (Utah 2006); Peeples v. State of Utah, 2004 UT App 328, 100 P.3d 254 (Utah Ct. App. 2004).

Wisconsin. Recht-Goldin-Siegal Const., Inc. v. Wisconsin Dept. of Revenue, 64 Wis. 2d 303, 219 N.W.2d 379 (1974).

See also cases where the similar quotation appears: "A statute ... is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses." State ex rel. Neelen v. Lucas, 24 Wis. 2d 262, 267, 128 N.W.2d 425, 428 (1964).

"The court should look to the language of the statute itself to determine if 'well-informed persons' *should have* become confused." National Amusement Co. v. Wisconsin Dept. of Taxation, 41 Wis. 2d 261, 163 N.W.2d 625 (1969).

A statute is ambiguous when it is capable of being understood in a different sense by reasonably well-informed persons. Kimberly-Clark Corp. v. Public Service Com'n of Wisconsin, 107 Wis. 2d 177, 320 N.W.2d 5 (Ct. App. 1982), decision aff'd, 110 Wis. 2d 455, 329 N.W.2d 143 (1983).

A test for ambiguity has been said to be that "a statute or portion thereof is ambiguous when it is capable of being understood by reasonably well-informed persons in either of two or more senses." Madison Metropolitan Sewerage Dist. v. Department of Natural Resourses, 63 Wis. 2d 175, 216 N.W.2d 533 (1974).

In re Commitment of Byers, 2003 WI 86, 263 Wis. 2d 113, 665 N.W.2d 729 (2003).

[FN17] **United States.** Addison v. Holly Hill Fruit Products, 322 U.S. 607, 64 S. Ct. 1215, 88 L. Ed. 1488, 153 A.L.R. 1007 (1944); Davies Warehouse Co. v. Bowles, 321 U.S. 144, 64 S. Ct. 474, 88 L. Ed. 635 (Em. App. 1944); Harrison v. Northern Trust Co., 317 U.S. 476, 63 S. Ct. 361, 87 L. Ed. 407, 43-1 U.S. Tax Cas. (CCH) P 10004, 30 A.F.T.R. (P-H) P 375 (1943); International Longshoremen's & Warehousemens's Union v. Juneau Spruce Corp., 13 Alaska 536, 342 U.S. 237, 72 S. Ct. 235, 96 L. Ed. 275, 29 L.R.R.M. (BNA) 2249, 20 Lab. Cas. (CCH) P 66704 (1952).

Alaska. State v. Alex, 646 P.2d 203 (Alaska 1982) (citing text).

California. Clements v. T. R. Bechtel Co., 43 Cal. 2d 227, 273 P.2d 5 (1954); Engelmann v. State Bd. of Education, 2 Cal. App. 4th 47, 3 Cal. Rptr. 2d 264, 71 Ed. Law Rep. 834 (3d Dist. 1991)).American Friends Service Committee v. Procunier, 33 Cal. App. 3d 252, 109 Cal. Rptr. 22 (3d Dist. 1973) (disapproved of on other grounds by, Engelmann v. State Bd. of Education, 2 Cal. App. 4th 47, 3 Cal. Rptr. 2d 264, 71 Ed. Law Rep. 834 (3d Dist. 1991)) (disapproved of on other grounds by,

Michigan. Webster v. Rotary Elec. Steel Co., 321 Mich. 526, 33 N.W.2d 69 (1948).

Missouri. Facing such a problem of reference in an aircraft liability statute, one court has held that the absence of a territorial limitation on the place in which the accident occurs raises an ambiguity in the statutory phraseology and accordingly the construction of the statute is proper. Ewers v. Thunderbird Aviation, Inc., 289 N.W.2d 94 (Minn. 1979).

Texas. Texans to Save the Capitol, Inc. v. Board of Adjustment of City of Austin, 647 S.W.2d 773 (Tex. App. Austin 1983), writ refused n.r.e., (Sept. 14, 1983) (citing text).

See U.S. v. Universal C. I. T. Credit Corp., 344 U.S. 218, 73 S. Ct. 227, 97 L. Ed. 260 (1952); U.S. v. Ruzicka, 329 U.S. 287, 67 S. Ct. 207, 91 L. Ed. 290 (1946); Gellman v. U.S., 235 F.2d 87, 56-2 U.S. Tax Cas. (CCH) P 9715, 49 A.F.T.R. (P-H) P 1689 (8th Cir. 1956).

Justice Cardozo suggested that the judge "ought to shape his judgment of the law in obedience to the same aims which would be those of a legislator. ... " Cardozo, The Nature of the Judicial Process, 120 (1928).

Montrose, Ambiguous Words in a Statute, 76 LQ Rev 359 (1960).

[FN18] **United States.** Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U.S. 498, 69 S. Ct. 1251, 93 L. Ed. 1499 (1949); Hilton v. Sullivan, 334 U.S. 323, 68 S. Ct. 1020, 92 L. Ed. 1416 (1948); I. C. C. v. Parker, 326 U.S. 60, 65 S. Ct. 1490, 89 L. Ed. 2051, 59 Pub. Util. Rep. (NS) 199 (1945); Rosenman v. U.S., 323 U.S. 658, 65 S. Ct. 536, 89 L. Ed. 535, 45-1 U.S. Tax Cas. (CCH) P 10165 (1945); Western Union Telegraph Co. v. Lenroot, 323 U.S. 490, 65 S. Ct. 335, 89 L. Ed. 414 (1945); N.L.R.B. v. Hearst Publications, 322 U.S. 111, 64 S. Ct. 851, 88 L. Ed. 1170, 14 L.R.R.M. (BNA) 614, 8 Lab. Cas. (CCH) P 51179 (1944) (overruled in part on other grounds by, Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 112 S. Ct. 1344, 117 L. Ed. 2d 581, 14 Employee Benefits Cas. (BNA) 2625 (1992)); Davies Warehouse Co. v. Bowles, 321 U.S. 144, 64 S. Ct. 474, 88 L. Ed. 635 (Em. App. 1944); Secretary of Treasury of Puerto Rico v. Esso Standard Oil Co., (P. R.), 332 F.2d 624 (1st Cir. 1964); Thomas v. U.S., 189 F.2d 494 (6th Cir. 1951); Felak v. U.S., 661 F. Supp. 51, 87-1 U.S. Tax Cas. (CCH) P 9366, 60 A.F.T.R.2d 87-5191 (D. Minn. 1987).U.S. v. Brown, 334 F. Supp. 536 (D. Neb. 1971).

Arkansas. Arkansas State Highway Commission v. Mabry, 229 Ark. 261, 315 S.W.2d 900 (1958).

Delaware. C.F. Schwartz Motor Co. v. International Truck and Engine Corp., 2004 WL 772068 (Del. Super. Ct. 2004).

Massachusetts. Killam v. March, 316 Mass. 646, 55 N.E.2d 945 (1944).

Missouri. State ex rel. Henderson v. Proctor, 361 S.W.2d 802 (Mo. 1962).Kansas City v. Travelers Ins. Co., 284 S.W.2d 874 (Mo. Ct. App. 1955).

Where provisions are not plainly written, the court should not add to the statute in order to accomplish an end which the court deems beneficial. Wilson v. McNeal, 575 S.W.2d 802, 4 Media L. Rep. (BNA) 2369 (Mo. Ct. App. 1978).

New Jersey. State v. Brenner, 132 N.J.L. 607, 41 A.2d 532 (N.J. Ct. Err. & App. 1945).

New Mexico. State v. Hausler, 101 N.M. 161, 679 P.2d 829 (Ct. App. 1983), judgment rev'd on other grounds, 101 N.M. 143, 679 P.2d 811 (1984).

New York. Lasro Corp. v. Kree Institute of Electrolysis, Inc., 29 Misc. 2d 700, 215 N.Y.S.2d 125 (Mun. Ct. 1961).

North Carolina. State v. Lance, 244 N.C. 455, 94 S.E.2d 335 (1956) (court may look to title of an ambiguous act to determine the act's meaning and the legislative intent).

Oklahoma. Pennington v. State, 1956 OK CR 98, 302 P.2d 170 (Okla. Crim. App. 1956).

Wisconsin. State ex rel. City of West Allis v. Dieringer, 275 Wis. 208, 81 N.W.2d 533 (1957).

See Schiaffo v. Helstoski, 492 F.2d 413 (3d Cir. 1974).

Bingham, The Nature and Importance of Legal Possession, 13 Mich L Rev 535, 623 (1915); Cohen, The Value of Value Symbols in Law, 52 Colum L Rev 893 (1952); Radin, Statutory Interpretation, 43 Harv L Rev 863 (1930); Note, Intent, Clear Statements, and Common Law: Statutory Interpretation in Supreme Court, 95 Harv L Rev 892 (1982).

[FN19] **Massachusetts.** Com. v. Correia, 17 Mass. App. Ct. 233, 457 N.E.2d 648 (1983).

New Mexico. The common law must be expressly abrogated by a statute because when determining the meaning of a statute courts will often construe the language in light of the pre-existing common law. Sims v. Sims, 1996-NMSC-078, 122 N.M. 618, 930 P.2d 153 (1996).

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Part
V. Statutory Interpretation

Subpart
A. Principles and Policies

Chapter
47. Intrinsic Aids

§ 47:23. Expressio unius est exclusio alterius[1]

As the maxim is applied to statutory interpretation, where a form of conduct,[2] the manner of its performance and operation,[3] and the persons[4] and things[5] to which it refers are designated, there is an inference that all omissions should be understood as exclusions.[6] The maxim does not apply to every statutory listing or grouping. It has force only when the items expressed are members of an associated group or series, justifying the inference that the items not mentioned were excluded by deliberate choice.[7]

> When what is expressed in a statute is creative, and not in a proceeding according to the course of the common law, it is exclusive, and the power exists only to the extent plainly granted. Where a statute creates and regulates, and prescribes the mode and names the parties granted right to invoke its provisions, that mode must be followed and none other, and such parties only may act.[8]

A statute which provides that a thing shall be done in a certain way carries with it an implied prohibition against doing that thing in any other way.[9] Thus, the method prescribed in a statute for enforcing the rights provided in it is likewise presumed to be exclusive.[10] For example, when there is a limited form of recoupment included in a statute, all other forms of recoupment must be deemed to have been excluded.[11] In the absence of a clear statement, the tendency is to make a restrictive interpretation.[12] Legislative prescription of a specified sanction for noncompliance with statutory requirements has been held to exclude the application of other sanctions.[13]

The rule is a rule of statutory construction and not a rule of law.[14] The maxim is subordinate to the primary rule that the legislative intent governs the interpretation of the statute.[15] Thus, it can be overcome by a strong indication of contrary legislative intent or policy.[16] For example, the Illinois Supreme Court reasoned that where in nearly a score of other instances the constitutional framers expressly required an extraordinary majority before legislative action could be taken, it does not seem proper that they could have inadvertently overlooked requiring an extraordinary majority in the present instance if they had in fact so intended.[17] The Massachusetts court likewise reasoned that had the legislature intended to permit a particular act to occur it would have done so expressly and not by silence.[18] When "include" is utilized, it is generally improper to conclude that entities not specifically enumerated are excluded.[19] The force of the maxim is strengthened where a thing is provided in one part of the statute and omitted in another.[20] It has also been assumed when the legislature expresses things through a list, the court

assumes that what is not listed is excluded.[21] It has also been noted that the maxim does not mean that anything not required is forbidden.[22]

In the case of exceptions, provisos and saving clauses, the maxim validates these and other negative provisions. The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.[23] "Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed."[24]

The maxim has been held to be "inapplicable if there is some special reason for mentioning one thing and none for mentioning another which is otherwise within the statute."[25] The maxim is also inapplicable where the listed exceptions were obviously not meant to be the only exceptions.[26]

[FN1] United States. Marshall v. Gibson's Products, Inc. of Plano, 584 F.2d 668, 6 O.S.H. Cas. (BNA) 2092, 1978 O.S.H. Dec. (CCH) P 23148 (5th Cir. 1978); Burke v. U.S. Dept. of Justice, Drug Enforcement Agency, 986 F. Supp. 672 (M.D. Ala. 1997); Anderson v. Janovich, 543 F. Supp. 1124 (W.D. Wash. 1982).

Alaska. State v. Patterson, 740 P.2d 944 (Alaska 1987).

Arizona. U.S. Parking Systems v. City of Phoenix, 160 Ariz. 210, 772 P.2d 33 (Ct. App. Div. 2 1989).

California. County of Sonoma v. Fouche, 1994 WL 372617 (Cal. App. 1st Dist. 1994), reh'g granted, opinion not citeable, (Aug. 9, 1994) and opinion on reh'g not for publication, (Nov. 7, 1994).

Maxim *Expressio unius est exclusio alterius* is subordinate to the canon that ambiguity should be resolved in favor of the party opposing the application of a statute which is penal in nature. People v. One 1986 Cadillac Deville, 70 Cal. App. 4th 157, 82 Cal. Rptr. 2d 509 (3d Dist. 1999).

Illinois. Norris v. National Union Fire Ins. Co. of Pittsburgh, Pa., 326 Ill. App. 3d 314, 260 Ill. Dec. 62, 760 N.E.2d 141 (1st Dist. 2001).

Indiana. Brandmaier v. Metropolitan Development Com'n of Marion County, 714 N.E.2d 179 (Ind. Ct. App. 1999).

Michigan. Williams v. Coleman, 194 Mich. App. 606, 488 N.W.2d 464 (1992); Van Etten v. Manufacturers Nat. Bank of Detroit, 119 Mich. App. 277, 326 N.W.2d 479 (1982).

Expressium facit cessare tacitum (that which is expressed puts an end to that which is implied) is a maxim of similar implication. Taylor v. Michigan Public Utilities Commission, 217 Mich. 400, 186 N.W. 485 (1922).

Missouri. State ex rel. C. C. G. Management Corp. v. City of Overland, 624 S.W.2d 50 (Mo. Ct. App. E.D. 1981).

North Dakota. State v. Dennis, 2007 ND 87, 733 N.W.2d 241 (N.D. 2007).

Texas. Bidelspach v. State, 840 S.W.2d 516 (Tex. App. Dallas 1992), petition for discretionary review refused, (Nov. 25, 1992) and petition for discretionary review granted, (Feb. 24, 1993).

Washington. The maxim of express mention and implicit exclusion [*expressio unius est exclusio alterius*]

should not be used to defeat legislative intent. Moen v. Spokane City Police Dept., 110 Wash. App. 714, 42 P.3d 456 (Div. 3 2002).

West Virginia. Concerned Loved Ones and Lot Owners Ass'n of Beverly Hills Memorial Gardens v. Pence, 181 W. Va. 649, 383 S.E.2d 831 (1989).

Wisconsin. Quinn v. Town of Dodgeville, 122 Wis. 2d 570, 364 N.W.2d 149 (1985).

Posner, The Federal Courts: Crisis and Reform 276–286 (Harvard University Press 1985); Burney, The Interaction of the Division Order and the Lease Royalty Clause, 28 St Mary's L J 353 (1997); Gilburt, Increasing Monetary Limits for Chapter 13 Eligibility: The Effect on Tax Dischargeability, 2 Am Bankr Inst L Rev 207 (1994).

Maxson, The Applicability of Section 2462's Statute of Limitations to SEC Enforcement Suits in Light of the Remedies Act of 1990, 94 Mich L Rev 512 (1995); Pearson, Canons, Presumptions and Manifest Injustice: Retroactivity of the Civil Rights Act of 1991, 3 S Cal Interdisciplinary LJ 461 (1993); Sager, Due Process Review Under the Railway Labor Act, 94 Mich L Rev 466 (1995); Sentell, The Canons of Construction in Georgia: Anachronisms in Action, 25 Ga L Rev 365, 414–433 (1991).

[FN2] **United States.** Jurczyk v. West, 17 Vet. App. 358 (2000) [This opinion will not appear in a printed volume].

Ritchie v. Eberhart, 11 F.3d 587 (6th Cir. 1993); Boudette v. Barnette, 923 F.2d 754, 18 Fed. R. Serv. 3d 1213 (9th Cir. 1991); Solano Garbage Co. v. Cheney, 779 F. Supp. 477 (E.D. Cal. 1991); MacDonald v. General Motors Corp., 784 F. Supp. 486, Prod. Liab. Rep. (CCH) P 13187 (M.D. Tenn. 1992); Shoshone Indian Tribe of Wind River Reservation, Wyo. v. U.S., 58 Fed. Cl. 77, 163 O.G.R. 340 (2003).

Adair v. U.S., 70 Fed. Cl. 65 (2006); Doe v. U.S., 74 Fed. Cl. 592, 181 L.R.R.M. (BNA) 3320, 13 Wage & Hour Cas. 2d (BNA) 203 (2007).

Colorado. Chism v. People, 80 P.3d 293 (Colo. 2003).

Connecticut. Board of Educ. of Town and Borough of Naugatuck v. Town and Borough of Naugatuck, 70 Conn. App. 358, 800 A.2d 517, 166 Ed. Law Rep. 659 (2002), judgment rev'd in part on other grounds, 268 Conn. 295, 843 A.2d 603, 186 Ed. Law Rep. 420 (2004).

Illinois. In Interest of Sneed, 48 Ill. App. 3d 364, 6 Ill. Dec. 508, 363 N.E.2d 37 (1st Dist. 1977), judgment aff'd, 72 Ill. 2d 326, 21 Ill. Dec. 194, 381 N.E.2d 272 (1978).

Iowa. Cairns v. Grinnell Mut. Reinsurance Co., 398 N.W.2d 821 (Iowa 1987); Hodges v. Tama County, 91 Iowa 578, 60 N.W. 185 (1894).

Michigan. Stowers v. Wolodzko, 386 Mich. 119, 191 N.W.2d 355 (1971); Williams v. Coleman, 194 Mich. App. 606, 488 N.W.2d 464 (1992); Wolverine Steel Co. v. City of Detroit, 45 Mich. App. 671, 207 N.W.2d 194 (1973).

Montana. Dussault v. Hjelm, 192 Mont. 282, 627 P.2d 1237 (1981).

New York. People ex rel. W.U. Tel. Co. v. Public Service Commission of New York, Second Dist., 192

A.D. 748, 183 N.Y.S. 659 (3d Dep't 1920), rev'd on other grounds, 230 N.Y. 95, 129 N.E. 220, 12 A.L.R. 960 (1920); In re Kolasinski's Estate, 59 Misc. 2d 533, 299 N.Y.S.2d 905 (Sur. Ct. 1969).

North Dakota. District One Republican Committee v. District One Democrat Committee, 466 N.W.2d 820 (N.D. 1991); State v. Dennis, 2007 ND 87, 733 N.W.2d 241 (N.D. 2007).

Utah. In re Marriage of Kunz, 2006 UT App 151, 136 P.3d 1278 (Utah Ct. App. 2006)

Washington. State v. Swanson, 116 Wash. App. 67, 65 P.3d 343 (Div. 2 2003).

Wisconsin. State, Dept. of Natural Resources, Division of Conservation v. City of Clintonville, 53 Wis. 2d 1, 191 N.W.2d 866 (1971).

Forde, The Exclusionary Rule at Sentencing: New Life Under The Federal Sentencing Guidelines? 33 Am Crim L Rev 379 (1996); Maxson, The Applicability of Section 2462's Statute of Limitations to SEC Enforcement Suits in Light of the Remedies Act of 1990, 94 Mich L Rev 512 (1995); Shelley, Kipel, Talbot & Marino, The Standard of Review Applied the United States Court of Appeals for the Federal Circuit in International Trade and Customs Cases, 45 American U L Rev 1749 (1996).

[FN3] **United States.** Case v. Kelly, 133 U.S. 21, 10 S. Ct. 216, 33 L. Ed. 513 (1890) (enumeration of purposes for which a corporation may acquire real estate: held exclusive); Forsyth v. Barr, 19 F.3d 1527, 28 Fed. R. Serv. 3d 1371 (5th Cir. 1994); Boudette v. Barnette, 923 F.2d 754, 18 Fed. R. Serv. 3d 1213 (9th Cir. 1991); Tom v. Sutton, 533 F.2d 1101 (9th Cir. 1976); Maiatico v. U.S., 302 F.2d 880 (D.C. Cir. 1962); Lukens Steel Co. v. Perkins, 107 F.2d 627 (App. D.C. 1939), judgment rev'd on other grounds, 310 U.S. 113, 60 S. Ct. 869, 84 L. Ed. 1108, 1 Empl. Prac. Dec. (CCH) P 9602 (1940); Solano Garbage Co. v. Cheney, 779 F. Supp. 477 (E.D. Cal. 1991); Catano v. Local Bd. No. 94 Selective Service System, 298 F. Supp. 1183 (E.D. Pa. 1969); Shoshone Indian Tribe of Wind River Reservation, Wyo. v. U.S., 58 Fed. Cl. 77, 163 O.G.R. 340 (2003).

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California. Mejia v. Reed, 31 Cal. 4th 657, 3 Cal. Rptr. 3d 390, 74 P.3d 166 (2003); Perkins v. Thornborough, 10 Cal 190 (1858); County of Madera v. Superior Court, 39 Cal. App. 3d 665, 114 Cal. Rptr. 283 (5th Dist. 1974).

Colorado. Chism v. People, 80 P.3d 293 (Colo. 2003).

Connecticut. State ex rel. Barlow v. Kaminsky, 144 Conn. 612, 136 A.2d 792 (1957).

Board of Educ. of Town and Borough of Naugatuck v. Town and Borough of Naugatuck, 70 Conn. App. 358, 800 A.2d 517, 166 Ed. Law Rep. 659 (2002), judgment rev'd in part on other grounds, 268 Conn. 295, 843 A.2d 603, 186 Ed. Law Rep. 420 (2004).

Illinois. People ex rel. Nelson v. Wiersema State Bank, 361 Ill. 75, 197 N.E. 537, 101 A.L.R. 501 (1935) (statute permitted pledging of assets against funds deposited by state treasurer, and Chicago Park Commission: excluded pledging of assets against deposits of other governmental units).

Massachusetts. Iannelle v. Fire Com'r of Boston, 331 Mass. 250, 118 N.E.2d 757 (1954) (the omission of

"Sundays and holidays excepted" in statute was indicative that they were meant to be included in computation of time).

New Jersey. Statutory authorization to "approve or disapprove" a zoning change was held not to permit "reconsideration" of prior action in that regard. Morton v. Mayor and Council of Clark Tp., 102 N.J. Super. 84, 245 A.2d 377 (Law Div. 1968), judgment aff'd, 108 N.J. Super. 74, 260 A.2d 5 (App. Div. 1969).

North Dakota. State v. Dennis, 2007 ND 87, 733 N.W.2d 241 (N.D. 2007).

Ohio. O'Neal v. Trustees, Springfield Firemen's Pension and Relief Fund, 10 Ohio Op. 2d 197, 81 Ohio L. Abs. 136, 160 N.E.2d 563 (C.P. 1959) (dismissed fireman could not be allowed to recover contributions to pension fund under statute allowing such recovery to one who "voluntarily resigns").

Oregon. Clatsop County v. Morgan, 19 Or. App. 173, 526 P.2d 1393 (1974).

Pennsylvania. In re Contested Election of School Directors of Little Beaver Tp., 165 Pa. 233, 30 A. 955 (1895) (space to be left on ballot for "inserting" the "name" of a candidate which "is not printed on the ballot:" excluded name put in by sticker).

South Carolina. Home Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1937).

Tennessee. Peoples Bank & Trust Co. v. Chumbley, 174 Tenn. 581, 129 S.W.2d 213, 122 A.L.R. 936 (1939).

Utah. State v. Judd, 27 Utah 2d 79, 493 P.2d 604 (1972) ("Remedies, which are conferred by statute in derogation of the common law, may be enforced only in the manner prescribed in that statute").

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Washington. State v. Swanson, 116 Wash. App. 67, 65 P.3d 343 (Div. 2 2003).

[FN4] **United States.** Jurczyk v. West, 17 Vet. App. 358 (2000) [This opinion will not appear in a printed volume].

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Alabama. Batson v. State, 46 Ala. App. 610, 246 So. 2d 677 (Crim. App. 1971); Hogan v. State ex rel. Van Antwerp, 46 Ala. App. 240, 240 So. 2d 227 (Civ. App. 1970).

California. Mejia v. Reed, 31 Cal. 4th 657, 3 Cal. Rptr. 3d 390, 74 P.3d 166 (2003); Wildlife Alive v. Chickering, 18 Cal. 3d 190, 132 Cal. Rptr. 377, 553 P.2d 537, 9 Env't. Rep. Cas. (BNA) 1920, 6 Envtl. L. Rep. 20748 (1976).

Colorado. Chism v. People, 80 P.3d 293 (Colo. 2003).

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Kansas. Application of Olander by Ireland, 213 Kan. 282, 515 P.2d 1211 (1973).

Michigan. Taylor v. Michigan Public Utilities Commission, 217 Mich. 400, 186 N.W. 485 (1922).

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See also Sanders v. Thigpen, 277 Ala. 198, 168 So. 2d 228 (1964); People v. Kearse, 58 Misc. 2d 277, 295

N.Y.S.2d 192 (County Ct. 1968); West Virginia Sanitary Engineering Corp. v. Kurish, 137 W. Va. 856, 74 S.E.2d 596 (1953).

Forde, The Exclusionary Rule at Sentencing: New Life Under The Federal Sentencing Guidelines? 33 Am Crim L Rev 379 (1996); Maxson, The Applicability of Section 2462's Statute of Limitations to SEC Enforcement Suits in Light of the Remedies Act of 1990, 94 Mich L Rev 512 (1995).

LaFave and Scott, Handbook on Criminal Law § 2.2 (Pocket Part, 2003).

Washington. State v. Swanson, 116 Wash. App. 67, 65 P.3d 343 (Div. 2 2003).

Claybrook, Standing, Prejudice, and Prejudging in Bid Protest Cases, 33 Pub. Cont. L. J. 535 (2004).

[FN5] **United States.** Solano Garbage Co. v. Cheney, 779 F. Supp. 477 (E.D. Cal. 1991); Shoshone Indian Tribe of Wind River Reservation, Wyo. v. U.S., 58 Fed. Cl. 77, 163 O.G.R. 340 (2003); Territory of Alaska v. Journal Printing Co, 15 Alaska 676, 135 F. Supp. 169 (Terr. Alaska 1955) (license tax);

Adair v. U.S., 70 Fed. Cl. 65 (2006); Doe v. U.S., 74 Fed. Cl. 592, 181 L.R.R.M. (BNA) 3320, 13 Wage & Hour Cas. 2d (BNA) 203 (2007).

Alaska. Including one or more items from a specific class in a statute indicates an intent to exclude all items from the same class which are not expressed. Pima County v. Heinfeld, 134 Ariz. 133, 654 P.2d 281 (1982).

California. Mejia v. Reed, 31 Cal. 4th 657, 3 Cal. Rptr. 3d 390, 74 P.3d 166 (2003); Rich v. State Bd. of Optometry, 235 Cal. App. 2d 591, 45 Cal. Rptr. 512 (1st Dist. 1965); Capistrano Union High School Dist. of Orange County v. Capistrano Beach Acreage Co., 188 Cal. App. 2d 612, 10 Cal. Rptr. 750, 92 A.L.R.2d 349 (4th Dist. 1961) (costs and disbursements of condemnee do not include interest on the interlocutory judgment);

Colorado. Chism v. People, 80 P.3d 293 (Colo. 2003).

Illinois. People v. Gazelle, 230 Ill. App. 3d 115, 172 Ill. Dec. 151, 595 N.E.2d 214 (4th Dist. 1992).

Iowa. Dotson v. City of Ames, 251 Iowa 467, 101 N.W.2d 711 (1960) ("by granting control over animals running at large the legislature has clearly excluded power over those confined").

Massachusetts. Bristol County v. Secretary of Com., 324 Mass. 403, 86 N.E.2d 911 (1949) (where with reference to recorded instruments the mention of one copy did not negate the inference that another could be made if in the judgment of the recorder the additional copies were necessary).

Michigan. Nowack v. Fuller, 243 Mich. 200, 219 N.W. 749, 60 A.L.R. 1351 (1928) (statute allowed inspection of records of any county, city, township, town, village, school district, or other public record: excluded records of the state auditor).

Minnesota. Congdon v. Cook, 55 Minn. 1, 56 N.W. 253 (1893) (landlord exempted from liens for repairs: excluded liens for other improvements—the construction of a new building).

New Jersey. State v. Seng, 89 N.J. Super. 58, 213 A.2d 515 (Law Div. 1965), order rev'd on other grounds,

91 N.J. Super. 50, 219 A.2d 185 (App. Div. 1966) (tear gas pen-gun held not within class designated "fire-arms").State v. Rullis, 79 N.J. Super. 221, 191 A.2d 197 (App. Div. 1963).

New Mexico. American Auto. Ass'n, Inc. v. Bureau of Revenue, 88 N.M. 148, 538 P.2d 420 (Ct. App. 1975), decision rev'd on other grounds, 88 N.M. 462, 541 P.2d 967 (1975).

New York. Collins v. National Aniline Division, Allied Chemical & Dye Corp., 8 A.D.2d 900, 186 N.Y.S.2d 979 (3d Dep't 1959) (provision inCurtis v. Leavitt, 17 Barb. 309, 1853 WL 5894 (N.Y. Gen. Term 1853), judgment modified, 15 N.Y. 9, 1857 WL 7041 (1857) (prohibition against issuing bills and notes on time or for interest: excluded the issuance of bonds); Workmen's Compensation Act concerning exposure to "arsenic, benzol, beryllium, zirconium, cadmium, chrome, lead or fluorine or to exposure to x-rays, radium, ionizing radiation or radioactive substances," did not apply in case of exposure to betanaphthylamine).

North Dakota. State v. Dennis, 2007 ND 87, 733 N.W.2d 241 (N.D. 2007).

Rhode Island. Tompkins v. Zoning Bd. of Review of Town of Little Compton, 2003 WL 22790829 (R.I. Super. Ct. 2003).(unpublished opinion)

Texas. City of Dallas v. Yarbrough, 399 S.W.2d 938 (Tex. Civ. App. Dallas 1966).

Utah. In re Marriage of Kunz, 2006 UT App 151, 136 P.3d 1278 (Utah Ct. App. 2006)

Vermont. Grenafege v. Department of Employment Sec., 134 Vt. 288, 357 A.2d 118 (1976).

Virginia. Tate v. Ogg, 170 Va. 95, 195 S.E. 496 (1938) (enumeration which included "any horse, mule, cattle, hog, sheep or goat" excluded turkeys).

Washington. State ex rel. Port of Seattle v. Department of Public Service, 1 Wash. 2d 102, 95 P.2d 1007 (1939) (jurisdiction over goods coming and going by water were excepted: included goods arriving or leaving by land); State v. Swanson, 116 Wash. App. 67, 65 P.3d 343 (Div. 2 2003).

West Virginia. State ex rel. City of Charleston v. Hutchinson, 154 W. Va. 585, 176 S.E.2d 691 (1970).

Hernandez, The Right of Religious Landlords to Exclude Unmarried Cohabitants: Debunking the Myth of the Tenant's "New" Clothes, 77 Neb L Rev 494 (1998); Forde, The Exclusionary Rule at Sentencing: New Life Under The Federal Sentencing Guidelines? 33 Am Crim L Rev 379 (1996); Maxson, The Applicability of Section 2462's Statute of Limitations to SEC Enforcement Suits in Light of the Remedies Act of 1990, 94 Mich L Rev 512 (1995).

LaFave and Scott, Handbook on Criminal Law § 2.2 (Pocket Part, 2003).

[FN6] **United States.** Smith v. Stevens, 77 U.S. 321, 19 L. Ed. 933, 1870 WL 12831 (1870); Ex parte McCardle, 74 U.S. 506, 19 L. Ed. 264, 1868 WL 11093 (1868); Navarro-Ayala v. Hernandez-Colon, 951 F.2d 1325, 21 Fed. R. Serv. 3d 1462 (1st Cir. 1991); U.S. v. McQuilkin, 78 F.3d 105 (3d Cir. 1996); Blackburn v. Reich, 79 F.3d 1375, 11 I.E.R. Cas. (BNA) 914 (4th Cir. 1996); Adams v. Dole, 927 F.2d 771, 6 I.E.R. Cas. (BNA) 384, 118 Lab. Cas. (CCH) P 10670 (4th Cir. 1991); Forsyth v. Barr, 19 F.3d 1527, 28 Fed. R. Serv. 3d 1371 (5th Cir. 1994); Ritchie v. Eberhart, 11 F.3d 587 (6th Cir. 1993); Matter of Cash Currency Exchange, Inc., 762 F.2d 542, 13 Bankr. Ct. Dec. (CRR) 262, 12 Collier Bankr. Cas. 2d

(MB) 1499, Bankr. L. Rep. (CCH) P 70561, 87 A.L.R. Fed. 255 (7th Cir. 1985); Matter of Chicago, M., St. P. & Pac. R. Co., 658 F.2d 1149 (7th Cir. 1981); Boudette v. Barnette, 923 F.2d 754, 18 Fed. R. Serv. 3d 1213 (9th Cir. 1991); In re Mark Anthony Const., Inc., 886 F.2d 1101, 19 Bankr. Ct. Dec. (CRR) 1391, Bankr. L. Rep. (CCH) P 73073, 89-2 U.S. Tax Cas. (CCH) P 9550, 64 A.F.T.R.2d 89-5412 (9th Cir. 1989); Complaint of McLinn, 744 F.2d 677, 1985 A.M.C. 2339 (9th Cir. 1984); Public Service Co. of Colorado v. F.E.R.C., 754 F.2d 1555 (10th Cir. 1985); Gilmere v. City of Atlanta, Ga., 774 F.2d 1495 (11th Cir. 1985); Lukens Steel Co. v. Perkins, 107 F.2d 627 (App. D.C. 1939), judgment rev'd on other grounds, 310 U.S. 113, 60 S. Ct. 869, 84 L. Ed. 1108, 1 Empl. Prac. Dec. (CCH) P 9602 (1940); Bausch & Lomb, Inc. v. U.S., 148 F.3d 1363, 20 Int'l Trade Rep. (BNA) 1321 (Fed. Cir. 1998); Johns-Manville Corp. v. U.S., 855 F.2d 1556, 35 Cont. Cas. Fed. (CCH) P 75541 (Fed. Cir. 1988); Burkey v. Ellis, 483 F. Supp. 897, 5 Fed. R. Evid. Serv. 518, 10 Envtl. L. Rep. 20305 (N.D. Ala. 1979); National Rifle Ass'n of America v. Potter, 628 F. Supp. 903, 16 Envtl. L. Rep. 20356 (D.D.C. 1986); Sierra Club v. Marsh, 639 F. Supp. 1216, 24 Env't. Rep. Cas. (BNA) 1818, 16 Envtl. L. Rep. 20976 (D. Me. 1986), judgment aff'd, 820 F.2d 513, 26 Env't. Rep. Cas. (BNA) 1017, 17 Envtl. L. Rep. 20991 (1st Cir. 1987); Boettger v. Bowen, 714 F. Supp. 272 (E.D. Mich. 1989), judgment rev'd on other grounds, 923 F.2d 1183 (6th Cir. 1991); Fay v. U S, 22 F.R.D. 28, 1962 A.M.C. 527 (E.D. N.Y. 1958); In re Chicago, Missouri and Western Ry. Co., 90 B.R. 344 (Bankr. N.D. Ill. 1988), decision rev'd on other grounds, 109 B.R. 308 (N.D. Ill. 1989), dismissed, 899 F.2d 17 (7th Cir. 1990); In re Oszajca, 199 B.R. 103, 30 U.C.C. Rep. Serv. 2d 26 (Bankr. D. Vt. 1996), order rev'd in part on other grounds, 207 B.R. 41, 32 U.C.C. Rep. Serv. 2d 930 (B.A.P. 2d Cir. 1997); Donovan v. West, 11 Vet. App. 481 (1998), reh'g granted, opinion withdrawn on other grounds, 12 Vet. App. 500 (1999).

For the view that "the maxim of statutory construction *expressio unius est exclusio alterius* ... is increasingly considered unreliable ... for it stands on the faulty premise that all possible alternative or supplemental provisions were necessarily considered and rejected by the legislature," see National Petroleum Refiners Ass'n v. F. T. C., 482 F.2d 672, 1973-1 Trade Cas. (CCH) P 74575 (D.C. Cir. 1973).

A statutory list of conditions which would disestablish an insured's right to collect on insurance was held to be exclusive. Hawkeye Chemical Co. v. St. Paul Fire & Marine Ins. Co., 510 F.2d 322 (7th Cir. 1975).

Court feels Congress gave a strong signal when it omitted travel expenses. Department of Air Force, Sacramento Air Logistics Center, McClellan Air Force Base, California v. Federal Labor Relations Authority, 877 F.2d 1036, 131 L.R.R.M. (BNA) 2864 (D.C. Cir. 1989).

If Congress had intended to incorporate sections 851(b) and (c) into section 2559 it would have done so rather than specify only section 851 (a). U.S. v. Oberle, 136 F.3d 1414, 48 Fed. R. Evid. Serv. 1175 (10th Cir. 1998).

The omission of a type of transaction from the activities requiring licensing evidences an intent by our legislature to exempt it from licensing statutes. EIE Guam Corp. v. Long Term Credit Bank of Japan, Ltd., 1998 Guam 6, 1998 WL 258452 (Guam 1998).

Repeated references to "enhancement provisions" leads to conclusion that what is not listed is excluded. U.S. v. Torres, 857 F. Supp. 168 (D.P.R. 1994), rev'd on other grounds, 50 F.3d 84 (1st Cir. 1995).

An item which is not listed in a list of exclusions is assumed to be excluded. Tang v. Reno, 77 F.3d 1194 (9th Cir. 1996); Donovan v. West, 11 Vet. App. 481 (1998), reh'g granted, opinion withdrawn on other grounds, 12 Vet. App. 500 (1999).

Reyes-Gaona v. North Carolina Growers Ass'n, 250 F.3d 861, 85 Fair Empl. Prac. Cas. (BNA) 1153, 80 Empl. Prac. Dec. (CCH) P 40550 (4th Cir. 2001); Smith v. Zachary, 255 F.3d 446 (7th Cir. 2001); U.S. v.

Juan-Manuel, 222 F.3d 480 (8th Cir. 2000).

District of Columbia Financial Responsibility and Management Authority v. Concerned Senior Citizens of Roosevelt Tenant Assoc., Inc., 129 F. Supp. 2d 13 (D.D.C. 2000); Gallo Motor Center Corp. v. Mazda Motor of America, Inc., 172 F. Supp. 2d 292 (D. Mass. 2001); U.S. v. Mills, 186 F. Supp. 2d 965 (E.D. Wis. 2002).

Scates v. Gober, 14 Vet. App. 62 (2000), aff'd as modified, 282 F.3d 1362 (Fed. Cir. 2002).

Jurczyk v. West, 17 Vet. App. 358 (2000) [This opinion will not appear in a printed volume].

H.T.E., Inc. v. Tyler Technologies, Inc., 217 F. Supp. 2d 1255 (M.D. Fla. 2002).

Aeroquip-Vickers, Inc. v. C.I.R., 347 F.3d 173, 2003-2 U.S. Tax Cas. (CCH) P 50693, 92 A.F.T.R.2d 2003-6555, 2003 FED App. 0370P (6th Cir. 2003); In re Sullivan, 254 B.R. 661, 36 Bankr. Ct. Dec. (CRR) 253, Bankr. L. Rep. (CCH) P 78306 (Bankr. D. N.J. 2000); Shoshone Indian Tribe of Wind River Reservation, Wyo. v. U.S., 58 Fed. Cl. 77, 163 O.G.R. 340 (2003); Hermes Consol., Inc. v. U.S., 58 Fed. Cl. 3 (2003), subsequent determination, 58 Fed. Cl. 409 (2003), rev'd on other grounds, 405 F.3d 1339, 15 A.L.R. Fed. 2d 755 (Fed. Cir. 2005).

Adair v. U.S., 70 Fed. Cl. 65 (2006). The statutory construction maxim of "expression unius", which requires that when some statutory provisions expressly mention a requirement, the omission of that requirement from other statutory provisions implies that the drafter intended the inclusion of the requirement in some instances but not others, it is a product of logic and common sense, and is properly applied only when it makes sense as a matter of legislative purpose. U.S. v. Olmos-Esparza, 484 F.3d 1111 (9th Cir. 2007), cert. denied, 128 S. Ct. 428, 169 L. Ed. 2d 300 (U.S. 2007); Webb v. Smart Document Solutions, LLC, 499 F.3d 1078 (9th Cir. 2007); Doe v. U.S., 74 Fed. Cl. 592, 181 L.R.R.M. (BNA) 3320, 13 Wage & Hour Cas. 2d (BNA) 203 (2007).

Alabama. Ex parte Holladay, 466 So. 2d 956 (Ala. 1985); Champion v. McLean, 266 Ala. 103, 95 So. 2d 82 (1957).

Ex parte University of South Alabama, 761 So. 2d 240 (Ala. 1999).

Alaska. McKeown v. Kinney Shoe Corp., 820 P.2d 1068, 30 Wage & Hour Cas. (BNA) 1052, 126 Lab. Cas. (CCH) P 57529 (Alaska 1991); Burrell v. Burrell, 696 P.2d 157 (Alaska 1984).

In this case the argument prevails allowing for a finding of legislative intent to prohibit unauthorized immunity agreements when the legislature has enacted a specific list of situations in which discretionary immunity in court proceedings can be granted. Surina v. Buckalew, 629 P.2d 969 (Alaska 1981).

Affiliated corporations was not included as an exemption. State, Dept. of Revenue v. Alaska Pulp America, Inc., 674 P.2d 268 (Alaska 1983).

Angnabooguk v. State, 26 P.3d 447 (Alaska 2001); John v. Baker, 982 P.2d 738 (Alaska 1999); Fund Manager, Public Safety Personnel Retirement System v. Superior Court In and For Maricopa County, 152 Ariz. 255, 731 P.2d 620 (Ct. App. Div. 1 1986)

Arkansas. Arthur v. Zearley, 320 Ark. 273, 895 S.W.2d 928 (1995); Thomas v. State, 315 Ark. 79, 864

S.W.2d 835 (1993); Watkins v. Wassell, 20 Ark. 410, 1859 WL 904 (1859).

California. Pacific Gas & Electric Co. v. County of Stanislaus, 16 Cal. 4th 1143, 69 Cal. Rptr. 2d 329, 947 P.2d 291, 1997-2 Trade Cas. (CCH) P 71996 (1997); Brown v. Kelly Broadcasting Co., 48 Cal. 3d 711, 257 Cal. Rptr. 708, 771 P.2d 406, 16 Media L. Rep. (BNA) 1625 (1989); Strang v. Cabrol, 37 Cal. 3d 720, 209 Cal. Rptr. 347, 691 P.2d 1013 (1984); County of Sonoma v. Fouche, 1994 WL 372617 (Cal. App. 1st Dist. 1994), reh'g granted, opinion not citeable, (Aug. 9, 1994) and opinion on reh'g not for publication, (Nov. 7, 1994); Strang v. Cabrol, 155 Cal. App. 3d 729, 202 Cal. Rptr. 410 (3d Dist. 1984), opinion vacated, 37 Cal. 3d 720, 209 Cal. Rptr. 347, 691 P.2d 1013 (1984); In re Fain, 145 Cal. App. 3d 540, 193 Cal. Rptr. 483 (1st Dist. 1983); Gruben v. Leebrick & Fisher, 32 Cal. App. 2d Supp. 762, 84 P.2d 1078 (App. Dep't Super. Ct. 1938).

Mejia v. Reed, 118 Cal. Rptr. 2d 415 (App. 6th Dist. 2002), as modified on denial of reh'g, (Apr. 24, 2002) and review granted and opinion superseded, 121 Cal. Rptr. 2d 373, 48 P.3d 408 (Cal. 2002) and judgment rev'd, 31 Cal. 4th 657, 3 Cal. Rptr. 3d 390, 74 P.3d 166 (2003).

People v. Oates, 32 Cal. 4th 1048, 12 Cal. Rptr. 3d 325, 88 P.3d 56 (2004); Mejia v. Reed, 31 Cal. 4th 657, 3 Cal. Rptr. 3d 390, 74 P.3d 166 (2003); In re J.W., 29 Cal. 4th 200, 126 Cal. Rptr. 2d 897, 57 P.3d 363 (2002); Big Creek Lumber Co. v. County of Santa Cruz, 10 Cal. Rptr. 3d 356 (Cal. App. 6th Dist. 2004), as modified on denial of reh'g, (Mar. 10, 2004) and review granted and opinion superseded, 14 Cal. Rptr. 3d 210, 91 P.3d 162 (Cal. 2004) and judgment rev'd, 38 Cal. 4th 1139, 45 Cal. Rptr. 3d 21, 136 P.3d 821, 36 Envtl. L. Rep. 20127 (2006), as modified, (Aug. 30, 2006).

Garcia v. San Jose Appeals Hearing Bd., 2005 WL 2403858 (Cal. App. 6th Dist. 2005), unpublished/noncitable; 137 Cal App4th 1131, 41 Cal Rptr3d 10 (2006); Bearden v. U.S. Borax, Inc., 138 Cal App4th 429, 41 Cal Rptr3d 482 (2006).

Colorado. Chism v. People, 80 P.3d 293 (Colo. 2003); Beeghly v. Mack, 20 P.3d 610 (Colo. 2001); People v. Grant, 30 P.3d 667 (Colo. Ct. App. 2000), judgment aff'd, 48 P.3d 543 (Colo. 2002).

Connecticut. The only subjective characteristic that was referred to in a statute was "viewpoint" which led the court to conclude that the legislative intent did not include all of the defendant's other subjective characteristics, including his personal perception of what is reasonable, even though that was a crucial point to be determined. State v. Ortiz, 217 Conn. 648, 588 A.2d 127 (1991).

Board of Educ. of Town and Borough of Naugatuck v. Town and Borough of Naugatuck, 70 Conn. App. 358, 800 A.2d 517, 166 Ed. Law Rep. 659 (2002), judgment rev'd in part on other grounds, 268 Conn. 295, 843 A.2d 603, 186 Ed. Law Rep. 420 (2004).

Delaware. Brice v. State, 1997 WL 524053 (Del. Super. Ct. 1997), judgment rev'd on other grounds, 704 A.2d 1176 (Del. 1998); Norman v. Goldman, 54 Del. 45, 173 A.2d 607 (Super. Ct. 1961).

If a governing body has the opportunity to veto three provisions and explicitly vetoes two of them, it should be presumed that the governing body acted intentionally and deliberately in not vetoing the third provision. DMS Properties-First, Inc. v. P.W. Scott Associates, Inc., 1999 WL 1261335 (Del. Ch. 1999) (citing Treatise), rev'd on other grounds, 748 A.2d 389 (Del. 2000); Quinn v. Keinicke, 700 A.2d 147 (Del. Super. Ct. 1996).

District of Columbia. Stevenson v. District of Columbia Bd. of Elections & Ethics, 683 A.2d 1371 (D.C. 1996); Matter of Herman, 619 A.2d 958 (D.C. 1993); McCray v. McGee, 504 A.2d 1128 (D.C. 1986).

Coburn v. Heggestad, 817 A.2d 813 (D.C. 2003).

Florida. PW Ventures, Inc. v. Nichols, 533 So. 2d 281, 98 Pub. Util. Rep. 4th (PUR) 533 (Fla. 1988); Towerhouse Condominium, Inc. v. Millman, 475 So. 2d 674 (Fla. 1985); In re Ratliff's Estate, 137 Fla. 229, 188 So. 128 (1939); Escambia County Council on Aging v. Goldsmith, 465 So. 2d 655 (Fla. Dist. Ct. App. 1st Dist. 1985).

Grant v. State, 832 So. 2d 770 (Fla. Dist. Ct. App. 5th Dist. 2002); St. John v. Coisman, 799 So. 2d 1110 (Fla. Dist. Ct. App. 5th Dist. 2001).

Georgia. Porter v. Calhoun County, 250 Ga. 566, 300 S.E.2d 143 (1983).

George L. Smith II Georgia World Congress Center Authority v. Soft Comdex, Inc., 250 Ga. App. 461, 550 S.E.2d 704 (2001).

Guam. The omission of this type of transaction from the activities requiring licensing evidences an intent by our legislature to exempt it from the licensing statutes. EIE Guam Corp. v. Long Term Credit Bank of Japan, Ltd., 1998 Guam 6, 1998 WL 258452 (Guam 1998).

Hawaii. State v. Savitz, 97 Haw. 440, 39 P.3d 567 (2002).

Illinois. County of Cook, Cermak Health Services v. Illinois State Local Labor Relations Bd., 144 Ill. 2d 326, 162 Ill. Dec. 52, 579 N.E.2d 866 (1991); People ex rel. Hansen v. Collins, 351 Ill. 551, 184 N.E. 641 (1933); Chicago & N.W.R. Co. v. Chapman, 133 Ill. 96, 24 N.E. 417 (1890) (common carrier forbidden to limit liability in its receipt: excluded special contract); Hankins v. People, 106 Ill. 628, 1883 WL 10254 (1883); People v. Gazelle, 230 Ill. App. 3d 115, 172 Ill. Dec. 151, 595 N.E.2d 214 (4th Dist. 1992); Douglas Transit, Inc. v. Illinois Commerce Com'n, 164 Ill. App. 3d 245, 115 Ill. Dec. 313, 517 N.E.2d 724 (4th Dist. 1987); Browning-Ferris Industries, Inc. of Iowa v. Illinois Pollution Control Bd., 127 Ill. App. 3d 509, 82 Ill. Dec. 362, 468 N.E.2d 1016 (3d Dist. 1984); People ex rel. Fahner v. Climatemp, Inc., 101 Ill. App. 3d 1077, 57 Ill. Dec. 416, 428 N.E.2d 1096, 1982-1 Trade Cas. (CCH) P 64463 (1st Dist. 1981).

Even though there are no negative words of prohibition or limitation. Department of Corrections v. Illinois Civil Service Com'n, 187 Ill. App. 3d 304, 134 Ill. Dec. 907, 543 N.E.2d 190 (1st Dist. 1989).

In re Detention of Lieberman, 201 Ill. 2d 300, 267 Ill. Dec. 81, 776 N.E.2d 218 (2002)People v. Ward, 326 Ill. App. 3d 897, 261 Ill. Dec. 116, 762 N.E.2d 685 (5th Dist. 2002); Norris v. National Union Fire Ins. Co. of Pittsburgh, Pa., 326 Ill. App. 3d 314, 260 Ill. Dec. 62, 760 N.E.2d 141 (1st Dist. 2001); Knolls Condominium Ass'n v. Harms, 326 Ill. App. 3d 18, 259 Ill. Dec. 924, 759 N.E.2d 985 (2d Dist. 2001), judgment rev'd on other grounds, 202 Ill. 2d 450, 269 Ill. Dec. 464, 781 N.E.2d 261 (2002); People ex rel. Klaeren v. Village of Lisle, 316 Ill. App. 3d 770, 250 Ill. Dec. 122, 737 N.E.2d 1099 (2d Dist. 2000), aff'd, 202 Ill. 2d 164, 269 Ill. Dec. 426, 781 N.E.2d 223 (2002);; Norris v. National Union Fire Ins. Co. of Pittsburgh, Pa., 326 Ill. App. 3d 314, 260 Ill. Dec. 62, 760 N.E.2d 141 (1st Dist. 2001).

Indiana. Marshall v. State, 493 N.E.2d 1317 (Ind. Ct. App. 1986).

State v. Willits, 773 N.E.2d 808 (Ind. 2002).

Iowa. City of Fort Dodge v. Janvrin, 372 N.W.2d 209 (Iowa 1985); Iowa Bankers Ass'n v. Iowa Credit Un-

ion Dept., 335 N.W.2d 439 (Iowa 1983); Wilson Food Corp. v. Cherry, 315 N.W.2d 756 (Iowa 1982); North Iowa Steel Co. v. Staley, 253 Iowa 355, 112 N.W.2d 364 (1961); Van Eaton v. Town of Sidney, 211 Iowa 986, 231 N.W. 475, 71 A.L.R. 820 (1930) (city granted power to build light plant by issuing bonds: excluded pledge warrants);

State v. Robinson, 618 N.W.2d 306, 147 Ed. Law Rep. 1076 (Iowa 2000); State v. Carpenter, 616 N.W.2d 540 (Iowa 2000); State v. Wiederien, 709 N.W.2d 538 (Iowa 2006).

Kansas. Dalke v. Allstate Ins. Co., 23 Kan. App. 2d 742, 935 P.2d 1067 (1997).

Macray v. Clubs, Inc., 32 Kan. App. 2d 711, 87 P.3d 989 (2004); State v. McIntosh, 30 Kan. App. 2d 504, 43 P.3d 837 (2002), aff'd but criticized on other grounds, 274 Kan. 939, 58 P.3d 716 (2002).

Kentucky. Schwindel v. Meade County, 113 S.W.3d 159 (Ky. 2003).

Louisiana. State v. Armstrong, 364 So. 2d 558 (La. 1978).

Filson v. Windsor Court Hotel, 907 So. 2d 723 (La. 2005).

Maryland. Office and Professional Employees Intern. Union, Local 2 (AFL-CIO) v. Mass Transit Admin., 295 Md. 88, 453 A.2d 1191 (1982); Montgomery v. State, 292 Md. 155, 438 A.2d 490 (1981); Gay Inv. Co. v. Comi, 230 Md. 433, 187 A.2d 463 (1963).

Massachusetts. Middleborough Gas & Elec. Dept. v. Town of Middleborough, 48 Mass. App. Ct. 427, 721 N.E.2d 936, 164 L.R.R.M. (BNA) 2427 (2000).

Protective Life Ins. Co. v. Sullivan, 425 Mass. 615, 682 N.E.2d 624 (1997); Construction Industries of Massachusetts v. Commissioner of Labor and Industries, 406 Mass. 162, 546 N.E.2d 367, 29 Wage & Hour Cas. (BNA) 1056, 114 Lab. Cas. (CCH) P 56188 (1989); Donaldson v. Boston Herald-Traveler Corp., 347 Mass. 274, 197 N.E.2d 671 (1964); Universal Mach. Co. v. Alcoholic Beverages Control Com'n, 301 Mass. 40, 16 N.E.2d 53 (1938) (power to license granted: excluded regulation over sale of alcoholic beverages);

Cox v. T.S. Truck Services, Inc., 19 Mass. L. Rptr. 695, 2005 WL 2373865 (Mass. Super. Ct. 2005); Carey v. New England Organ Bank, 446 Mass. 270, 843 N.E.2d 1070 (2006).

Michigan. LaGuire v. Kain, 440 Mich. 367, 487 N.W.2d 389 (1992); Feld v. Robert & Charles Beauty Salon, 435 Mich. 352, 459 N.W.2d 279 (1990); Van Sweden v. Van Sweden, 250 Mich. 238, 230 N.W. 191 (1930); Marshall v. Wabash Ry. Co., 201 Mich. 167, 167 N.W. 19, 8 A.L.R. 435 (1918) (preference given over "judgments, executions or attachments": excluded mortgage liens); U.S. Fidelity & Guar. Co. v. Amerisure Ins. Co., 195 Mich. App. 1, 489 N.W.2d 115 (1992); Williams v. Coleman, 194 Mich. App. 606, 488 N.W.2d 464 (1992); People v. Adair, 184 Mich. App. 703, 458 N.W.2d 666 (1990); Elliott v. Genesee County, 166 Mich. App. 11, 419 N.W.2d 762 (1988); Hoerstman General Contracting, Inc. v. Hahn, 474 Mich. 66, 711 N.W.2d 340, 59 U.C.C. Rep. Serv. 2d 308 (2006).

Minnesota. Walser Auto Sales, Inc. v. City of Richfield, 635 N.W.2d 391 (Minn. Ct. App. 2001), decision aff'd, 644 N.W.2d 425 (Minn. 2002).

Mississippi. Koch & Dryfus v. Bridges, 45 Miss. 247, 1871 WL 3986 (1871).

Missouri. Harrison v. MFA Mut. Ins. Co., 607 S.W.2d 137 (Mo. 1980); Giloti v. Hamm-Singer Corp., 396 S.W.2d 711 (Mo. 1965).

The maxim should be used with great care. Pippins v. City of St. Louis, 823 S.W.2d 131 (Mo. Ct. App. E.D. 1992).

Montana. Reed v. Reed, 130 Mont. 409, 304 P.2d 590 (1956).

Nebraska. Nebraska City Ed. Ass'n v. School Dist. of Nebraska City, in Otoe County, 201 Neb. 303, 267 N.W.2d 530, 98 L.R.R.M. (BNA) 3228 (1978); Calvary Baptist Church v. Coonrad, 163 Neb. 25, 77 N.W.2d 821 (1956); In re Shirley's Estate, 162 Neb. 613, 76 N.W.2d 749 (1956).

Pfizer Inc. v. Lancaster County Bd. of Equalization, 260 Neb. 265, 616 N.W.2d 326 (2000).

State v. Brouillette, 265 Neb. 214, 655 N.W.2d 876 (2003).

New Hampshire. Cowan v. Tyrolean Ski Area, Inc., 127 N.H. 397, 506 A.2d 690 (1985); Silva v. Botsch, 120 N.H. 600, 420 A.2d 301 (1980); Matter of Gamble, 118 N.H. 771, 394 A.2d 308 (1978).

New Jersey. New Jersey Sports and Exposition Authority v. Cariddi, 84 N.J. 102, 417 A.2d 529 (1980); Housing Authority of City of Wildwood v. Williams, 263 N.J. Super. 561, 623 A.2d 318 (Law Div. 1993); State v. Jersey Carting, Inc., 259 N.J. Super. 130, 611 A.2d 677 (Law Div. 1992).

Under the expressio unius doctrine, it is generally held that where the legislature makes express mention of one thing, the exclusion of others is implied. Shapiro v. Essex County Bd. of Chosen Freeholders, 177 N.J. Super. 87, 424 A.2d 1203 (Law Div. 1980), judgment aff'd, 183 N.J. Super. 24, 443 A.2d 219 (App. Div. 1982), judgment aff'd, 91 N.J. 430, 453 A.2d 158 (1982).

As the reference to minimum parole eligibility terms comes in statutory sections that deal with fixed terms, it is clear that the legislative intention was to exclude mandatory minimum parole eligibility terms where an indeterminate term is imposed. State v. Groce, 183 N.J. Super. 168, 443 A.2d 736 (App. Div. 1982).

Elizabeth Bd. of Educ. v. New Jersey Transit Corp., 342 N.J. Super. 262, 776 A.2d 821, 155 Ed. Law Rep. 1249 (App. Div. 2001).

Prunetti v. Mercer County Bd. of Chosen Freeholders, 350 N.J. Super. 72, 794 A.2d 278 (Law Div. 2001).

New Mexico. State v. Yarborough, 1996-NMSC-068, 122 N.M. 596, 930 P.2d 131 (1996).

The state legislature has enacted comprehensive statutory provisions declaring certain types of conduct to be against public policy; this evinces a desire upon the part of the legislature to restrict the right of termination by an employer of an employee only in those areas specifically covered by legislative declaration. Bottijliso v. Hutchison Fruit Co., 96 N.M. 789, 635 P.2d 992, 118 L.R.R.M. (BNA) 3095 (Ct. App. 1981) (disapproved of on other grounds by, Michaels v. Anglo American Auto Auctions, Inc., 117 N.M. 91, 869 P.2d 279, 9 I.E.R. Cas. (BNA) 420 (1994)).

State v. Tower, 133 N.M. 32, 2002-NMCA-109, 59 P.3d 1264 (Ct. App. 2002).

New York. City of New York v. New York Telephone Co., 108 A.D.2d 372, 489 N.Y.S.2d 474 (1st Dep't

1985); People v. Mastrodonato, 136 Misc. 2d 854, 519 N.Y.S.2d 497 (Sup 1987), judgment aff'd, 142 A.D.2d 464, 536 N.Y.S.2d 722 (4th Dep't 1988), judgment aff'd, 75 N.Y.2d 18, 550 N.Y.S.2d 580, 549 N.E.2d 1151 (1989) and judgment aff'd, 142 A.D.2d 460, 536 N.Y.S.2d 603 (4th Dep't 1988), judgment aff'd, 75 N.Y.2d 18, 550 N.Y.S.2d 580, 549 N.E.2d 1151 (1989); Matter of Amy Beth G., 136 Misc. 2d 85, 517 N.Y.S.2d 848 (Fam. Ct. 1987); National Superlease, Inc. v. Reliance Ins. Co. of New York, 126 Misc. 2d 988, 484 N.Y.S.2d 776 (Sup 1985), order aff'd, 123 A.D.2d 608, 507 N.Y.S.2d 16 (2d Dep't 1986).

People v. Ceasar, 188 Misc. 2d 219, 727 N.Y.S.2d 258 (Sup 2001).

North Carolina. In re Miller, 357 N.C. 316, 584 S.E.2d 772 (2003); Campbell v. First Baptist Church of City of Durham, 298 N.C. 476, 259 S.E.2d 558 (1979).

North Dakota. State v. Dennis, 2007 ND 87, 733 N.W.2d 241 (N.D. 2007).

Ohio. Independent Ins. Agents of Ohio, Inc. v. Fabe, 63 Ohio St. 3d 310, 587 N.E.2d 814 (1992); Fort Hamilton-Hughes Memorial Hosp. Center v. Southard, 12 Ohio St. 3d 263, 466 N.E.2d 903 (1984); Weirick v. Mansfield Lumber Co., 96 Ohio St. 386, 117 N.E. 362 (1917) (statute required return order to state the thing attached, and the owner: excluded necessity of stating that it was served on the owner); Board of Educ., Erie County School Dist. v. Rhodes, 17 Ohio App. 3d 35, 477 N.E.2d 1171, 24 Ed. Law Rep. 1245 (10th Dist. Franklin County 1984).

Oklahoma. State v. Cline, 1958 OK CR 21, 322 P.2d 208 (Okla. Crim. App. 1958).

Patterson v. Beall, 2000 OK 92, 19 P.3d 839 (Okla. 2000).

Oregon. Gold v. Secretary of State, 106 Or. App. 573, 809 P.2d 1334 (1991).

The clear implication of the Condominium Act is that kinds of "interests or estates" specifically set out are the only ones covered by the statute. Royal Aloha Partners v. Real Estate Div., 59 Or. App. 564, 651 P.2d 1350 (1982).

Pennsylvania. Miller v. Miller, 44 Pa. 170, 1863 WL 4775 (1863). "Where a remedy or method of procedure is provided by an act of assembly, the directions of such act must be strictly pursued and such remedy or procedure is exclusive." Gaebel v. Thornbury Tp., Delaware County, 8 Pa. Commw. 399, 303 A.2d 57 (1973).

Aronson v. Bright-Teeth Now, LLC., 2003 PA Super 187, 824 A.2d 320 (2003); Atcovitz v. Gulph Mills Tennis Club, Inc., 571 Pa. 580, 812 A.2d 1218 (2002).

Rhode Island. Terrano v. State, Dept. of Corrections, 573 A.2d 1181 (R.I. 1990); Vanni v. Vanni, 535 A.2d 1268 (R.I. 1988); Centazzo v. Centazzo, 509 A.2d 995 (R.I. 1986); Murphy v. Murphy, 471 A.2d 619 (R.I. 1984).

Blue Cross & Blue Shield of Rhode Island v. McConaghy, 2001 WL 1097807 (R.I. Super. Ct. 2001).

Abad v. City of Providence, 2004 WL 2821310 (R.I. Super. Ct. 2004), aff'd, 919 A.2d 379, 181 L.R.R.M. (BNA) 3307 (R.I. 2007); Cohen v. Duncan, 2004 WL 1351155 (R.I. Super. Ct. 2004); Tompkins v. Zoning Bd. of Review of Town of Little Compton, 2003 WL 22790829 (R.I. Super. Ct. 2003).(unpublished opinion); Blais v. Revens, 2002 WL 31546103 (R.I. Super. Ct. 2002).

South Carolina. Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (Ct. App. 2002).

Tennessee. State v. Harkins, 811 S.W.2d 79 (Tenn. 1991); Opinion of Attorney General of Tennessee, 8 Op Atty Gen 292 (Tenn 1978); Sheely v. McLemore, 153 Tenn. 498, 284 S.W. 61 (1926); State v. Bilbrey, 816 S.W.2d 71 (Tenn. Crim. App. 1991);

State v. Adler, 92 S.W.3d 397 (Tenn. 2002).

Texas. Bidelspach v. State, 840 S.W.2d 516 (Tex. App. Dallas 1992), petition for discretionary review refused, (Nov. 25, 1992) and petition for discretionary review granted, (Feb. 24, 1993); Calvert v. Thompson, 472 S.W.2d 311 (Tex. Civ. App. Austin 1971), writ granted, (June 14, 1972) and judgment aff'd in part, rev'd in part on other grounds, 489 S.W.2d 95 (Tex. 1972).; Carp v. Texas State Bd. of Examiners in Optometry, 401 S.W.2d 639 (Tex. Civ. App. Dallas 1966), writ granted, (Oct. 5, 1966) and aff'd, 412 S.W.2d 307 (Tex. 1967).

Commission for Lawyer Discipline v. Denisco, 132 S.W.3d 211 (Tex. App. Houston 14th Dist. 2004).

Abbott v. North East Independent School Dist., 212 S.W.3d 364, 216 Ed. Law Rep. 706 (Tex. App. Austin 2006).

Utah. Olson v. Salt Lake City School Dist., 724 P.2d 960 (Utah 1986).

Tustian v. Schriever, 2001 UT 84, 34 P.3d 755, 45 U.C.C. Rep. Serv. 2d 921 (Utah 2001).

In re Marriage of Kunz, 2006 UT App 151, 136 P.3d 1278 (Utah Ct. App. 2006); Duke v. Graham, 2007 UT 31, 158 P.3d 540 (Utah 2007).

Vermont. State v. Whitingham School Bd., 140 Vt. 405, 438 A.2d 394, 1 Ed. Law Rep. 905, 28 Fair Empl. Prac. Cas. (BNA) 958, 29 Empl. Prac. Dec. (CCH) P 32789 (1981).

Virginia. Offield v. Davis, 100 Va. 250, 40 S.E. 910 (1902).

Smith Mountain Lake Yacht Club, Inc. v. Ramaker, 261 Va. 240, 542 S.E.2d 392 (2001); Com. ex rel. Virginia Dept. of Corrections v. Brown, 259 Va. 697, 529 S.E.2d 96 (2000); Epps v. Com., 47 Va. App. 687, 626 S.E.2d 912 (2006), judgment aff'd, 641 S.E.2d 77 (Va. 2007).

Washington. Kreidler v. Eikenberry, 111 Wash. 2d 828, 766 P.2d 438 (1989); Washington Natural Gas Co. v. Public Utility Dist. No. 1 of Snohomish County, 77 Wash. 2d 94, 459 P.2d 633, 1970 Trade Cas. (CCH) P 73083, 82 Pub. Util. Rep. 3d (PUR) 44 (1969); State v. Roadhs, 71 Wash. 2d 705, 430 P.2d 586 (1967); Bradley v. Department of Labor and Industries, 52 Wash. 2d 780, 329 P.2d 196 (1958).

Solicitation to deliver cocaine was not an offense under the Uniform Controlled Substances Act and was not subject to the Act's sentence doubling provision for prior drug convictions. In re Hopkins, 137 Wash. 2d 897, 976 P.2d 616 (1999).

State v. Swanson, 116 Wash. App. 67, 65 P.3d 343 (Div. 2 2003); State v. Baldwin, 109 Wash. App. 516, 37 P.3d 1220 (Div. 3 2001); State v. M.R.C., 98 Wash. App. 52, 989 P.2d 93 (Div. 2 1999), as amended, (Dec. 3, 1999).

West Virginia. State ex rel. Riffle v. Ranson, 195 W. Va. 121, 464 S.E.2d 763 (1995); Ratcliff v. State Compensation Com'r, 146 W. Va. 920, 123 S.E.2d 829 (1962).

A contrast must be made between what is expressed and what is impliedly omitted. Committee On Legal Ethics of West Virginia State Bar v. Roark, 181 W. Va. 260, 382 S.E.2d 313 (1989).

State ex rel. Stanley v. Sine, 215 W. Va. 100, 594 S.E.2d 314 (2004).

Wisconsin. State ex rel Deer Lk. Improvement Assn v. Polk Cty Bd of Adjustment, 104 Wis. 2d 743, 314 N.W.2d 363 (Ct. App. 1981); State v. Derenne, 98 Wis. 2d 749, 297 N.W.2d 515 (Ct. App. 1980), decision rev'd on other grounds, 102 Wis. 2d 38, 306 N.W.2d 12 (1981); Gottlieb v. City of Milwaukee, 90 Wis. 2d 86, 279 N.W.2d 479 (Ct. App. 1979); Foster v. State, 70 Wis. 2d 12, 233 N.W.2d 411 (1975) (citing text);

Tri-Tech Corp. of America v. Americomp Services, Inc., 247 Wis. 2d 317, 2001 WI App 191, 633 N.W.2d 683 (Ct. App. 2001), decision rev'd, 2002 WI 88, 254 Wis. 2d 418, 646 N.W.2d 822 (2002).

Wyoming. Town of Pine Bluffs v. State Bd. of Equalization, 79 Wyo. 262, 333 P.2d 700 (1958).

Hernandez, The Right of Religious Landlords to Exclude Unmarried Cohabitants: Debunking the Myth of the Tenant's "New" Clothes, 77 Neb L Rev 494 (1998); Williams, Expressio Unius Est Exclusio Alterius, 15 Marq L Rev 185 (1931); Posner, Statutory Construction—In the Classroom and in the Courtroom, 50 U Chi L Rev 800, 813 (1983); Sinclair, Law and Language: The Role of Pragmatics in Statutory Interpretation, 46 U Pitt L Rev 373, 414 (1985); Burney, The Interaction of the Division Order and the Lease Royalty Clause, 28 St Mary's L J 353 (1997); Jorgensen, The Practical Power of State and Local Governments to Enforce Federal Immigration Laws, 1997 B Y U L Rev 899 (1997); Warner, Of Grinches, Alchemy and Disinterest-edness: The Commission's Magically Disappearing Conflicts of Interest, 5 Am Bankr Inst L Rev 423 (1997); Ward, Enlarging an Employer's Fiduciary Hat: Varity Corp. v. Howe Increases Employers'; Exposure to Liability When They Act as ERISA Fiduciaries, 34 Hous L Rev 1195 (1997); Shelley, Kipel, Talbot & Marino, The Standard of Review Applied the United States Court of Appeals for the Federal Circuit in International Trade and Customs Cases, 45 American U L Rev 1749 (1996); Barry, The District of Columbia's Joint Custody Presumption: Misplaced Blame and Simplistic Solutions, 46 Catholic U L Rev 767 (1997); McFarland, Lewis v. United States: A Requiem for Aggregation, 46 Catholic U L Rev 1057 (1997); Cordray, Evidence Rule 806 and the Problem of Impeaching the Nontestifying Declarant, 56 Ohio St L J 495, 533 (1995); Dooley, An Implied Right of Contribution Under Rule 10b-5: An Essential Element of Attaining The Goals of the Securities Exchange Act of 1934, 61 Fordham L Rev S185 (1993); Forde, The Exclusionary Rule at Sentencing: New Life Under The Federal Sentencing Guidelines? 33 Am Crim L Rev 379 (1996); Gilburt, Increasing Monetary Limits for Chapter 13 Eligibility: The Effect on Tax Dischargeability, 2 Am Bankr Inst L Rev 207 (1994); Hacker, Are Trojan Horse Union Organizers "Employees"?: A New Look at Deference to the NLRB's Interpretation of NLRA Section 2(3), 93 Mich L Rev 772, 778 (1995); Maxson, The Applicability of Section 2462's Statute of Limitations to SEC Enforcement Suits in Light of the Remedies Act of 1990, 94 Mich L Rev 512 (1995); Page, Premarital Consent to Waiver of Spousal Pension Benefits: A Proposal to Equalize Prenuptial "I Do" and Postnuptial "I Do," 47 Wash U J Urb & Contemp L 157 (1995); Reilly, Constitutional Limits on New Mexico's In Vitro Fertilization Law, 24 NM L Rev 125 (1994); Salcido, Screening Out Unworthy Whistleblower Actions: An Historical Analysis of the Public Disclosure Jurisdictional Bar to Qui Tam Actions Under the False Claims Act, 24 Pub Cont L J 237 (1995).

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[FN7] **United States.** Barnhart v. Peabody Coal Co., 537 U.S. 149, 123 S. Ct. 748, 154 L. Ed. 2d 653, 29 Employee Benefits Cas. (BNA) 2089 (2003); Under the doctrine of expression unius est exclusio alterius, when a statute limits a thing to be done in a particular mode it includes the negative of any other mode. Diaz v. Paragon Motors of Woodside, Inc., 424 F. Supp. 2d 519 (E.D. N.Y. 2006).

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Broida, A Guide to Merit Systems Protection Board Law & Practice, CH 10. Reductions in Force, I. The RIF Process, B. Actions Appealable as RIF, MSPBG CH 10, I, B, 1 (2006).

[FN8] **United States.** Foxgord v. Hischemoeller, 820 F.2d 1030 (9th Cir. 1987); Fiat Motors of North America, Inc. v. Mayor and Council of City of Wilmington, 619 F. Supp. 29 (D. Del. 1985), certified question answered, 498 A.2d 1062 (Del. 1985).

Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A., 530 U.S. 1, 120 S. Ct. 1942, 147, 147 L. Ed. 2d 1, 36 Bankr. Ct. Dec. (CRR) 38, 43 Collier Bankr. Cas. 2d (MB) 861, Bankr. L. Rep. (CCH) P 78183 (2000).

In re McLeroy, 250 B.R. 872, 44 Collier Bankr. Cas. 2d (MB) 864, Bankr. L. Rep. (CCH) P 78221 (N.D. Tex. 2000); In re Concord Marketing, Inc., 268 B.R. 415, 38 Bankr. Ct. Dec. (CRR) 148, 47 Collier Bankr. Cas. 2d (MB) 358 (Bankr. D. N.J. 2001).

In re Hansen, 332 B.R. 8, Bankr. L. Rep. (CCH) P 80403 (B.A.P. 10th Cir. 2005).

Alaska. Gore v. Schlumberger Ltd., 703 P.2d 1165, 27 Wage & Hour Cas. (BNA) 591 (Alaska 1985).

In a statute the expression of one or more items of a class and the exclusion of other items of the same class imply the legislative intent to exclude those items not so included. Southwestern Iron and Steel Industries, Inc. v. State, 123 Ariz. 78, 597 P.2d 981 (1979); Blank v. State, 142 P.3d 1210 (Alaska Ct. App. 2006).

California. In re Fain, 145 Cal. App. 3d 540, 193 Cal. Rptr. 483 (1st Dist. 1983); Opinion of Attorney General of California, 62 Op Atty Gen 233 (Cal 1979).

Florida. Department of Professional Regulation, Bd. of Professional Engineers v. Florida Soc. of Professional Land Surveyors, 475 So. 2d 939 (Fla. Dist. Ct. App. 1st Dist. 1985).

Illinois. Dick v. Roberts, 8 Ill. 2d 215, 133 N.E.2d 305 (1956).

Indiana. State v. Grant Superior Court, 202 Ind. 197, 209, 172 N.E. 897, 901, 71 A.L.R. 1354 (1930).

Iowa. City of Fort Dodge v. Janvrin, 372 N.W.2d 209 (Iowa 1985).

Maryland. Annapolis Market Place, L.L.C. v. Parker, 369 Md. 689, 802 A.2d 1029 (2002).

Michigan. Feld v. Robert & Charles Beauty Salon, 435 Mich. 352, 459 N.W.2d 279 (1990); Williams v. Coleman, 194 Mich. App. 606, 488 N.W.2d 464 (1992); Taylor v. Michigan Public Utilities Commission, 217 Mich. 400, 186 N.W. 485 (1922). "It is a rule of statutory and constitutional interpretation that, where a restriction is not general but is provided in a specific instance, such application of the specific instance will not be carried into other statements which do not provide such limitations."

Missouri. Brown v. Morris, 365 Mo. 946, 290 S.W.2d 160 (1956).

Montana. State ex rel. Jones v. Giles, 168 Mont. 130, 541 P.2d 355 (1975); Farmers Alliance Mut. Ins. Co. v. Holeman, 278 Mont. 274, 924 P.2d 1315 (1996).

New Mexico. Jicarilla Apache Tribe v. Board of County Com'rs, County of Rio Arriba, 118 N.M. 550, 883 P.2d 136 (1994).

Rhode Island. Orthopedic Specialists, Inc. v. Great Atlantic & Pac. Tea Co., Inc., 120 R.I. 378, 388 A.2d 352 (1978).

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[FN9] **United States.** Boyer v. West, 210 F.3d 1351 (Fed. Cir. 2000); Beverly Enterprises, Inc. v. Herman, 119 F. Supp. 2d 1, 19 O.S.H. Cas. (BNA) 1161 (D.D.C. 2000); Rinehart v. Rinehart, 2000 Guam 14, 2000 WL 362426 (Guam 2000); Marfork Coal Co. v. Weis, 251 Fed. Appx. 229 (4th Cir. 2007).

Connecticut. Chairman, Criminal Justice Com'n v. Freedom of Information Com'n, 217 Conn. 193, 585 A.2d 96, 18 Media L. Rep. (BNA) 2075 (1991).

Florida. St. John v. Coisman, 799 So. 2d 1110 (Fla. Dist. Ct. App. 5th Dist. 2001).

Kentucky. Palmer v. Com., 3 S.W.3d 763 (Ky. Ct. App. 1999).

New Mexico. Fernandez v. Espanola Public School Dist., 135 N.M. 677, 2004-NMCA-068, 92 P.3d 689, 189 Ed. Law Rep. 391 (Ct. App. 2004), aff'd, 2005-NMSC-026, 138 N.M. 283, 119 P.3d 163 (2005).

Ohio. Elder v. Fischer, 129 Ohio App. 3d 209, 717 N.E.2d 730 (1st Dist. Hamilton County 1998).

Oregon. State ex rel. City of Powers v. Coos County Airport Dist., 201 Or. App. 222, 119 P.3d 225 (2005), review denied, 341 Or. 197, 140 P.3d 580 (2006).

[FN10] **United States.** Goldman v. First Federal Sav. and Loan Ass'n of Wilmette, 518 F.2d 1247 (7th Cir. 1975); Seltzer v. Office of Personnel Management, 833 F.2d 975 (Fed. Cir. 1987).

Delaware. Quinn v. Keinicke, 700 A.2d 147 (Del. Super. Ct. 1996).

Michigan. Feld v. Robert & Charles Beauty Salon, 435 Mich. 352, 459 N.W.2d 279 (1990); Williams v. Coleman, 194 Mich. App. 606, 488 N.W.2d 464 (1992).

[FN11] **Delaware.** Public Service Com'n v. Diamond State Telephone Co., 468 A.2d 1285 (Del. 1983).

Illinois. Freeman United Coal Min. Co. v. Industrial Com'n, 308 Ill. App. 3d 578, 241 Ill. Dec. 854, 720 N.E.2d 309 (5th Dist. 1999).

Nebraska. Although the practice of chiropractic is a skilled profession, a chiropractor is not licensed to practice medicine. Nelsen v. Grzywa, 9 Neb. App. 702, 618 N.W.2d 472 (2000).

[FN12] **United States.** ITT World Communications, Inc. v. F.C.C., 699 F.2d 1219 (D.C. Cir. 1983), judgment rev'd on other grounds, 466 U.S. 463, 104 S. Ct. 1936, 80 L. Ed. 2d 480, 10 Media L. Rep. (BNA) 1685 (1984); Kaczynski v. Draper Printing, 848 F. Supp. 1060 (D. Mass. 1994).

[FN13] **United States.** Gold Line Refining, Ltd. v. U.S., 54 Fed. Cl. 285 (2002) (abrogated on other grounds by, Tesoro Hawaii Corp. v. U.S., 405 F.3d 1339, 15 A.L.R. Fed. 2d 755 (Fed. Cir. 2005)).

Alaska. The exclusion of absent remedies is to be inferred from the inclusion of specific remedies. Sprague v. State, 590 P.2d 410 (Alaska 1979).

Illinois. Heifner v. Board of Ed. of Morris Community High School Dist. No. 101, Grundy County, 32 Ill. App. 3d 83, 335 N.E.2d 600 (3d Dist. 1975).

Iowa. State v. Carpenter, 616 N.W.2d 540 (Iowa 2000); State v. Wiederien, 709 N.W.2d 538 (Iowa 2006).

Michigan. Under a statute that expressly forbids a reduction in rank of a policeman or fireman except for cause, reduction for reasons of economy is not allowed. Greenslait v. City of Taylor, 137 Mich. App. 536, 358 N.W.2d 30 (1984).

Powers, The Copyright Act of 1976 and Prejudgment Interest, 94 Mich L Rev 1326 (1996).

[FN14] **United States.** Keams v. Tempe Technical Institute, Inc., 39 F.3d 222, 95 Ed. Law Rep. 513 (9th Cir. 1994); U.S. v. Castro, 837 F.2d 441 (11th Cir. 1988).

It is a product of logic and common sense properly applied only when it makes sense as a matter of legislative purpose. U.S. v. Bert, 292 F.3d 649 (9th Cir. 2002).

H.T.E., Inc. v. Tyler Technologies, Inc., 217 F. Supp. 2d 1255 (M.D. Fla. 2002).

California. Fields v. Eu, 18 Cal. 3d 322, 134 Cal. Rptr. 367, 556 P.2d 729 (1976).

Connecticut. Hallenbeck v. St. Mark The Evangelist Corp., 29 Conn. App. 618, 616 A.2d 1170 (1992).

District of Columbia. Matter of Herman, 619 A.2d 958 (D.C. 1993).

Florida. Smalley Transp. Co. v. Moed's Transfer Co., 373 So. 2d 55 (Fla. Dist. Ct. App. 1st Dist. 1979); Grant v. State, 832 So. 2d 770 (Fla. Dist. Ct. App. 5th Dist. 2002).

Idaho. Union Pacific R. Co. v. Board of Tax Appeals, 103 Idaho 808, 654 P.2d 901 (1982).

Illinois. In re Marriage of Thornton, 89 Ill. App. 3d 1078, 45 Ill. Dec. 612, 412 N.E.2d 1336, 27 A.L.R.4th 1013 (1st Dist. 1980); In re Detention of Lieberman, 201 Ill. 2d 300, 267 Ill. Dec. 81, 776 N.E.2d 218 (2002); People ex rel. Klaeren v. Village of Lisle, 316 Ill. App. 3d 770, 250 Ill. Dec. 122, 737 N.E.2d 1099 (2d Dist. 2000), aff'd, 202 Ill. 2d 164, 269 Ill. Dec. 426, 781 N.E.2d 223 (2002).

New Jersey. Hanover Ins. Co. v. Borough of Atlantic Highlands, 310 N.J. Super. 599, 709 A.2d 328 (Law Div. 1997), aff'd, 310 N.J. Super. 568, 709 A.2d 236 (App. Div. 1998); Elizabeth Bd. of Educ. v. New Jersey Transit Corp., 342 N.J. Super. 262, 776 A.2d 821, 155 Ed. Law Rep. 1249 (App. Div. 2001).

Oregon. Gold v. Secretary of State, 106 Or. App. 573, 809 P.2d 1334 (1991); AT & T Communications of the Pacific Northwest, Inc. v. City of Eugene, 177 Or. App. 379, 35 P.3d 1029 (2001).

South Carolina. State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (Ct. App. 2002).

West Virginia. State v. Euman, 210 W. Va. 519, 558 S.E.2d 319 (2001).

Hacker, Are Trojan Horse Union Organizers "Employees"?: A New Look at Deference to the NLRB's Interpretation of NLRA Section 2(3), 93 Mich L Rev 772, 778 (1995).

Bain & Colella, Interpreting Federal Statutes of Limitations, 37 Creighton L. Rev. 493 (2004).

[FN15] Wendel, Professionalism as Interpretation, 99 NW U L Rev 1167 (2005). The key to interpretation is to ascertain and effectuate legislative intent as expressed in the statute. U.S. v. One "Piper" Aztec "F" De Luxe Model 250 PA 23 Aircraft Bearing Serial No. 27-7654057, 321 F.3d 355 (3d Cir. 2003); United States. U.S. v. One Parcel of Land in Name of Mikell, 33 F.3d 11 (5th Cir. 1994); U.S. v. One 1997 Toyota Land Cruiser, 248 F.3d 899 (9th Cir. 2001), as amended, (June 21, 2001); U.S. v. One (1) 1980 Cessna 441 Conquest II Aircraft, 989 F. Supp. 1465 (S.D. Fla. 1997).

United States. U.S. v. Olmos-Esparza, 484 F.3d 1111 (9th Cir. 2007), cert. denied, 128 S. Ct. 428, 169 L. Ed. 2d 300 (U.S. 2007).

California. It is subordinate to the primary rule that the legislative intent governs the interpretation of the statute. People v. Saunders, 232 Cal. App. 3d 1592, 284 Cal. Rptr. 212 (5th Dist. 1991).

Illinois. In re Detention of Lieberman, 201 Ill. 2d 300, 267 Ill. Dec. 81, 776 N.E.2d 218 (2002).

Iowa. State v. Carpenter, 616 N.W.2d 540 (Iowa 2000).

Kansas. Dunn v. Unified School Dist. No. 367, 30 Kan. App. 2d 215, 40 P.3d 315, 161 Ed. Law Rep. 1026 (2002).

Minnesota. Walser Auto Sales, Inc. v. City of Richfield, 635 N.W.2d 391 (Minn. Ct. App. 2001), decision aff'd, 644 N.W.2d 425 (Minn. 2002).

New Jersey. The ultimate question is whether in a precise context an express provision with respect to a portion of a topic reveals by implication a decision with respect to the remainder. Elizabeth Bd. of Educ. v. New Jersey Transit Corp., 342 N.J. Super. 262, 776 A.2d 821, 155 Ed. Law Rep. 1249 (App. Div. 2001).

Washington. State v. Baldwin, 109 Wash. App. 516, 37 P.3d 1220 (Div. 3 2001).

Wisconsin. Tri-Tech Corp. of America v. Americomp Services, Inc., 247 Wis. 2d 317, 2001 WI App 191, 633 N.W.2d 683 (Ct. App. 2001), decision rev'd on other grounds, 2002 WI 88, 254 Wis. 2d 418, 646 N.W.2d 822 (2002).

Moringiello, Has Congress Slimmed Down the Hogs?: A Look at the BAPCPA Approach to Pre-Bankruptcy Planning, 15 Widener L.J. 615 (2006).

[FN16] **United States.** U.S. Dept. of Justice v. Federal Labor Relations Authority, 727 F.2d 481, 115 L.R.R.M. (BNA) 3499 (5th Cir. 1984); U.S. v. Castro, 837 F.2d 441 (11th Cir. 1988); Solano Garbage Co. v. Cheney, 779 F. Supp. 477 (E.D. Cal. 1991); In re Chicago, Missouri and Western Ry. Co., 90 B.R. 344 (Bankr. N.D. Ill. 1988), decision rev'd on other grounds, 109 B.R. 308 (N.D. Ill. 1989), dismissed, 899 F.2d 17 (7th Cir. 1990).

The maxim cannot be relied on in the face of strong evidence of a contrary legislative intent. National Ass'n of Metal Finishers v. E.P.A., 719 F.2d 624, 19 Env't. Rep. Cas. (BNA) 1785, 13 Envtl. L. Rep. 21042 (3d Cir. 1983), judgment rev'd on other grounds, 470 U.S. 116, 105 S. Ct. 1102, 84 L. Ed. 2d 90, 22 Env't. Rep. Cas. (BNA) 1305, 15 Envtl. L. Rep. 20230 (1985).

The language and judicial interpretation of section 10(b) of the Securities Exchange Act and section 12(2) of the Securities Act as well as the legislative history are strong indicia that Congress intended to preserve the section 10(b) remedy where preservation would not nullify the express remedy of section 12(2). Basile v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 551 F. Supp. 580, Fed. Sec. L. Rep. (CCH) P 99088 (S.D. Ohio 1982).

U.S. v. Vonn, 535 U.S. 55, 122 S. Ct. 1043, 152 L. Ed. 2d 90 (2002).

California. The maxim gives way to an expression of contrary legislative intent. Larcher v. Wanless, 18 Cal. 3d 646, 135 Cal. Rptr. 75, 557 P.2d 507 (1976).

Illinois. DeClerck v. Simpson, 200 Ill. App. 3d 889, 146 Ill. Dec. 271, 558 N.E.2d 234 (5th Dist. 1990),

judgment rev'd on other grounds, 143 Ill. 2d 489, 160 Ill. Dec. 442, 577 N.E.2d 767 (1991); In re Detention of Lieberman, 201 Ill. 2d 300, 267 Ill. Dec. 81, 776 N.E.2d 218 (2002).

Iowa. State v. Carpenter, 616 N.W.2d 540 (Iowa 2000).

Ohio. State v. Long, 68 Ohio App. 3d 663, 589 N.E.2d 437 (9th Dist. Medina County 1990).

Oklahoma. State ex rel. Macy v. Freeman, 1991 OK 59, 814 P.2d 147 (Okla. 1991).

Avery, Enforcing Environmental Indemnification Against a Settling Party Under CERCLA, 23 Seton Hall L Rev 872 (1993); Hacker, Are Trojan Horse Union Organizers "Employees"?: A New Look at Deference to the NLRB's Interpretation of NLRA Section 2(3), 93 Mich L Rev 772, 778 (1995).

[FN17] **Illinois.** Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

[FN18] **Massachusetts.** Durham v. Massachusetts Parole Bd., 382 Mass. 494, 416 N.E.2d 954 (1981).

[FN19] **United States.** Jones v. American Postal Workers Union, 192 F.3d 417, 9 A.D. Cas. (BNA) 1249 (4th Cir. 1999); Adams v. Dole, 927 F.2d 771, 6 I.E.R. Cas. (BNA) 384, 118 Lab. Cas. (CCH) P 10670 (4th Cir. 1991); Bausch & Lomb, Inc. v. U.S., 148 F.3d 1363, 20 Int'l Trade Rep. (BNA) 1321 (Fed. Cir. 1998); Matter of Maidman, 2 B.R. 569, 5 Bankr. Ct. Dec. (CRR) 1334 (Bankr. S.D. N.Y. 1980), subsequently aff'd, 668 F.2d 682, 5 Collier Bankr. Cas. 2d (MB) 1495, Bankr. L. Rep. (CCH) P 68498 (2d Cir. 1982).

Alaska. Thoeni v. Consumer Electronic Services, 151 P.3d 1249 (Alaska 2007).

Connecticut. Schroeder v. Triangulum Associates, 259 Conn. 325, 789 A.2d 459 (2002).

District of Columbia. Gholson v. U.S., 532 A.2d 118 (D.C. 1987).

Hawaii. Schwab v. Ariyoshi, 58 Haw. 25, 564 P.2d 135 (1977).

Illinois. Paxson v. Board of Educ. of School Dist. No. 87, Cook County, Ill., 276 Ill. App. 3d 912, 213 Ill. Dec. 288, 658 N.E.2d 1309, 105 Ed. Law Rep. 1145, 24 Media L. Rep. (BNA) 1457 (1st Dist. 1995)

Massachusetts. Connerty v. Metropolitan Dist. Com'n, 398 Mass. 140, 495 N.E.2d 840, 24 Env't. Rep. Cas. (BNA) 1974 (1986) (abrogated on other grounds by, Jean W. v. Com., 414 Mass. 496, 610 N.E.2d 305 (1993)).

[FN20] **United States.** Forrestall v. West, 17 Vet. App. 339 (2000); U.S. v. Wiltberger, 18 U.S. 76, 5 L. Ed. 37, 1820 WL 2133 (1820); Sundance Land Corp. v. Community First Federal Sav. and Loan Ass'n, 840 F.2d 653, R.I.C.O. Bus. Disp. Guide (CCH) P 6876, 1988-1 Trade Cas. (CCH) P 67924 (9th Cir. 1988); Carter v. Director, Office of Workers' Compensation Programs, U.S. Dept. of Labor, 751 F.2d 1398, 1985 A.M.C. 2404 (D.C. Cir. 1985); Feldman v. Philadelphia Nat. Bank, 408 F. Supp. 24, 18 U.C.C. Rep. Serv. 776 (E.D. Pa. 1976).

Connecticut. City of New Haven v. Whitney, 36 Conn. 373, 1870 WL 1048 (1870).

Maine. Martin v. Piscataquis Savings Bank, 325 A.2d 49 (Me. 1974).

New Jersey. The maxim is based upon the common-sense notion that generally when people say one thing they do not mean something else. New Jersey Sports and Exposition Authority v. Cariddi, 84 N.J. 102, 417 A.2d 529 (1980).

South Carolina. Home Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1937).

Wyoming. Matter of Voss' Adoption, 550 P.2d 481 (Wyo. 1976).

See Trabue v. State, 164 Ind. App. 409, 328 N.E.2d 743 (1975).

But cf. State ex rel. Curtis v. De Corps, 134 Ohio St. 295, 12 Ohio Op. 96, 16 N.E.2d 459 (1938).

[FN21] **United States.** Sharp v. Waterfront Restaurants, 16 Nat'l Disability Law Rep. P 224, 1999 WL 1095486 (S.D. Cal. 1999); In re Ben Franklin Retail Store, Inc., 227 B.R. 268, 33 Bankr. Ct. Dec. (CRR) 640 (Bankr. N.D. Ill. 1998).

Alaska. State v. Ault, 157 Ariz. 516, 759 P.2d 1320 (1988).

Connecticut. Board of Educ. of Town and Borough of Naugatuck v. Town and Borough of Naugatuck, 70 Conn. App. 358, 800 A.2d 517, 166 Ed. Law Rep. 659 (2002), judgment rev'd in part on other grounds, 268 Conn. 295, 843 A.2d 603, 186 Ed. Law Rep. 420 (2004).

Hawaii. State v. Kaakimaka, 84 Haw. 280, 933 P.2d 617 (1997); Richardson v. City and County of Honolulu, 76 Haw. 46, 868 P.2d 1193 (1994); State v. Martin, 103 Haw. 399, 83 P.3d 114 (2004), unpublished/noncitable.

New Jersey. The maxim does not apply where the listed exceptions were obviously not meant to be the only exceptions. Borough of North Haledon v. Board of Educ. of Manchester Regional High School Dist., Passaic County, 305 N.J. Super. 19, 701 A.2d 925, 122 Ed. Law Rep. 198 (App. Div. 1997).

Rhode Island. Esposito v. O'Hair, 2004 WL 877548 (R.I. Super. Ct. 2004), judgment aff'd, 886 A.2d 1197 (R.I. 2005); Kem v. Monchick, 2004 WL 144120 (R.I. Super. Ct. 2004), judgment entered, 2004 WL 5150724 (R.I. Super. Ct. 2004).

Hargrove, Soldiers of Qui Tam Fortune: Do Military Service Members Have Standing to File Qui Tam Actions Under the False Claims Act?, 34 Pub. Cont. L. J. 45 (2004).

[FN22] **California.** Metropolitan Water Dist. of Southern California v. Imperial Irr. Dist., 80 Cal. App. 4th 1403, 96 Cal. Rptr. 2d 314 (2d Dist. 2000), as modified on denial of reh'g, (June 15, 2000); If exemptions are specified in a statute courts may not imply additional exemptions unless there is a clear legislative intent to the contrary. Thomas v. Quintero, 126 Cal. App. 4th 635, 24 Cal. Rptr. 3d 619 (1st Dist. 2005), review denied, (May 11, 2005).

Ohio. State, ex rel. Coulverson v. Ohio Adult Parole Auth., 62 Ohio St. 3d 12, 577 N.E.2d 352 (1991).

[FN23] **United States.** Boston Edison Co. v. U.S. Ecology, Inc., 1996 WL 653344 (D. Mass. 1996); Hodgson v. Servomation-Ajax Co., 323 F. Supp. 1047, 19 Wage & Hour Cas. (BNA) 968, 65 Lab. Cas. (CCH) P 32466 (N.D. Miss. 1971); Herzberg v. Finch, 321 F. Supp. 1367 (S.D. N.Y. 1971); Developer's

Mortg. Co. v. TransOhio Sav. Bank, 706 F. Supp. 570, Fed. Sec. L. Rep. (CCH) P 94784 (S.D. Ohio 1989); Erickson ex rel. U.S. v. American Institute of Biological Sciences, 716 F. Supp. 908 (E.D. Va. 1989); Morris Friedman & Co. v. U.S., 69 Cust. Ct. 184, 351 F. Supp. 611 (Cust. Ct. 1 Div. 1972).

In dealing with exceptions the same rule would apply, i.e., the enumeration of one exception means that no other exceptions apply. Horner v. Andrzjewski, 811 F.2d 571 (Fed. Cir. 1987).

U.S. v. Galvan-Perez, 291 F.3d 401, 2002 FED App. 0174P (6th Cir. 2002).

Alaska. Bushnell v. Superior Court of Maricopa County, 102 Ariz. 309, 428 P.2d 987 (1967).

If a statute specifies one exception to a general rule, other exceptions are excluded. Burkett v. Mott by Maricopa County Public Fiduciary, 152 Ariz. 476, 733 P.2d 673 (Ct. App. Div. 2 1986).

California. Williams v. Los Angeles Metropolitan Transit Authority, 57 Cal. Rptr. 7 (App. 2d Dist. 1967), opinion vacated, 68 Cal. 2d 599, 68 Cal. Rptr. 297, 440 P.2d 497 (1968); Parmett v. Superior Court, 212 Cal. App. 3d 1261, 262 Cal. Rptr. 387 (6th Dist. 1989); Monarch Healthcare v. Superior Court, 78 Cal. App. 4th 1282, 93 Cal. Rptr. 2d 619 (4th Dist. 2000); People v. Galambos, 104 Cal. App. 4th 1147, 128 Cal. Rptr. 2d 844 (3d Dist. 2002).

Colorado. People v. A.W., 982 P.2d 842 (Colo. 1999); Nicholas v. People, 973 P.2d 1213 (Colo. 1999).

Illinois. Howlett v. Doglio, 402 Ill. 311, 83 N.E.2d 708, 6 A.L.R.2d 790 (1949) (Illinois Cent. R. Co. v. Franklin County, 387 Ill. 301, 56 N.E.2d 775 (1944) (bridge renewal order of Illinois Commerce Commission); Dramshop Act); People ex rel. Lunn v. Chicago Title & Trust Co., 409 Ill. 505, 100 N.E.2d 578 (1951).

People ex rel. Sherman v. Cryns, 203 Ill. 2d 264, 271 Ill. Dec. 881, 786 N.E.2d 139 (2003).

Iowa. Vale v. Messenger, 184 Iowa 553, 168 N.W. 281 (1918).

Where the statute contains a lengthy list of exclusions, it is not inappropriate to infer a legislative intent to exclude only those benefits specifically named. Golinvaux v. City of Dubuque, 439 N.W.2d 196 (Iowa 1989).

Kansas. State v. Showers, 34 Kan. 269, 8 P. 474 (1885).

Louisiana. State ex rel. Fitzpatrick v. Grace, 187 La. 1028, 175 So. 656 (1936).

Massachusetts. Guzman v. Board of Assessors of Oxford, 24 Mass. App. Ct. 118, 506 N.E.2d 1168 (1987).

Breneman v. Massachusetts Aeronautics Com'n, 17 Mass. L. Rptr. 485, 2004 WL 856640 (Mass. Super. Ct. 2004), judgment entered, 2004 WL 4967365 (Mass. Super. Ct. 2004).

Michigan. LaGuire v. Kain, 440 Mich. 367, 487 N.W.2d 389 (1992).

Minnesota. By specifying one exception to the statute the legislature excluded all other exceptions. Green-Glo Turf Farms, Inc. v. State, 347 N.W.2d 491 (Minn. 1984).

New Hampshire. Brahmey v. Rollins, 87 N.H. 290, 179 A. 186, 119 A.L.R. 8 (1935).

New Jersey. State Bd. of Medical Examiners v. Warren Hospital, 102 N.J. Super. 407, 246 A.2d 78 (Dist. Ct. 1968), judgment aff'd, 104 N.J. Super. 409, 250 A.2d 158 (App. Div. 1969).

North Dakota. Rheaume v. State, 339 N.W.2d 90 (N.D. 1983).

Pennsylvania. Page v. Allen, 58 Pa. 338, 346, 1868 WL 7243 (1868).

South Carolina. Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).

Tennessee. Peoples Bank & Trust Co. v. Chumbley, 174 Tenn. 581, 129 S.W.2d 213, 122 A.L.R. 936 (1939).

Virginia. Reese v. Wampler Foods, Inc., 222 Va. 249, 278 S.E.2d 870 (1981).

Washington. National Elec. Contractors Ass'n, Cascade Chapter v. Riveland, 138 Wash. 2d 9, 978 P.2d 481, 5 Wage & Hour Cas. 2d (BNA) 1322 (1999); State ex rel. Port of Seattle v. Department of Public Service, 1 Wash. 2d 102, 95 P.2d 1007 (1939).

West Virginia. Johnson v. Continental Cas. Co., 157 W. Va. 572, 201 S.E.2d 292 (1973).

Cf. Fay v. U S, 22 F.R.D. 28, 1962 A.M.C. 527 (E.D. N.Y. 1958); Hueftle v. Eustis Cemetery Ass'n, 171 Neb. 293, 106 N.W.2d 400 (1960) ("cities" does not include villages); Pennsylvania Liquor Control Board v. Publicker Commercial Alcohol Co., 347 Pa. 555, 32 A.2d 914 (1943) (license fees), withBroadbent v. Gibson, 105 Utah 53, 140 P.2d 939 (1943) (Sunday Closing Law); Layne v. Hayes, 141 W. Va. 289, 90 S.E.2d 270 (1955).

Wisconsin. Jacobson v. American Tool Companies, Inc., 222 Wis. 2d 384, 588 N.W.2d 67, 14 I.E.R. Cas. (BNA) 879, 137 Lab. Cas. (CCH) P 58582 (Ct. App. 1998).

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[FN24] State v. Tuscaloosa Building & Loan Ass'n, 230 Ala. 476, 161 So. 530, 99 A.L.R. 1019 (1935).

United States. Miller v. Consolidated Aluminum Corp., 729 F. Supp. 1154, Prod. Liab. Rep. (CCH) P 12529 (S.D. Ohio 1990); Developer's Mortg. Co. v. TransOhio Sav. Bank, 706 F. Supp. 570, Fed. Sec. L. Rep. (CCH) P 94784 (S.D. Ohio 1989).

Grand Traverse Band of Ottawa and Chippewa Indians v. U.S. Attorney For Western Dist. of Michigan, 198 F. Supp. 2d 920 (W.D. Mich. 2002), aff'd, 369 F.3d 960, 2004 FED App. 0151P (6th Cir. 2004).

California. Monarch Healthcare v. Superior Court, 78 Cal. App. 4th 1282, 93 Cal. Rptr. 2d 619 (4th Dist. 2000).

State Department of Health Services v. Superior Court, 113 Cal. Rptr. 2d 878, 87 Fair Empl. Prac. Cas. (BNA) 481 (App. 3d Dist. 2001), review granted and opinion superseded, 117 Cal. Rptr. 2d 166, 41 P.3d 1 (Cal. 2002) and judgment rev'd on other grounds, 31 Cal. 4th 1026, 6 Cal. Rptr. 3d 441, 79 P.3d 556, 92 Fair Empl. Prac. Cas. (BNA) 1712, 84 Empl. Prac. Dec. (CCH) P 41549 (2003).

Colorado. People v. Grant, 30 P.3d 667 (Colo. Ct. App. 2000), judgment aff'd, 48 P.3d 543 (Colo. 2002).

Guam. EIE Guam Corp. v. Long Term Credit Bank of Japan, Ltd., 1998 Guam 6, 1998 WL 258452 (Guam 1998).

South Carolina. Riverwoods, LLC v. County of Charleston, 349 S.C. 378, 563 S.E.2d 651 (2002); Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000).

German Evangelical Lutheran Church of Charleston v. City of Charleston, 352 S.C. 600, 576 S.E.2d 150 (2003).

[FN25] **United States.** Jurczyk v. West, 17 Vet. App. 358 (2000).

Farish for Farish v. Courion Industries, Inc., 754 F.2d 1111, 40 U.C.C. Rep. Serv. 857 (4th Cir. 1985).

California. If exemptions are specified in a statute courts may not imply additional exemptions unless there is a clear legislative intent to the contrary. Thomas v. Quintero, 126 Cal. App. 4th 635, 24 Cal. Rptr. 3d 619 (1st Dist. 2005), review denied, (May 11, 2005).

Connecticut. In a sexual assault, if penetration is not an element, the doctrine does not apply. State v. Kish, 186 Conn. 757, 443 A.2d 1274 (1982).

Florida. Grant v. State, 832 So. 2d 770 (Fla. Dist. Ct. App. 5th Dist. 2002).

Idaho. Idaho Press Club, Inc. v. State Legislature of the State, 142 Idaho 640, 132 P.3d 397, 34 Media L. Rep. (BNA) 1436 (2006).

Illinois. Rock v. Thompson, 85 Ill. 2d 410, 55 Ill. Dec. 566, 426 N.E.2d 891 (1981).

Iowa. State v. Carpenter, 616 N.W.2d 540 (Iowa 2000).

Kansas. Johnson v. General Motors Corp., 199 Kan. 720, 433 P.2d 585 (1967).

Michigan. Chesapeake & O. Ry. Co. v. Michigan Public Service Commission, 59 Mich. App. 88, 228 N.W.2d 843 (1975).

New Jersey. The maxim is inapplicable where the listed exceptions were obviously not meant to be the only exceptions. State v. M., 188 N.J. Super. 533, 457 A.2d 1237 (Law Div. 1982).

The enumeration of exclusions from the operation of the act suggests that the act should apply to all cases not specifically excluded. Central Const. Co. v. Horn, 179 N.J. Super. 95, 430 A.2d 939, 25 Wage & Hour Cas. (BNA) 995 (App. Div. 1981).

Bain & Colella, Interpreting Federal Statutes of Limitations, 37 Creighton L. Rev. 493 (2004).

[FN26] **New Jersey.** State v. M., 188 N.J. Super. 533, 457 A.2d 1237 (Law Div. 1982).

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SUTHERLAND § 47:23

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Part
V. Statutory Interpretation

Subpart
A. Principles and Policies

Chapter
46. Literal Interpretation

§ 46:5. "Whole statute" interpretation

A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section to produce a harmonious whole.[1] Thus, it is not proper to confine interpretation to the one section to be construed.[2]

It has also been held that the court will not only consider the particular statute in question, but also the entire legislative scheme of which it is a part.[3]

The "whole statute" interpretation has been expressed in a number of ways by the courts. For example, statutes must be construed to further the intent of the legislature as evidenced by the entire statutory scheme;[4] a statutory subsection may not be considered in a vacuum, but must be considered in reference to the statute as a whole and in reference to statutes dealing with the same general subject matter;[5] courts should not rely too heavily upon characterizations such as "disjunctive" or "conjunctive" forms to resolve difficult issues but should look to all parts of the statute;[6] when interpreting a statute all parts must be construed together without according undue importance to a single or isolated portion.[7] A Tennessee court has stated that the meaning of a statute is to be determined, not from special words in a single sentence or section, but from the statute as a whole and viewing the legislation in light of its general purpose.[8] If doubt or uncertainty exists as to the meaning or application of a statute's provisions the court should analyze the act in its entirety and harmonize its provisions in accordance with legislative intent and purpose.[9]

> It is always unsafe to construe a statute or contract by a process of etymological dissection, and to separate words and then apply to each, thus separated from its context, some particular definition given by lexicographers, and then to reconstruct the instrument upon the basis of these definitions. An instrument must always be construed as a whole and the particular meaning to be attached to any word or phrase is usually to be ascribed from the context, the nature of the subject matter treated and the purpose or intention of the parties who executed the contract or of the body which enacted or framed the statute or constitution.[10]

When interpreting statutes a court must both strive to implement the policy of the legislature and harmonize all provisions of the statute.[11] "Neither clinical construction nor the letter of the statute or its rhetorical framework

should be permitted to defeat its clear and definite purpose to be gathered from the whole act, compared part with part."[12]

It has also been said: "even apparently plain words, divorced from the context in which they arise and which their creators intended them to function, may not accurately convey the meaning the creators intended to impart. It is only within context that a word, any word, can communicate an idea."[13]

As said in a leading British case: "To discover the true construction of any particular clause of a statute, the first thing to be attended to, no doubt, is the actual language of the clause itself, as introduced by the preamble; second, the words or expressions which obviously are by design omitted; third, the connection of the clause with other clauses in the same statute, and the conclusions which on comparison with other clauses, may reasonably and obviously be drawn .... If the comparison of one clause with the rest of the statute makes a certain proposition clear and undoubted the act must be construed accordingly and ought to be so construed as to make it a consistent whole. If after all it turns out that that cannot be done, the construction that produces the greatest harmony and the least inconsistency is that which ought to prevail."[14]

The result is that a "clear and unambiguous" statutory provision generally has a meaning not contradicted by other language in the same act.[15] For example, the Supreme Court of the United States has said:

> Although the spirit of the instrument, especially of the Constitution, is to be respected not less than its letter yet the spirit is to be collected chiefly from its words. It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of the instrument expressly provided shall be exempt from its operation. Where words conflict with each other, where the different clauses of the instrument bear upon each other and would be inconsistent unless the nature and common import of the words be validated, interpretation becomes necessary; and to depart from the obvious meaning of words is justifiable. Yet, in most cases, the plain meaning of a provision not contradicted by any other provision in the same instrument, is not to be disregarded because we believe the framers of the 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.[16]

The presumption is that the lawmaker has a definite purpose in every enactment and has adapted and formulated the subsidiary provisions in harmony with the purpose.[17] That purpose is an implied limitation on the sense of general terms, and a touchstone for the expansion of narrower terms. This intention also affords the key to the sense and scope of minor provisions. From this assumption proceeds the cardinal rule that the general purpose, intent or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious[18] to its manifest object, and if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction.[19] As a general rule prior and later statutes dealing with the same subject matter, although in apparent conflict, should as far as reasonably possible be construed in harmony with each other to allow both to stand and to give force and effect to each.[20] Additionally, if one construction is workable and fair and the other is unworkable and unjust, the court will assume the legislature intended that which is workable and fair.[21]

Two statutory provisions containing similar or identical language are not necessarily subject to the same interpretation, as there are other interpretive factors such as the purpose and context of the legislation, and legislative history.[22] Where there is inescapable conflict between general and specific terms or provisions of a statute, the specific will prevail.[23] The Maine Supreme Judicial Court held when there is in the same statute a specific provision and also a general one, which in its most comprehensive sense would include matters embraced in a specific provision, the general provision must be understood to affect only those cases within its general language that are not within the purview of the specific provision, with the result that the specific provision controls.[24] Likewise, if the construction in pari materia leads to irreconcilable inconsistency, the later and more specific statute usually controls the earlier and more general statute.[25]

If conflict between provisions in the same act is resolvable no other way, the last provision in point of arrangement within the text of the act is given effect.[26] However, if the words in question mean different things the rule of construction does not apply.[27]

If upon examination the general meaning and object of the statute is inconsistent with the literal import of any clause or section, such clause or section must, if possible, be construed according to that general purpose.[28] However, to warrant changing the sense to accommodate it to a broader or narrower focus, the intention of the legislature must be clearly manifested.[29] In like manner, where the legislature has employed a term in one place and excluded it in another, it should not be implied where excluded.[30]

Chancellor Kent made the classic observation that: "In the exposition of a statute the intention of the lawmaker will prevail over the literal sense of the terms; and its reason and intention will prevail over the strict letter. When the words are not explicit, the intention is to be collected from the context; from the occasion and necessity of the law; from the mischief felt and the remedy in view; and the intention should be taken or presumed according to what is consistent with reason and good discretion."[31]

[FN1] **United States.** Gustafson v. Alloyd Co., Inc., 513 U.S. 561, 115 S. Ct. 1061, 131 L. Ed. 2d 1, Fed. Sec. L. Rep. (CCH) P 98,531 (1995); U.S. Nat. Bank of Oregon v. Independent Ins. Agents of America, Inc., 508 U.S. 439, 113 S. Ct. 2173, 124 L. Ed. 2d 402 (1993); Smith v. U.S., 508 U.S. 223, 113 S. Ct. 2050, 124 L. Ed. 2d 138 (1993) (overruling on other grounds recognized by, U.S. v. Regans, 125 F.3d 685 (8th Cir. 1997)); In re Public Nat Bank of New York, 278 U.S. 555, 49 S. Ct. 7, 73 L. Ed. 503 (1928), rule to show cause discharged, 278 U.S. 101, 49 S. Ct. 43, 73 L. Ed. 202 (1928); O'Connell v. Shalala, 79 F.3d 170 (1st Cir. 1996); Williams v. Poulos, 11 F.3d 271 (1st Cir. 1993); Silverman v. Eastrich Multiple Investor Fund, L.P., 51 F.3d 28 (3d Cir. 1995); Greenpeace, Inc. v. Waste Technologies Industries, 9 F.3d 1174, 37 Env't. Rep. Cas. (BNA) 1769, 24 Envtl. L. Rep. 20103 (6th Cir. 1993); Lopez v. Espy, 83 F.3d 1095 (9th Cir. 1996), as amended on denial of reh'g, (July 3, 1996); Castrejon-Garcia v. I.N.S., 49 F.3d 603 (9th Cir. 1995), opinion amended and superseded on other grounds, 60 F.3d 1359 (9th Cir. 1995); Boise Cascade Corp. v. U.S. E.P.A., 942 F.2d 1427, 33 Env't. Rep. Cas. (BNA) 1693, 22 Envtl. L. Rep. 20007 (9th Cir. 1991); Oakley v. City of Longmont, 890 F.2d 1128, 11 Employee Benefits Cas. (BNA) 2453 (10th Cir. 1989); Miami Heart Institute v. Sullivan, 868 F.2d 410, 24 Soc. Sec. Rep. Serv. 552 (11th Cir. 1989); American Federation of Government Employees, Local 2782 v. Federal Labor Relations Authority, 803 F.2d 737, 123 L.R.R.M. (BNA) 3111 (D.C. Cir. 1986); Sterling Federal Systems, Inc. v. Goldin, 16 F.3d 1177, 39 Cont. Cas. Fed. (CCH) P 76615 (Fed. Cir. 1994); Reynolds Metals Co. v. Arkansas Power & Light Co., 920 F. Supp. 991, 42 Env't. Rep. Cas. (BNA) 1847, 26 Envtl. L. Rep. 21179 (E.D. Ark. 1996); Foothill Presbyterian Hospital v. Shalala, Medicare & Medicaid 45249, 1997 WL 367227 (C.D. Cal. 1997), aff'd, 152 F.3d 1132, 58 Soc. Sec. Rep. Serv. 21 (9th Cir. 1998); Air Courier Conference of America/International Committee v. U.S. Postal Service, 762 F. Supp. 86 (D. Del. 1991), order aff'd, 959 F.2d 1213 (3d Cir. 1992); Jang v. A.M. Miller and Associates, Inc., 1996 WL 435096 (N.D. Ill. 1996), aff'd, 122 F.3d 480 (7th Cir. 1997); Federal Deposit Ins. Corp. v. Miller, 781 F. Supp. 1271 (N.D. Ill. 1991); Mundell v. Beverly Enterprises-Indiana, Inc., 778 F. Supp. 459 (S.D. Ind. 1991); Knox v. AC & S, Inc., 690 F. Supp. 752, Prod. Liab. Rep. (CCH) P 11892 (S.D. Ind. 1988); Crow v. U.S., 659 F. Supp. 556 (D. Kan. 1987); Howell Industries, Inc. v. Sharon Steel Corp., 532 F. Supp. 400, 1982-2 Trade Cas. (CCH) P 64866 (E.D. Mich. 1981); State of Nev. ex rel. Dept. of Transp. v. U.S., 925 F. Supp. 691, 43 Env't. Rep. Cas. (BNA) 1163, 26 Envtl. L. Rep. 21443 (D. Nev. 1996); Juvenile Products Mfrs. Ass'n, Inc. v. Edmisten, 568 F. Supp. 714 (E.D. N.C. 1983); U.S. v. Waste Industries, 556 F. Supp. 1301, 18 Env't. Rep. Cas. (BNA) 1521, 13 Envtl. L. Rep. 20286 (E.D. N.C. 1982), judgment rev'd on other grounds, 734 F.2d 159, 20 Env't. Rep. Cas. (BNA) 2089, 14 Envtl. L. Rep. 20461 (4th Cir. 1984); U.S. v. Allen, 605 F. Supp. 864 (W.D. Pa. 1985); U.S. v. Abreu, 940 F. Supp. 443 (D.R.I. 1996); E.E.O.C. v. Exxon Corp., 1 F. Supp. 2d 635, 8 A.D. Cas. (BNA) 53 (N.D. Tex. 1998), aff'd, 202 F.3d 755, 2000 A.M.C. 1567 (5th Cir. 2000); Abramson v. Georgetown Consulting Group, Inc., 765 F.

Supp. 255 (D.V.I. 1991), judgment aff'd, 952 F.2d 1391 (3d Cir. 1991); In re Dow Corning Corp., 215 B.R. 346, 31 Bankr. Ct. Dec. (CRR) 954, 32 Collier Bankr. Cas. 2d (MB) 151 (Bankr. E.D. Mich. 1997), opinion supplemented, 215 B.R. 526, 31 Bankr. Ct. Dec. (CRR) 1144 (Bankr. E.D. Mich. 1997); Matter of Delex Management, 155 B.R. 161, 24 Bankr. Ct. Dec. (CRR) 552, 29 Collier Bankr. Cas. 2d (MB) 125 (Bankr. W.D. Mich. 1993); In re Pulliam, 90 B.R. 241 (Bankr. N.D. Tex. 1988); Melrose Associates, L.P. v. U.S., 43 Fed. Cl. 124 (1999), opinion supplemented on other grounds, 45 Fed. Cl. 56 (1999), aff'd, 4 Fed. Appx. 936 (Fed. Cir. 2001) and aff'd, 4 Fed. Appx. 936 (Fed. Cir. 2001); Abramson v. U.S., 42 Fed. Cl. 621, 6 Wage & Hour Cas. 2d (BNA) 801 (1998); Pacific Nat. Cellular v. U.S., 41 Fed. Cl. 20 (1998); Meeks v. West, 12 Vet. App. 352 (1999), aff'd, 216 F.3d 1363 (Fed. Cir. 2000); The court held that the phrase "in receipt of or entitled to receive" have the same meaning in both sections.Hix v. West, 12 Vet. App. 138 (1999), aff'd, 225 F.3d 1377 (Fed. Cir. 2000); Wright v. Gober, 10 Vet. App. 343 (1997); Piotrowski v. Brown, 9 Vet. App. 215 (1996); Tallman v. Brown, 7 Vet. App. 453, 99 Ed. Law Rep. 467 (1995), judgment rev'd on other grounds, 105 F.3d 613, 116 Ed. Law Rep. 882 (Fed. Cir. 1997); Claro v. Brown, 6 Vet. App. 515 (1994).

Reading statute to say "based on otherwise-permissible evidence in the file" rather than "based on all evidence in the file (including old evidence)." The first stated construes each part of the statute leading to a harmonious whole interpretation. Zevalkink v. Brown, 6 Vet. App. 483 (1994), aff'd, 102 F.3d 1236 (Fed. Cir. 1996).

Contra: where different parts of a statute serve different purposes. Bituminous Coal Operators' Ass'n, Inc. v. Hathaway, 406 F. Supp. 371, 1975–1976 O.S.H. Dec. (CCH) P 20590 (W.D. Va. 1975), judgment aff'd, 547 F.2d 240, 4 O.S.H. Cas. (BNA) 1919, 1976–1977 O.S.H. Dec. (CCH) P 21422 (4th Cir. 1977).

Jones v. Principi, 16 Vet. App. 219 (2002).

Harbours Pointe of Nashotah, LLC v. Village of Nashotah, 278 F.3d 701, 32 Envtl. L. Rep. 20421 (7th Cir. 2002); Lindsey v. Tacoma-Pierce County Health Dept., 195 F.3d 1065, 28 Media L. Rep. (BNA) 1170 (9th Cir. 1999), opinion amended on other grounds, 203 F.3d 1150 (9th Cir. 2000); Devine v. Robinson, 131 F. Supp. 2d 963, 29 Media L. Rep. (BNA) 1301 (N.D. Ill. 2001); In re Handel, 253 B.R. 308, 36 Bankr. Ct. Dec. (CRR) 933 (B.A.P. 1st Cir. 2000); Berkley v. U.S., 48 Fed. Cl. 361, 80 Empl. Prac. Dec. (CCH) P 40419 (2000), rev'd on other grounds, 287 F.3d 1076, 88 Fair Empl. Prac. Cas. (BNA) 1066, 82 Empl. Prac. Dec. (CCH) P 41082 (Fed. Cir. 2002); California v. U.S., 47 Fed. Cl. 688 (2000), rev'd and remanded on other grounds, 271 F.3d 1377, 32 Envtl. L. Rep. 20360 (Fed. Cir. 2001); Chaney v. U.S., 45 Fed. Cl. 309, 84 A.F.T.R.2d 99-7137 (1999); Meeks v. West, 13 Vet. App. 40 (1999); Westberry v. West, 12 Vet. App. 510 (1999), aff'd, 255 F.3d 1377 (Fed. Cir. 2001).

Briddell v. Principi, 16 Vet. App. 267 (2002), aff'd, 409 F.3d 1356 (Fed. Cir. 2005).

U.S. v. Yarbrough, 55 M.J. 353 (C.A.A.F. 2001).

U.S. v. Graham, 305 F.3d 1094 (10th Cir. 2002).

Dersch Energies, Inc. v. Shell Oil Co., 314 F.3d 846 (7th Cir. 2002).

Loughridge v. Goodyear Tire and Rubber Co., 207 F. Supp. 2d 1187 (D. Colo. 2002).

U.S. v. Gayle, 342 F.3d 89, 196 A.L.R. Fed. 685 (2d Cir. 2003), as amended, (Jan. 7, 2004) and cert. denied, 544 U.S. 1026, 125 S. Ct. 1968, 161 L. Ed. 2d 872 (2005); PDK Laboratories Inc. v. U.S. D.E.A., 362 F.3d 786 (D.C. Cir. 2004); Wong ex rel. Leung Yuen Man v. The Boeing Co., Prod. Liab. Rep. (CCH) P

16749, 2003 WL 22078379 (N.D. Ill. 2003); Leland v. Moran, 235 F. Supp. 2d 153 (N.D. N.Y. 2002), aff'd, 80 Fed. Appx. 133 (2d Cir. 2003); Jordan v. Principi, 17 Vet. App. 261 (2003), aff'd, 401 F.3d 1296 (Fed. Cir. 2005).

U.S. v. Champlin, 388 F. Supp. 2d 1177 (D. Haw. 2005); Adair v. U.S., 70 Fed. Cl. 65 (2006); Padgett v. Nicholson, 19 Vet. App. 133 (2005), revoked in part on other grounds, 19 Vet. App. 84 (2005) and opinion withdrawn, 19 Vet. App. 334 (2005), rev'd and remanded on other grounds, 473 F.3d 1364 (Fed. Cir. 2007); Mayfield v. Nicholson, 19 Vet. App. 103 (2005), rev'd and remanded on other grounds, 444 F.3d 1328 (Fed. Cir. 2006).

Alabama. Karrh v. Board of Control of Employees' Retirement System of Alabama, 679 So. 2d 669 (Ala. 1996); McRae v. Security Pacific Housing Services, Inc., 628 So. 2d 429, 21 U.C.C. Rep. Serv. 2d 855 (Ala. 1993); Curren v. State, 620 So. 2d 739 (Ala. 1993); Sparks v. Calhoun County, 415 So. 2d 1104 (Ala. Civ. App. 1982); Baggett v. Webb, 46 Ala. App. 666, 248 So. 2d 275 (Civ. App. 1971).

Proctor v. Riley, 903 So. 2d 786, 199 Ed. Law Rep. 528 (Ala. 2004).

Skelton v. J&G, LLC, 922 So. 2d 926 (Ala. Civ. App. 2005), cert. quashed, (Aug. 19, 2005).

Alaska. Progressive Ins. Co. v. Simmons, 953 P.2d 510 (Alaska 1998); Keane v. Local Boundary Com'n, 893 P.2d 1239 (Alaska 1995); Norgord v. State ex rel. Berning, 201 Ariz. 228, 33 P.3d 1166 (Ct. App. Div. 2 2001); City of Kotzebue v. State, Dept. of Corrections, 166 P.3d 37 (Alaska 2007); Grandstaff v. State, 171 P.3d 1176 (Alaska Ct. App. 2007).

Arkansas. Thomas v. Cornell, 316 Ark. 366, 872 S.W.2d 370 (1994); State v. Brown, 283 Ark. 304, 675 S.W.2d 822 (1984); Commercial Printing Co. v. Rush, 261 Ark. 468, 549 S.W.2d 790, 2 Media L. Rep. (BNA) 1951 (1977).

Smith v. State, 352 Ark. 92, 98 S.W.3d 433 (2003).

California. Lindeleaf v. Agricultural Labor Relations Bd. (United Farm Workers of America, AFL-CIO), 215 Cal. Rptr. 776 (App. 1st Dist. 1985), review granted and opinion superseded, 219 Cal. Rptr. 25, 706 P.2d 1158 (Cal. 1985) and judgment rev'd on other grounds, 41 Cal. 3d 861, 226 Cal. Rptr. 119, 718 P.2d 106, 116 Lab. Cas. (CCH) P 56393 (1986); People v. Hull, 1 Cal. 4th 266, 2 Cal. Rptr. 2d 526, 820 P.2d 1036 (1991); People v. Anderson, 6 Cal. 3d 628, 100 Cal. Rptr. 152, 493 P.2d 880 (1972) (rejected on other grounds by, State v. Ramseur, 106 N.J. 123, 524 A.2d 188 (1987)) (re constitutional provisions); Ahern v. Livermore Union High School Dist. of Alameda County, 208 Cal. 770, 284 P. 1105 (1930); People v. Harris, 165 Cal. App. 3d 1246, 212 Cal. Rptr. 216 (1st Dist. 1985); Candlestick Properties, Inc. v. San Francisco Bay Conservation etc. Com., 11 Cal. App. 3d 557, 89 Cal. Rptr. 897, 2 Env't. Rep. Cas. (BNA) 1075, 3 Envtl. L. Rep. 20446 (1st Dist. 1970).

Legislation should be construed so as to harmonize its various elements without doing violence to its language or spirit. Wells v. Marina City Properties, Inc., 29 Cal. 3d 781, 176 Cal. Rptr. 104, 632 P.2d 217 (1981).

Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist., 90 Cal. App. 4th 64, 108 Cal. Rptr. 2d 715, 154 Ed. Law Rep. 905 (5th Dist. 2001), as modified, (June 27, 2001); Friends of Davis v. City of Davis, 83 Cal. App. 4th 1004, 100 Cal. Rptr. 2d 413 (3d Dist. 2000); Holmes v. Jones, 83 Cal. App. 4th 882, 100 Cal. Rptr. 2d 138 (2d Dist. 2000).

People v. Garrett, 92 Cal. App. 4th 1417, 112 Cal. Rptr. 2d 643 (6th Dist. 2001).

Jurcoane v. Superior Court, 93 Cal. App. 4th 886, 113 Cal. Rptr. 2d 483 (2d Dist. 2001).

People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems, Inc., 95 Cal. App. 4th 709, 116 Cal. Rptr. 2d 497 (2d Dist. 2002), as modified on other grounds, (Feb. 1, 2002) and as modified on other grounds, (Feb. 8, 2002).

Smith v. Santa Rosa Police Dept., 97 Cal. App. 4th 546, 119 Cal. Rptr. 2d 72 (1st Dist. 2002).

Colorado. Wilczynski v. People, 891 P.2d 998 (Colo. 1995); People v. White, 870 P.2d 424 (Colo. 1994); Dempsey v. Romer, 825 P.2d 44 (Colo. 1992); Bynum v. Kautzky, 784 P.2d 735 (Colo. 1989); Peoples Bank v. Banking Bd., 164 Colo. 564, 436 P.2d 681 (1968); People v. Campbell, 885 P.2d 327 (Colo. Ct. App. 1994).

Benz v. People, 5 P.3d 311 (Colo. 2000); Ryals v. St. Mary Corwin Regional Medical Center, 987 P.2d 865, 1999-1 Trade Cas. (CCH) P 72431 (Colo. Ct. App. 1999), judgment rev'd on other grounds, 10 P.3d 654 (Colo. 2000).

In re Water Rights of Double RL Co. in Uncompahgre River, Ouray County, 54 P.3d 908 (Colo. 2002).

Martinez v. People, 69 P.3d 1029 (Colo. 2003); Simpson v. Bijou Irrigation Co., 69 P.3d 50 (Colo. 2003), as modified on denial of reh'g, (May 27, 2003); Leonard v. McMorris, 63 P.3d 323, 8 Wage & Hour Cas. 2d (BNA) 740 (Colo. 2003); People v. Perea, 74 P.3d 326 (Colo. Ct. App. 2002).

Connecticut. Ferrigno v. Cromwell Development Associates, 244 Conn. 189, 708 A.2d 1371 (1998); Connecticut Light and Power Co. v. Texas-Ohio Power, Inc., 243 Conn. 635, 708 A.2d 202 (1998); Coley v. Camden Associates, Inc., 243 Conn. 311, 702 A.2d 1180 (1997); Atwood v. Regional School Dist. No. 15, 169 Conn. 613, 363 A.2d 1038 (1975); Kerin v. Goldfarb, 160 Conn. 463, 280 A.2d 143 (1971); Rosado v. Bridgeport Roman Catholic Diocesan Corp., 77 Conn. App. 690, 825 A.2d 153 (2003), judgment rev'd on other grounds, 276 Conn. 168, 884 A.2d 981 (2005); Shelby Mut. Ins. Co. v. Della Ghelfa, 3 Conn. App. 432, 489 A.2d 398 (1985), judgment aff'd, 200 Conn. 630, 513 A.2d 52 (1986); Hopkins v. Hamden Bd. of Ed., 29 Conn. Supp. 397, 289 A.2d 914 (C.P. 1971).

Delaware. George & Lynch, Inc. v. Division of Parks and Recreation, Dept. of Natural Resources and Environmental Control, 465 A.2d 345 (Del. 1983); State v. Roberts, 282 A.2d 603 (Del. 1971) (interpretation of a constitution); Dowling v. Board of Professional Counselors of Mental Health, 1996 WL 527212 (Del. Super. Ct. 1996); Second Nat. Bldg. and Loan, Inc. v. Sussex Trust Co., 508 A.2d 902 (Del. Super. Ct. 1985).

Cochran v. Supinski, 794 A.2d 1239 (Del. Ch. 2001); Friends of Paladin v. New Castle County Bd. of Adjustment, 2006 WL 3026240 (Del. Super. Ct. 2006).

District of Columbia. Cook v. Edgewood Management Corp., 825 A.2d 939 (D.C. 2003); District of Columbia v. Thompson, 593 A.2d 621 (D.C. 1991); District of Columbia v. Acme Reporting Co., 530 A.2d 708 (D.C. 1987); Howard v. Riggs Nat. Bank, 432 A.2d 701 (D.C. 1981).

Florida. City of Tampa v. Birdsong Motors, Inc., 261 So. 2d 1 (Fla. 1972) (interpretation of a constitution).

Georgia. East West Exp., Inc. v. Collins, 264 Ga. 774, 449 S.E.2d 599 (1994); Board of Trustees of Policemen's Pension Fund of Atlanta v. Christy, 246 Ga. 553, 272 S.E.2d 288 (1980) (overruled on other grounds by, Mayor and Aldermen of Savannah v. Stevens, 278 Ga. 166, 598 S.E.2d 456 (2004)); Brown v. Momar, Inc., 201 Ga. App. 542, 411 S.E.2d 718 (1991).

Ware v. DeKalb County Employee Retirement System Pension Bd., 273 Ga. 796, 546 S.E.2d 496 (2001); Anderson v. State, 261 Ga. App. 716, 583 S.E.2d 549 (2003).

Hawaii. State v. Engcabo, 71 Haw. 96, 784 P.2d 865 (1989); Pacific Ins. Co. v. Oregon Auto. Ins. Co., 53 Haw. 208, 490 P.2d 899 (1971).

State v. Guillermo, 91 Haw. 307, 983 P.2d 819 (1999).

Sierra Club v. Hawaii Tourism Authority ex rel. Board of Directors, 100 Haw. 242, 59 P.3d 877 (2002).

State v. Chun, 102 Haw. 383, 76 P.3d 935 (2003); In re Doe, 101 Haw. 220, 65 P.3d 167 (2003), as amended, (Apr. 22, 2003); Davenport v. City and County of Honolulu, 100 Haw. 297, 59 P.3d 932 (Ct. App. 2001), aff'd, 100 Haw. 481, 60 P.3d 882 (2002).

Idaho. Davaz v. Priest River Glass Co., Inc., 125 Idaho 333, 870 P.2d 1292 (1994); East Shoshone Hosp. Dist. v. Nonini, 109 Idaho 937, 712 P.2d 638 (1985); Union Pacific R. Co. v. Board of Tax Appeals, 103 Idaho 808, 654 P.2d 901 (1982); Ashley v. Department of Health and Welfare, 108 Idaho 1, 696 P.2d 353 (Ct. App. 1985).

Illinois. American Nat. Bank & Trust Co. of Chicago v. National Advertising Co., 149 Ill. 2d 14, 171 Ill. Dec. 461, 594 N.E.2d 313 (1992); Morris v. Broadview, Inc., 385 Ill. 228, 52 N.E.2d 769 (1944); Dewitt v. McHenry County, 294 Ill. App. 3d 712, 229 Ill. Dec. 278, 691 N.E.2d 388 (2d Dist. 1998); People v. Liberman, 228 Ill. App. 3d 639, 170 Ill. Dec. 139, 592 N.E.2d 575 (4th Dist. 1992); Estep v. Illinois Dept. of Public Aid, 115 Ill. App. 3d 644, 71 Ill. Dec. 402, 450 N.E.2d 1281 (1st Dist. 1983); Borg v. Village of Schiller Park Police Pension Bd., 111 Ill. App. 3d 653, 67 Ill. Dec. 395, 444 N.E.2d 631 (1st Dist. 1982), judgment aff'd, 99 Ill. 2d 376, 76 Ill. Dec. 816, 459 N.E.2d 951 (1984).

Freeman United Coal Min. Co. v. Industrial Com'n, 308 Ill. App. 3d 578, 241 Ill. Dec. 854, 720 N.E.2d 309 (5th Dist. 1999); Baksh v. Human Rights Com'n, 304 Ill. App. 3d 995, 238 Ill. Dec. 313, 711 N.E.2d 416 (1st Dist. 1999)

Doe v. Channon, 335 Ill. App. 3d 709, 269 Ill. Dec. 720, 781 N.E.2d 517 (1st Dist. 2002).

Knolls Condominium Ass'n v. Harms, 202 Ill. 2d 450, 269 Ill. Dec. 464, 781 N.E.2d 261 (2002).

Indiana. Golitko v. Indiana Dept. of Correction, 712 N.E.2d 13 (Ind. Ct. App. 1999); Becker v. Four Points Inv. Corp., 708 N.E.2d 29 (Ind. Ct. App. 1999); Detterline v. Bonaventura, 465 N.E.2d 215 (Ind. Ct. App. 1984); Meridian Mortg. Co., Inc. v. State, 182 Ind. App. 328, 395 N.E.2d 433 (1979); White v. Livengood, 181 Ind. App. 56, 390 N.E.2d 696 (1979); City of Indianapolis v. Ingram, 176 Ind. App. 645, 377 N.E.2d 877 (1978).

An injunction against depositing materials on the floodway was not a flood easement in terms of the statute. Foreman v. State ex rel. Dept. of Natural Resources, 180 Ind. App. 94, 387 N.E.2d 455 (1979).

Dreiling v. Custom Builders, 756 N.E.2d 1087 (Ind. Ct. App. 2001); Moshenek v. Anderson, 718 N.E.2d 811 (Ind. Ct. App. 1999).

Iowa. Iowa Beef Processors, Inc. v. Miller, 312 N.W.2d 530 (Iowa 1981) (overruled on other grounds by, Henriksen v. Younglove Const., 540 N.W.2d 254 (Iowa 1995)); Williams v. Osmundson, 281 N.W.2d 622 (Iowa 1979); Anderson v. Jester, 206 Iowa 452, 221 N.W. 354 (1928).

Miller v. Marshall County, 641 N.W.2d 742 (Iowa 2002); TLC Home Health Care, L.L.C. v. Iowa Dept. of Human Services, 638 N.W.2d 708 (Iowa 2002).

Kansas. Davis v. City of Leawood, 257 Kan. 512, 893 P.2d 233 (1995); Boatright v. Kansas Racing Com'n, 251 Kan. 240, 834 P.2d 368 (1992); Steele v. City of Wichita, 250 Kan. 524, 826 P.2d 1380 (1992); Capital Elec. Line Builders, Inc. v. Lennen, 232 Kan. 379, 654 P.2d 464 (1982), reh'g denied and opinion modified on other grounds, 232 Kan. 652, 658 P.2d 365 (1983); Gnadt v. Durr, 208 Kan. 783, 494 P.2d 1219 (1972); Lamb v. Kansas Parole Bd., 15 Kan. App. 2d 606, 812 P.2d 761 (1991).

Smith v. Yell Bell Taxi, Inc., 276 Kan. 305, 75 P.3d 1222 (2003); State v. Adams, 29 Kan. App. 2d 589, 30 P.3d 317 (2001).

Kentucky. Schwindel v. Meade County, 113 S.W.3d 159 (Ky. 2003); Budget Marketing, Inc. v. Com. ex rel. Stephens, 587 S.W.2d 245 (Ky. 1979).

Louisiana. Berteau v. Police Jury of Parish of Ascension, 214 La. 1003, 39 So. 2d 594 (1949); In re RLV, 484 So. 2d 206 (La. Ct. App. 1st Cir. 1986); Fisher v. Albany Mach. & Supply Co., 246 So. 2d 218 (La. Ct. App. 1st Cir. 1971), writ issued, 258 La. 905, 248 So. 2d 332 (1971) and judgment aff'd in part, rev'd in part on other grounds, 261 La. 747, 260 So. 2d 691 (1972); Hoffpauir v. City of Crowley, 241 So. 2d 67 (La. Ct. App. 3d Cir. 1970), writ denied, 257 La. 457, 242 So. 2d 578 (1971); Legros v. Conner, 212 So. 2d 177 (La. Ct. App. 3d Cir. 1968); Giles v. Breaux, 160 So. 2d 608 (La. Ct. App. 1st Cir. 1964).

Where part of the act is to be interpreted, it should be read in connection with the rest of the act and all other related laws on the same subject. Theriot v. Midland Risk Ins. Co., 694 So. 2d 184 (La. 1997).

Williams v. Abadie, 857 So. 2d 1118 (La. Ct. App. 4th Cir. 2003); Breaux v. Lafourche Parish Council, 851 So. 2d 1173 (La. Ct. App. 1st Cir. 2003), writ denied, 860 So. 2d 1163 (La. 2003); Times Picayune Pub. Corp. v. Board of Sup'rs of Louisiana State University, 845 So. 2d 599 (La. Ct. App. 1st Cir. 2003), writ denied, 852 So. 2d 1044 (La. 2003).

Maine. Small v. Gartley, 363 A.2d 724 (Me. 1976).

Maryland. Blondell v. Baltimore City Police Dept., 341 Md. 680, 672 A.2d 639 (1996); Curran v. Price, 334 Md. 149, 638 A.2d 93 (1994); Vest v. Giant Food Stores, Inc., 329 Md. 461, 620 A.2d 340 (1993); Guardian Life Ins. Co. of America v. Insurance Com'r of State of Md., 293 Md. 629, 446 A.2d 1140 (1982); Board of County Com'rs of Howard County v. Fleming, 13 Md. App. 261, 282 A.2d 512 (1971).

If reasonably possible, a statute should be construed so that no word, clause, sentence, or phrase shall be rendered surplusage, superfluous, meaningless or nugatory. Williams v. William T. Burnett & Co., Inc., 296 Md. 214, 462 A.2d 66 (1983).

Medex v. McCabe, 372 Md. 28, 811 A.2d 297 (2002).

Toler v. Motor Vehicle Admin., 373 Md. 214, 817 A.2d 229 (2003).

In ascertaining the intention of the legislature, all parts of a statute are to be read together to find the intention as to any one part and all parts are to be reconciled and harmonized, if possible. Sewell v. Norris, 148 Md. App. 122, 811 A.2d 349 (2002).

Massachusetts. Dowell v. Commissioner of Transitional Assistance, 424 Mass. 610, 677 N.E.2d 213 (1997); Singer Friedlander Corp. v. State Lottery Com'n, 423 Mass. 562, 670 N.E.2d 144 (1996); Saccone v. State Ethics Com'n, 395 Mass. 326, 480 N.E.2d 13 (1985); Walker v. Board of Appeals of Harwich, 388 Mass. 42, 445 N.E.2d 141 (1983); Baker v. Chisholm, 268 Mass. 1, 167 N.E. 321 (1929); Nercessian v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, 46 Mass. App. Ct. 766, 709 N.E.2d 1134 (1999); Wing Memorial Hospital v. Department of Public Health, 10 Mass. App. Ct. 593, 410 N.E.2d 729 (1980).

There should be internal consistency. Telesetsky v. Wight, 395 Mass. 868, 482 N.E.2d 818 (1985).

Wilson v. Commissioner Of Transitional Assistance, 441 Mass. 846, 809 N.E.2d 524 (2004); First Justice of Bristol Div. of Juvenile Court Dept. v. Clerk-Magistrate of Bristol Div. of Juvenile Court Dept., 438 Mass. 387, 780 N.E.2d 908 (2003).

Michigan. Gross v. General Motors Corp., 448 Mich. 147, 528 N.W.2d 707 (1995); Gebhardt v. O'Rourke, 444 Mich. 535, 510 N.W.2d 900 (1994); In re Forfeiture of $5,264, 432 Mich. 242, 439 N.W.2d 246, 86 A.L.R.4th 969 (1989); City of Detroit v. Detroit Police Officers Ass'n, 408 Mich. 410, 294 N.W.2d 68, 105 L.R.R.M. (BNA) 3083 (1980); Smeets v. Genesee County Clerk, 193 Mich. App. 628, 484 N.W.2d 770 (1992); Pletz v. Secretary of State, 125 Mich. App. 335, 336 N.W.2d 789 (1983); State Dept. of Treasury, Revenue Division v. Campbell, 107 Mich. App. 561, 309 N.W.2d 668 (1981).

Meaning will be given to one section of the telephone company act only after due consideration of the other sections so as to give effect to each provision and to produce a harmonious and consistent result. Ram Broadcasting of Michigan, Inc. v. Michigan Public Service Commission, 113 Mich. App. 79, 317 N.W.2d 295 (1982).

"Agency" when considered in the context of the statute indicated clearly that the legislature did not intend to have the probate court included within the definition of the word. Barry County Probate Court v. Michigan Dept. of Social Services, 114 Mich. App. 312, 319 N.W.2d 571 (1982).

G.C. Timmis & Co. v. Guardian Alarm Co., 468 Mich. 416, 662 N.W.2d 710 (2003).

Minnesota. Fichtner v. Schiller, 271 Minn. 263, 135 N.W.2d 877 (1965); Van Asperen v. Darling Olds, Inc., 254 Minn. 62, 93 N.W.2d 690 (1958); Anderson v. Commissioner of Taxation, 253 Minn. 528, 93 N.W.2d 523 (1958); Anker v. Little, 541 N.W.2d 333, Prod. Liab. Rep. (CCH) P 14504 (Minn. Ct. App. 1995).

Minnesota Equal Access Network Services v. Burlington Northern & Santa Fe R. Co., 646 N.W.2d 911 (Minn. Ct. App. 2002).

Mississippi. Pinkton v. State, 481 So. 2d 306 (Miss. 1985); McCluskey v. Thompson, 363 So. 2d 256 (Miss. 1978); State ex rel. Patterson v. Board of Sup'rs of Warren County, 233 Miss. 240, 102 So. 2d 198

(1958), adhered to, 239 Miss. 671, 123 So. 2d 695 (1960), corrected on other grounds, 239 Miss. 671, 125 So. 2d 91 (1960).

Wiltcher v. State, 785 So. 2d 1083 (Miss. Ct. App. 2001).

Missouri. Hagely v. Board of Educ. of Webster Groves School Dist., 841 S.W.2d 663, 79 Ed. Law Rep. 684 (Mo. 1992) (implied overruling on other grounds recognized by,Eminence R-1 School Dist. v. Hodge, 635 S.W.2d 10, 5 Ed. Law Rep. 303 (Mo. 1982); Phillips v. American Motorist Ins. Co., 996 S.W.2d 584 (Mo. Ct. App. W.D. 1999); State ex rel. Yarber (Clint), Minor, by His Mother and Next Friend, Yarber (Cheryl) v. McHenry (Hon. James F.), Judge of 19th Circuit Court, 1994 WL 712716 (Mo. Ct. App. W.D. 1994), transferred to Mo. S. Ct., 915 S.W.2d 325, 107 Ed. Law Rep. 361 (Mo. 1995)); Eureka Fire Protection Dist. of St. Louis County v. Hoene, 623 S.W.2d 79 (Mo. Ct. App. E.D. 1981); State v. Rife, 619 S.W.2d 900 (Mo. Ct. App. W.D. 1981); In re Dugan's Estate, 309 S.W.2d 137 (Mo. Ct. App. 1957).

State v. Johnson, 148 S.W.3d 338 (Mo. Ct. App. W.D. 2004); Missouri ex rel. Bouchard v. Grady, 86 S.W.3d 121 (Mo. Ct. App. E.D. 2002).

Nebraska. Wilson v. Misko, 244 Neb. 526, 508 N.W.2d 238 (1993); Nuzum v. Board of Educ. of School Dist. of Arnold, 227 Neb. 387, 417 N.W.2d 779 (1988); Anderson v. Peterson, 221 Neb. 149, 375 N.W.2d 901 (1985); Van Patten v. City of Omaha, 167 Neb. 741, 94 N.W.2d 664 (1959).

In re Sabrina K., 262 Neb. 871, 635 N.W.2d 727 (2001).

Gilroy v. Ryberg, 266 Neb. 617, 667 N.W.2d 544 (2003); Wilder v. Grant County School Dist. No. 0001, 265 Neb. 742, 658 N.W.2d 923, 175 Ed. Law Rep. 328 (2003); State v. Johnson, 12 Neb. App. 247, 670 N.W.2d 802 (2003), decision aff'd, 269 Neb. 507, 695 N.W.2d 165 (2005).

Nevada. Minor Girl v. Clark County Juvenile Court Services, 87 Nev. 544, 490 P.2d 1248 (1971); International Game Technology, Inc. v. Second Judicial Dist. Court of Nevada, 122 Nev. 132, 127 P.3d 1088 (2006).

New Hampshire. Comeau v. Vergato, 149 N.H. 508, 823 A.2d 764 (2003); Pandora Industries, Inc. v. State Dept. of Revenue Administration, 118 N.H. 891, 395 A.2d 1241 (1978); Plymouth School Dist. v. State Bd. of Ed., 112 N.H. 74, 289 A.2d 73 (1972).

Motion Motors, Inc. v. Berwick, 150 N.H. 771, 846 A.2d 1156 (2004).

New Jersey. State v. Sutton, 132 N.J. 471, 625 A.2d 1132 (1993); Brown v. Brown, 86 N.J. 565, 432 A.2d 493 (1981); In re Huyler, 133 N.J.L. 171, 43 A.2d 278 (N.J. Sup. Ct. 1945); Division of Youth and Family Services v. P.M., 301 N.J. Super. 80, 693 A.2d 941 (Ch. Div. 1997); State Farm Mut. Auto. Ins. Co. v. Molino, 289 N.J. Super. 406, 674 A.2d 189 (App. Div. 1996); State Farm Mut. Auto. Ins. Co. v. Crocker, 288 N.J. Super. 250, 672 A.2d 226 (App. Div. 1996); Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 622 A.2d 872 (App. Div. 1993), judgment aff'd in part, rev'd in part, 137 N.J. 71, 644 A.2d 564, 147 L.R.R.M. (BNA) 2993 (1994) and aff'd as modified on other grounds, 137 N.J. 88, 644 A.2d 573, 147 L.R.R.M. (BNA) 2999 (1994); Public Service Elec. and Gas Co. v. Rodriguez, 195 N.J. Super. 252, 478 A.2d 1231 (App. Div. 1984); Albert F. Ruehl Co. v. Board of Trustees of Schools for Indus. Ed., 85 N.J. Super. 4, 203 A.2d 410 (Law Div. 1964).

The validity of the statute in question becomes clearer when the court examines the entire statute and looks beyond the specific terms of the enabling act to the statutory policy sought to be achieved. Newark Fire-

men's Mut. Benev. Ass'n, Local No. 4 v. City of Newark, 90 N.J. 44, 447 A.2d 130, 113 L.R.R.M. (BNA) 2775 (1982).

A construction that will render any part of a statute inoperative, superfluous or meaningless, is to be avoided. Paper Mill Playhouse v. Millburn Tp., 95 N.J. 503, 472 A.2d 517, 42 A.L.R.4th 591 (1984).

In re Passaic County Utilities Authority Petition Requesting Determination of Financial Difficulty and Application for Refinancing Approval, 164 N.J. 270, 753 A.2d 661, 30 Envtl. L. Rep. 20658 (2000).

Matturri v. Board of Trustees of Judicial Retirement System, 173 N.J. 368, 802 A.2d 496 (2002).

Reck v. Director, Div. of Taxation, 345 N.J. Super. 443, 785 A.2d 476 (App. Div. 2001), judgment aff'd, 175 N.J. 54, 811 A.2d 458 (2002); Barron v. State Health Benefits Com'n, 343 N.J. Super. 583, 779 A.2d 460, 156 Ed. Law Rep. 1170 (App. Div. 2001).

DiProspero v. Penn, 183 N.J. 477, 874 A.2d 1039 (2005); In re Distribution of Liquid Assets Upon Dissolution of the Union County Regional High School Dist. No. 1, 2005 WL 2515779 (N.J. Super. Ct. App. Div. 2005), certification denied, 186 N.J. 242, 892 A.2d 1289 (2006).

New Mexico. State ex rel. Bingaman v. Valley Sav. & Loan Ass'n, 97 N.M. 8, 636 P.2d 279 (1981); State ex rel. Newsome v. Alarid, 90 N.M. 790, 568 P.2d 1236, 3 Media L. Rep. (BNA) 1129 (1977).

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New York. Gwynne v. Board of Education of Union Free School Dist. No. 3, 259 N.Y. 191, 181 N.E. 353 (1932); Steinberg v. Brookdale Hosp. Medical Center, 134 Misc. 2d 268, 510 N.Y.S.2d 797 (Sup 1986); People v. Jack Resnick & Sons, Inc., 127 Misc. 2d 1031, 487 N.Y.S.2d 988 (City Ct. 1985).

Dutchess County Dept. of Social Services ex rel. Day v. Day, 96 N.Y.2d 149, 726 N.Y.S.2d 54, 749 N.E.2d 733 (2001); Rangolan v. County of Nassau, 96 N.Y.2d 42, 725 N.Y.S.2d 611, 749 N.E.2d 178 (2001).

North Carolina. Buford v. General Motors Corp., 112 N.C. App. 437, 435 S.E.2d 782 (1993), decision rev'd on other grounds, 339 N.C. 396, 451 S.E.2d 293 (1994); Matter of Badzinski, 79 N.C. App. 250, 339 S.E.2d 80 (1986); North Carolina Bd. of Examiners for Speech and Language Pathologists and Audiologists v. North Carolina State Bd. of Educ., 77 N.C. App. 159, 334 S.E.2d 503 (1985); State v. Anderson, 57 N.C. App. 602, 292 S.E.2d 163 (1982).

North Dakota. State ex rel. Sprynczynatyk v. Mills, 523 N.W.2d 537 (N.D. 1994); Maurer v. Wagner, 509 N.W.2d 258 (N.D. 1993); Kadrmas, Lee & Jackson, P.C. v. Bolken, 508 N.W.2d 341 (N.D. 1993); Quist v. Best Western Intern., Inc., 354 N.W.2d 656 (N.D. 1984); Morton County v. Henke, 308 N.W.2d 372 (N.D. 1981); Fisher v. City of Minot, 188 N.W.2d 745 (N.D. 1971) (interpretation of constitution);

In construing statutes, it is axiomatic that the courts will look to the entire statute so as to produce a unified interpretation. Mandan Supply, Inc. v. Steckler, 244 N.W.2d 698 (N.D. 1976).

Ohio. Caldwell v. State, 115 Ohio St. 458, 4 Ohio L. Abs. 835, 154 N.E. 792 (1926); Brooks v. Ohio State Univ., 111 Ohio App. 3d 342, 676 N.E.2d 162 (10th Dist. Franklin County 1996).

Oklahoma. Donelson v. Oldfield, 1971 OK 118, 488 P.2d 1269 (Okla. 1971); Christian v. Shideler, 1963

OK 129, 382 P.2d 129 (Okla. 1963).

Oregon. Carlson v. Myers, 327 Or. 213, 959 P.2d 31 (1998); Pierce v. Allstate Ins. Co., 112 Or. App. 530, 829 P.2d 1032 (1992), decision rev'd on other grounds, 316 Or. 31, 848 P.2d 1197 (1993); State v. Moline, 104 Or. App. 173, 800 P.2d 299 (1990).

Pennsylvania. Mishoe v. Erie Ins. Co., 573 Pa. 267, 824 A.2d 1153 (2003); Daly v. Hemphill, 411 Pa. 263, 191 A.2d 835 (1963); In re Brock, 312 Pa. 92, 166 A. 785 (1933); In Interest of Jones, 286 Pa. Super. 574, 429 A.2d 671 (1981).

Rhode Island. In re Rhode Island Com'n for Human Rights, 472 A.2d 1211, 34 Fair Empl. Prac. Cas. (BNA) 1878, 39 Empl. Prac. Dec. (CCH) P 36066 (R.I. 1984).

Theta Properties v. Ronci Realty Co., Inc., 814 A.2d 907 (R.I. 2003).

South Carolina. Koenig v. South Carolina Dept. of Public Safety, 325 S.C. 400, 480 S.E.2d 98 (Ct. App. 1996).

South Dakota. State v. Nguyen, 1997 SD 47, 563 N.W.2d 120 (S.D. 1997); Koenig v. Lambert, 527 N.W.2d 903 (S.D. 1995) (overruled on other grounds by, Stratmeyer v. Stratmeyer, 1997 SD 97, 567 N.W.2d 220 (S.D. 1997)); State v. French, 509 N.W.2d 693 (S.D. 1993); Hartpence v. Youth Forestry Camp, 325 N.W.2d 292 (S.D. 1982); Matter of Silver King Mines, Permit Ex-5, 315 N.W.2d 689 (S.D. 1982), on reh'g, 323 N.W.2d 858 (S.D. 1982); Johnson v. Kusel, 298 N.W.2d 91 (S.D. 1980).

Tennessee. Medic Ambulance Service, Inc. v. McAdams, 216 Tenn. 304, 392 S.W.2d 103 (1965).

Scott v. Ashland Healthcare Center, Inc., 49 S.W.3d 281 (Tenn. 2001); Culbreath v. First Tennessee Bank Nat. Ass'n, 44 S.W.3d 518 (Tenn. 2001); McLane Co., Inc. v. State, 115 S.W.3d 925 (Tenn. Ct. App. 2002).

Texas. St. Luke's Episcopal Hosp. v. Agbor, 952 S.W.2d 503 (Tex. 1997); Taylor v. Firemen's and Policemen's Civil Service Commission of City of Lubbock, 616 S.W.2d 187 (Tex. 1981); Black v. American Bankers Ins. Co., 478 S.W.2d 434 (Tex. 1972); Firemen's and Policemen's Civil Service Commission of City of Lubbock v. Taylor, 607 S.W.2d 631 (Tex. Civ. App. Eastland 1980), judgment rev'd on other grounds, 616 S.W.2d 187 (Tex. 1981); Turullols v. San Felipe Country Club, 458 S.W.2d 206 (Tex. Civ. App. San Antonio 1970), writ refused n.r.e., (Dec. 2, 1970).

In ascertaining legislative intent, the court must examine the entire statute and not merely an isolated portion. Young v. Del Mar Homes, Inc., 608 S.W.2d 804 (Tex. Civ. App. Houston 14th Dist. 1980), writ refused n.r.e., (Mar. 11, 1981).

Power Resource Group, Inc. v. Public Utility Commission of Texas, 73 S.W.3d 354 (Tex. App.-Austin, 2002).

Guthery v. Taylor, 112 S.W.3d 715 (Tex. App. Houston 14th Dist. 2003); Dallas County Community College Dist. v. Bolton, 89 S.W.3d 707 (Tex. App. Dallas 2002), judgment rev'd on other grounds, (Dec. 2, 2005).

The construction of a statute which would make a provision a useless appendage is not favored by the law.

Strasburger Enterprises, Inc. v. TDGT Ltd. Partnership, 110 S.W.3d 566 (Tex. App. Austin 2003).

Celadon Trucking Services, Inc. v. Titan Textile Co., Inc., 130 S.W.3d 301 (Tex. App. Houston 14th Dist. 2004).

Utah. Utah Bankers Ass'n v. America First Credit Union, 912 P.2d 988 (Utah 1996); Grant v. Utah State Land Bd., 26 Utah 2d 100, 485 P.2d 1035 (1971); State v. Redd, 954 P.2d 230 (Utah Ct. App. 1998), rev'd on other grounds, 1999 UT 108, 992 P.2d 986 (Utah 1999); Ferro v. Utah Dept. of Commerce, Div. of Occupational and Professional Licensing, 828 P.2d 507, 73 Ed. Law Rep. 1149 (Utah Ct. App. 1992) (disapproved of by, King v. Industrial Com'n of Utah, 850 P.2d 1281 (Utah Ct. App. 1993)).

Anabasis, Inc. v. Labor Com'n, 2001 UT App 239, 30 P.3d 1236 (Utah Ct. App. 2001).

Stichting Mayflower Mountain Fonds v. Jordanelle Special Service Dist., 2001 UT App 257, 47 P.3d 86 (Utah Ct. App. 2001).

Miller v. Weaver, 2003 UT 12, 66 P.3d 592, 175 Ed. Law Rep. 334, 19 I.E.R. Cas. (BNA) 1671 (Utah 2003); Hansen v. Eyre, 2003 UT App 274, 74 P.3d 1182 (Utah Ct. App. 2003), aff'd, 2005 UT 29, 116 P.3d 290 (Utah 2005).

Utah Dept. of Public Safety, Driver License Div. v. Robot Aided Mfg. Center, Inc., 2005 UT App 199, 113 P.3d 1014 (Utah Ct. App. 2005); Sill v. Hart, 2007 UT 45, 162 P.3d 1099 (Utah 2007); General Security Indem. Co. of Arizona v. Tipton, 2007 UT App 109, 158 P.3d 1121 (Utah Ct. App. 2007), cert. denied, 168 P.3d 819 (Utah 2007).

Vermont. Town of Brandon v. Harvey, 105 Vt. 435, 168 A. 708 (1933).

State v. Thompson, 174 Vt. 172, 807 A.2d 454 (2002).

Virginia. Norwood v. City of Richmond, 203 Va. 886, 128 S.E.2d 425 (1962); McDaniel v. Com., 199 Va. 287, 99 S.E.2d 623 (1957).

Board of Directors v. Wachovia Bank, N.A., 266 Va. 46, 581 S.E.2d 201 (2003); Com., Dept. of Social Services, Div. of Child Support Enforcement ex rel. Gagne v. Chamberlain, 31 Va. App. 533, 525 S.E.2d 19 (2000); Epps v. Com., 47 Va. App. 687, 626 S.E.2d 912 (2006), judgment aff'd, 641 S.E.2d 77 (Va. 2007).

Washington. Donovick v. Seattle-First Nat. Bank, 111 Wash. 2d 413, 757 P.2d 1378 (1988); Washington State Human Rights Commission ex rel. Spangenberg v. Cheney School Dist. No. 30, 97 Wash. 2d 118, 641 P.2d 163, 2 Ed. Law Rep. 1169, 51 Fair Empl. Prac. Cas. (BNA) 928 (1982); State v. Marshall, 39 Wash. App. 180, 692 P.2d 855 (Div. 3 1984); Upjohn v. Russell, 33 Wash. App. 777, 658 P.2d 27 (Div. 2 1983); In Interest of Rogers, 31 Wash. App. 372, 641 P.2d 733 (Div. 3 1982).

In interpreting the contributory fault statute, each part of the statute should be construed with the other parts in order to provide a harmonious whole. State v. Lee, 96 Wash. App. 336, 979 P.2d 458 (Div. 2 1999); Union Elevator & Warehouse Co., Inc. v. State ex rel. Dept. of Transp., 96 Wash. App. 288, 980 P.2d 779 (Div. 3 1999); Ginochio v. Hesston Corp., 46 Wash. App. 843, 733 P.2d 551, Prod. Liab. Rep. (CCH) P 11323 (Div. 3 1987).

Arbitration of Mooberry v. Magnum Mfg., Inc., 108 Wash. App. 654, 32 P.3d 302 (Div. 1 2001).

State v. J.P., 149 Wash. 2d 444, 69 P.3d 318 (2003); State v. Haws, 118 Wash. App. 36, 74 P.3d 147 (Div. 2 2003); Citizens For Fair Share v. State Dept. of Corrections, 117 Wash. App. 411, 72 P.3d 206 (Div. 2 2003); Muckleshoot Indian Tribe v. Washington Dept. of Ecology, 112 Wash. App. 712, 50 P.3d 668 (Div. 1 2002).

West Virginia. State ex rel. Appleby v. Recht, 213 W. Va. 503, 583 S.E.2d 800 (2002); McCoy v. VanKirk, 201 W. Va. 718, 500 S.E.2d 534 (1997); Peak v. Ratliff, 185 W. Va. 548, 408 S.E.2d 300 (1991); State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars, 144 W. Va. 137, 107 S.E.2d 353 (1959).

Wisconsin. State v. Fouse, 120 Wis. 2d 471, 355 N.W.2d 366 (Ct. App. 1984); Davis v. Rahkonen, 112 Wis. 2d 385, 332 N.W.2d 855 (Ct. App. 1983); Town of Ringle v. Marathon County, 104 Wis. 2d 297, 311 N.W.2d 595 (1981); National Exchange Bank of Fond du Lac v. Mann, 81 Wis. 2d 352, 260 N.W.2d 716, 23 U.C.C. Rep. Serv. 510 (1978); Aero Auto Parts, Inc. v. State, Dept. of Transp., Division of Highways, 78 Wis. 2d 235, 253 N.W.2d 896 (1977).

In construing a statute, the entire statute should be brought into harmony with the statute's purpose. State v. Clausen, 105 Wis. 2d 231, 313 N.W.2d 819 (1982).

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McQuillin, The Law of Municipal Corporations § 9.22. Saxe, When a Rigid Textualism Fails: Damages for ADA Employment Retaliation, 2006 Mich. St. L. Rev. 555; Vu, Conscripting Attorneys to Battle Corporate Fraud Without Shields or Armor? Reconsidering Retaliatory Discharge in Light of Sarbanes-Oxley, 105 Mich. L. Rev. 209 (2006).

[FN2] **United States.** U.S. v. Universal C. I. T. Credit Corp., 344 U.S. 218, 73 S. Ct. 227, 97 L. Ed. 260 (1952); Johansen v. U.S., 343 U.S. 427, 72 S. Ct. 849, 96 L. Ed. 1051, 1952 A.M.C. 1043 (1952); Markham v. Cabell, 326 U.S. 404, 66 S. Ct. 193, 90 L. Ed. 165 (1945); Harrison v. Northern Trust Co., 317 U.S. 476, 63 S. Ct. 361, 87 L. Ed. 407, 43-1 U.S. Tax Cas. (CCH) P 10004, 30 A.F.T.R. (P-H) P 375 (1943); Little People's School, Inc. v. U.S., 842 F.2d 570, 45 Ed. Law Rep. 1017, Unempl. Ins. Rep. (CCH) P 21892, 88-1 U.S. Tax Cas. (CCH) P 9298, 61 A.F.T.R.2d 88-931 (1st Cir. 1988); U.S. v. One Parcel of Land in Name of Mikell, 33 F.3d 11 (5th Cir. 1994); In re Timbers of Inwood Forest Associates, Ltd., 793 F.2d 1380, 14 Bankr. Ct. Dec. (CRR) 1029, 15 Collier Bankr. Cas. 2d (MB) 509, Bankr. L. Rep. (CCH) P 71238 (5th Cir. 1986), on reh'g, 808 F.2d 363, 15 Bankr. Ct. Dec. (CRR) 494, 16 Collier Bankr. Cas. 2d

(MB) 1, Bankr. L. Rep. (CCH) P 71584 (5th Cir. 1987), judgment aff'd, 484 U.S. 365, 108 S. Ct. 626, 98 L. Ed. 2d 740, 16 Bankr. Ct. Dec. (CRR) 1369, 17 Collier Bankr. Cas. 2d (MB) 1368, Bankr. L. Rep. (CCH) P 72113 (1988); Kelly v. Wauconda Park Dist., 801 F.2d 269, 41 Fair Empl. Prac. Cas. (BNA) 1376, 41 Empl. Prac. Dec. (CCH) P 36694 (7th Cir. 1986); Water Quality Ass'n Employees' Benefit Corp. v. U.S., 795 F.2d 1303, 7 Employee Benefits Cas. (BNA) 1737, 86-2 U.S. Tax Cas. (CCH) P 9527, 58 A.F.T.R.2d 86-5410 (7th Cir. 1986); State Highway Commission of Missouri v. Volpe, 479 F.2d 1099, 27 A.L.R. Fed. 183 (8th Cir. 1973); Boise Cascade Corp. v. U.S. E.P.A., 942 F.2d 1427, 33 Env't. Rep. Cas. (BNA) 1693, 22 Envtl. L. Rep. 20007 (9th Cir. 1991); Seldovia Native Ass'n, Inc. v. Lujan, 904 F.2d 1335 (9th Cir. 1990); In re Roberts, 906 F.2d 1440, 20 Bankr. Ct. Dec. (CRR) 1143, 23 Collier Bankr. Cas. 2d (MB) 374, Bankr. L. Rep. (CCH) P 73516, 90-2 U.S. Tax Cas. (CCH) P 50484, 66 A.F.T.R.2d 90-5315 (10th Cir. 1990); Communist Party of U.S. v. Subversive Activities Control Bd., 223 F.2d 531 (D.C. Cir. 1954), judgment rev'd on other grounds, 351 U.S. 115, 76 S. Ct. 663, 100 L. Ed. 1003 (1956) (question whether one valid section of a statute can be treated separately from other valid sections is governed by the rule that the statute must be considered as a whole, in its entirety, and all parts together); U.S. v. Shell Oil Co., 605 F. Supp. 1064, 22 Env't. Rep. Cas. (BNA) 1473, 15 Envtl. L. Rep. 20337 (D. Colo. 1985); Jang v. A.M. Miller and Associates, Inc., 1996 WL 435096 (N.D. Ill. 1996), aff'd, 122 F.3d 480 (7th Cir. 1997); Eggleston v. South Bend Community School Corp., 858 F. Supp. 841, 93 Ed. Law Rep. 1243, 64 Fair Empl. Prac. Cas. (BNA) 999 (N.D. Ind. 1994); Welsh By and Through Welsh v. Century Products, Inc., 745 F. Supp. 313, Prod. Liab. Rep. (CCH) P 12688 (D. Md. 1990); State of Nev. ex rel. Dept. of Transp. v. U.S., 925 F. Supp. 691, 43 Env't. Rep. Cas. (BNA) 1163, 26 Envtl. L. Rep. 21443 (D. Nev. 1996); U.S. v. Allen, 605 F. Supp. 864 (W.D. Pa. 1985); Matter of Delex Management, 155 B.R. 161, 24 Bankr. Ct. Dec. (CRR) 552, 29 Collier Bankr. Cas. 2d (MB) 125 (Bankr. W.D. Mich. 1993); In re Eakes, 69 B.R. 497 (Bankr. W.D. Mo. 1987).

In construing a term used in a statute, the court must consider not only the bare meaning of the word, but also its placement and purpose in the statutory scheme. U.S. v. Thompson, 82 F.3d 849, 44 Fed. R. Evid. Serv. 462 (9th Cir. 1996).

Reading statute to say "based on otherwise-permissible evidence in the file" rather than "based on all evidence in the file (including old evidence)." The first stated construes each part of the statute leading to a harmonious whole interpretation. Zevalkink v. Brown, 6 Vet. App. 483 (1994), aff'd, 102 F.3d 1236 (Fed. Cir. 1996).

Briddell v. Principi, 16 Vet. App. 267 (2002), aff'd, 409 F.3d 1356 (Fed. Cir. 2005).

U.S. v. Yarbrough, 55 M.J. 353 (C.A.A.F. 2001).

Dersch Energies, Inc. v. Shell Oil Co., 314 F.3d 846 (7th Cir. 2002).

Wong ex rel. Leung Yuen Man v. The Boeing Co., Prod. Liab. Rep. (CCH) P 16749, 2003 WL 22078379 (N.D. Ill. 2003); Leland v. Moran, 235 F. Supp. 2d 153 (N.D. N.Y. 2002), aff'd, 80 Fed. Appx. 133 (2d Cir. 2003).

Alabama. Curren v. State, 620 So. 2d 739 (Ala. 1993); Blue Cross and Blue Shield of Alabama v. Protective Life Ins. Co., 527 So. 2d 125 (Ala. Civ. App. 1987).

Weathers v. City of Oxford, 895 So. 2d 305 (Ala. Civ. App. 2004).

Alaska. The structure of the statute indicates a distinct offense. Rather than construing one section in isolation as strictly a repeat offender sentence enhancement provision, the entire section should be construed as

a whole. Morgan v. State, 661 P.2d 1102 (Alaska Ct. App. 1983).

Wyatt v. Wehmueller, 167 Ariz. 281, 806 P.2d 870 (1991); City of Kotzebue v. State, Dept. of Corrections, 166 P.3d 37 (Alaska 2007).

Arkansas. Thomas v. Cornell, 316 Ark. 366, 872 S.W.2d 370 (1994).

California. Parris v. Zolin, 12 Cal. 4th 839, 50 Cal. Rptr. 2d 109, 911 P.2d 9 (1996); Santa Barbara County Taxpayers Assn. v. County of Santa Barbara, 194 Cal. App. 3d 674, 239 Cal. Rptr. 769 (2d Dist. 1987); Dreyer's Grand Ice Cream, Inc. v. County of Alameda, 178 Cal. App. 3d 1174, 224 Cal. Rptr. 285 (1st Dist. 1986); In re Philpott, 163 Cal. App. 3d 1152, 210 Cal. Rptr. 95 (2d Dist. 1985).

Colorado. People v. White, 870 P.2d 424 (Colo. 1994); People v. Terry, 791 P.2d 374 (Colo. 1990); In re Marriage of Davisson, 797 P.2d 809 (Colo. Ct. App. 1990).

Connecticut. Connecticut Light and Power Co. v. Texas-Ohio Power, Inc., 243 Conn. 635, 708 A.2d 202 (1998).

Delaware. Grimes v. Alteon, Inc., 804 A.2d 256 (Del. 2002).

District of Columbia. In re Bicksler, 501 A.2d 1 (D.C. 1985).

Georgia. Wilson v. Miles, 218 Ga. App. 806, 463 S.E.2d 381 (1995).

Hawaii. State v. Wallace, 71 Haw. 591, 801 P.2d 27 (1990).

Idaho. Sherwood v. Carter, 119 Idaho 246, 805 P.2d 452 (1991).

Illinois. Scattered Corp. v. Midwest Clearing Corp., 299 Ill. App. 3d 653, 234 Ill. Dec. 1, 702 N.E.2d 167 (1st Dist. 1998); Jensen Disposal Co. v. Town of Warren, 218 Ill. App. 3d 483, 161 Ill. Dec. 247, 578 N.E.2d 605 (2d Dist. 1991); School Directors of School Dist. No. 82, Whiteside County v. County Bd. of School Trustees of Whiteside County, 15 Ill. App. 2d 115, 145 N.E.2d 285 (2d Dist. 1957).

Indiana. Demoss v. Demoss, 135 Ind. App. 548, 195 N.E.2d 496 (1964).

The rule of statutory construction that the intent of the legislature is ascertained from the statute as a whole is particularly applicable when adherence to the principles enunciated by one section would lead to injustice, absurdity, or contradiction. Park 100 Development Co. v. Indiana Dept. of State Revenue, 429 N.E.2d 220 (Ind. 1981).

Iowa. Iowa Auto Dealers Ass'n v. Iowa Dept. of Revenue, 301 N.W.2d 760 (Iowa 1981); Barnes Beauty College v. McCoy, 279 N.W.2d 258 (Iowa 1979).

Kansas. The legislative intent is determined from a general consideration of the entire act. State v. Walbridge, 248 Kan. 65, 805 P.2d 15 (1991).

Kentucky. Schwindel v. Meade County, 113 S.W.3d 159 (Ky. 2003).

Louisiana. In re RLV, 484 So. 2d 206 (La. Ct. App. 1st Cir. 1986).

Maryland. Curry v. Department of Public Safety and Correctional Services, 102 Md. App. 620, 651 A.2d 390 (1994).

Massachusetts. Wolfe v. Gormally, 440 Mass. 699, 802 N.E.2d 64 (2004).

Boston Police Patrolmen's Ass'n, Inc. v. Police Dept. of Boston, 446 Mass. 46, 841 N.E.2d 1229, 24 I.E.R. Cas. (BNA) 234 (2006).

Zimmer, FERC's Authority to Impose Monetary Remedies for Federal Power Act and Natural Gas Act Violation: An Anaylsis, 57 Admin L Rev 543 (2005).

Michigan. Frank v. William A. Kibbe & Assoc., Inc., 208 Mich. App. 346, 527 N.W.2d 82 (1995); Sullivan v. Department of Corrections, 185 Mich. App. 157, 460 N.W.2d 253 (1990); Wills v. Iron County Bd. of Canvassers, 183 Mich. App. 797, 455 N.W.2d 405 (1990); Miller v. State Farm Mut. Auto. Ins. Co., 88 Mich. App. 175, 276 N.W.2d 873 (1979), judgment rev'd on other grounds, 410 Mich. 538, 302 N.W.2d 537 (1981).

Everything should be considered together in order to produce a harmonious whole; like construing the words "shall assure" to provide an equivalent command to all localities effected by the legislation in question. Delta County v. Michigan Dept. of Natural Resources, 118 Mich. App. 458, 325 N.W.2d 455 (1982) (abrogated on other grounds by, Livingston County v. Department of Management and Budget, 430 Mich. 635, 425 N.W.2d 65, 27 Env't. Rep. Cas. (BNA) 2250 (1988)).

Minnesota. Kirkwold Const. Co. v. M.G.A. Const., Inc., 513 N.W.2d 241 (Minn. 1994).

Missouri. Stewart v. Johnson, 398 S.W.2d 850 (Mo. 1966).

The crucial words in the context of the statute must be viewed and the assumption made that the legislature did not use meaningless words. State v. Shell, 571 S.W.2d 798 (Mo. Ct. App. 1978).

State v. Johnson, 148 S.W.3d 338 (Mo. Ct. App. W.D. 2004).

Montana. Sections in close proximity to the one being construed have greater probative force than more remote ones. Bryant Development Ass'n v. Dagel, 166 Mont. 252, 531 P.2d 1320 (1975).

Nebraska. School Dist. No. 17, Douglas County v. State, 210 Neb. 762, 316 N.W.2d 767, 3 Ed. Law Rep. 148 (1982); State v. Johnson, 12 Neb. App. 247, 670 N.W.2d 802 (2003), decision aff'd, 269 Neb. 507, 695 N.W.2d 165 (2005).

New Jersey. Finnegan v. State Bd. of Tax Appeals, 131 N.J.L. 276, 36 A.2d 13 (N.J. Sup. Ct. 1944); State Farm Mut. Auto. Ins. Co. v. Molino, 289 N.J. Super. 406, 674 A.2d 189 (App. Div. 1996).

In re Distribution of Liquid Assets Upon Dissolution of Union County Regional High School Dist. No. 1, 168 N.J. 1, 773 A.2d 6, 154 Ed. Law Rep. 589 (2001); In re Passaic County Utilities Authority Petition Requesting Determination of Financial Difficulty and Application for Refinancing Approval, 164 N.J. 270, 753 A.2d 661, 30 Envtl. L. Rep. 20658 (2000).

Matturri v. Board of Trustees of Judicial Retirement System, 173 N.J. 368, 802 A.2d 496 (2002).

North Carolina. Cape Fear Memorial Hosp. v. North Carolina Dept. of Human Resources, 121 N.C. App. 492, 466 S.E.2d 299 (1996).

North Dakota. Maurer v. Wagner, 509 N.W.2d 258 (N.D. 1993).

Oregon. Carlson v. Myers, 327 Or. 213, 959 P.2d 31 (1998); Pierce v. Allstate Ins. Co., 112 Or. App. 530, 829 P.2d 1032 (1992), decision rev'd on other grounds, 316 Or. 31, 848 P.2d 1197 (1993).

Pennsylvania. Application of Sanitary Authority of Elizabeth Tp., Allegheny County, 413 Pa. 502, 198 A.2d 304 (1964).

Rhode Island. Bailey v. American Stores, Inc./Star Market, 610 A.2d 117 (R.I. 1992); State v. Campbell, 528 A.2d 321 (R.I. 1987).

South Dakota. Scott v. Class, 532 N.W.2d 399 (S.D. 1995); Koenig v. Lambert, 527 N.W.2d 903 (S.D. 1995) (overruled on other grounds by, Stratmeyer v. Stratmeyer, 1997 SD 97, 567 N.W.2d 220 (S.D. 1997); State v. French, 509 N.W.2d 693 (S.D. 1993); Matter of Heuermann, 90 S.D. 312, 240 N.W.2d 603 (1976).

Tennessee. Lyons v. Rasar, 872 S.W.2d 895, 90 Ed. Law Rep. 504 (Tenn. 1994).

Texas. Ellis County v. Thompson, 95 Tex. 22, 64 S.W. 927 (1901), modified on reh'g, 95 Tex. 22, 66 S.W. 48 (1902); Springfield v. Aetna Cas. & Sur. Ins. Co., 612 S.W.2d 285 (Tex. Civ. App. Austin 1981), writ refused n.r.e., 620 S.W.2d 557 (Tex. 1981); City of Corpus Christi v. Southern Community Gas Co., 368 S.W.2d 144 (Tex. Civ. App. San Antonio 1963), writ refused n.r.e., (Oct. 2, 1963).

In re Azle Manor, Inc., 83 S.W.3d 410 (Tex. App. Fort Worth 2002).

Vermont. Greenmoss Builders, Inc. v. Dun & Bradstreet, Inc., 149 Vt. 365, 543 A.2d 1320 (1988); State v. Trucott, 145 Vt. 274, 487 A.2d 149 (1984).

Virginia. Commonwealth Natural Resources, Inc. v. Com., 219 Va. 529, 248 S.E.2d 791 (1978); Jennings v. Division of Crime Victims' Compensation of Com. of Virginia, 5 Va. App. 536, 365 S.E.2d 241 (1988).

Washington. If possible the statutes will be construed to give effect to all the language used and no part will be rendered meaningless and superfluous. This is true even if there are two statutes involved. State v. Becker, 59 Wash. App. 848, 801 P.2d 1015 (Div. 1 1990).

Arbitration of Mooberry v. Magnum Mfg., Inc., 108 Wash. App. 654, 32 P.3d 302 (Div. 1 2001).

Moen v. Spokane City Police Dept., 110 Wash. App. 714, 42 P.3d 456 (Div. 3 2002).

West Virginia. A court must not be guided by a single sentence of word in a sentence, but must look to the provisions of the whole law and to its object and policy. West Virginia Human Rights Com'n v. Garretson, 196 W. Va. 118, 468 S.E.2d 733 (1996).

Wisconsin. State v. Williams, 198 Wis. 2d 516, 544 N.W.2d 406 (1996).

Wyoming. Wyrulec Co. v. Schutt, 866 P.2d 756 (Wyo. 1993).

Duffy, Administrative Common Law in Judicial Review, 77 Tex L Rev 113 (1998).

Padula, The Plight of Connecticut's Brightest Students: Broadley v. Meriden Board of Education, 29 Conn L Rev 1319 (1997); Araiza, Text, Purpose and Facts: The Relationship between CERCLA Sections 107 and 113, 72 Notre Dame L Rev 193 (1996).

Aguirre, The Enron Decision: Closing the Fraud-Free Zone on Errant Gatekeepers?, 40 Tex. J. Bus. L. 107 (2004). Saxe, When a Rigid Textualism Fails: Damages for ADA Employment Retaliation, 2006 Mich. St. L. Rev. 555; Vu, Conscripting Attorneys to Battle Corporate Fraud Without Shields or Armor? Reconsidering Retaliatory Discharge in Light of Sarbanes-Oxley, 105 Mich. L. Rev. 209 (2006).

[FN3] **United States.** King v. St. Vincent's Hosp., 502 U.S. 215, 112 S. Ct. 570, 116 L. Ed. 2d 578, 14 Employee Benefits Cas. (BNA) 1990, 138 L.R.R.M. (BNA) 2977, 120 Lab. Cas. (CCH) P 11024 (1991); Lansing Dairy, Inc. v. Espy, 39 F.3d 1339, 1994 FED App. 0366P (6th Cir. 1994); Lake Cumberland Trust, Inc. v. U.S. E.P.A., 954 F.2d 1218, 22 Envtl. L. Rep. 20558 (6th Cir. 1992), opinion modified on reh'g, (Apr. 10, 1992); Boise Cascade Corp. v. U.S. E.P.A., 942 F.2d 1427, 33 Env't. Rep. Cas. (BNA) 1693, 22 Envtl. L. Rep. 20007 (9th Cir. 1991); Aulston v. U.S., 915 F.2d 584 (10th Cir. 1990); Underwood v. Waddell, 743 F. Supp. 1291 (S.D. Ind. 1990); Abramson v. Georgetown Consulting Group, Inc., 765 F. Supp. 255 (D.V.I. 1991), judgment aff'd, 952 F.2d 1391 (3d Cir. 1991).

U.S. v. Pacheco, 225 F.3d 148 (2d Cir. 2000).

Owasso Independent School Dist. No. I-011 v. Falvo, 534 U.S. 426, 122 S. Ct. 934, 151 L. Ed. 2d 896, 161 Ed. Law Rep. 33 (2002).

When two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective. DGM Investments, Inc. v. New York Futures Exchange, Inc., 288 F. Supp. 2d 519, Comm. Fut. L. Rep. (CCH) P 29602 (S.D. N.Y. 2003).

Alabama. State, Home Builders Licensure Bd. v. Teel, 887 So. 2d 900 (Ala. Civ. App. 2003).

Alaska. McMann v. City of Tucson, 202 Ariz. 468, 47 P.3d 672 (Ct. App. Div. 2 2002); Norgord v. State ex rel. Berning, 201 Ariz. 228, 33 P.3d 1166 (Ct. App. Div. 2 2001).

Arizona. Facilitec, Inc. v. Hibbs, 206 Ariz. 486, 80 P.3d 765 (2003)

Arkansas. Fewell v. Pickens, 346 Ark. 246, 57 S.W.3d 144 (2001); Thomas v. Cornell, 316 Ark. 366, 872 S.W.2d 370 (1994).

California. RRLH, Inc. v. Saddleback Valley Unified School Dist., 222 Cal. App. 3d 1602, 272 Cal. Rptr. 529, 62 Ed. Law Rep. 274 (4th Dist. 1990); Curle v. Superior Court, 24 Cal. 4th 1057, 103 Cal. Rptr. 2d 751, 16 P.3d 166 (2001); Wilcox v. Birtwhistle, 21 Cal. 4th 973, 90 Cal. Rptr. 2d 260, 987 P.2d 727 (1999).

Florida. Akel v. Dorcelus, 793 So. 2d 1049 (Fla. Dist. Ct. App. 4th Dist. 2001).

Idaho. George W. Watkins Family v. Messenger, 118 Idaho 537, 797 P.2d 1385 (1990).

Illinois. People v. Liberman, 228 Ill. App. 3d 639, 170 Ill. Dec. 139, 592 N.E.2d 575 (4th Dist. 1992).

In re County Treasurer and Ex-Officio Collector of Cook County, 305 Ill. App. 3d 995, 239 Ill. Dec. 172, 713 N.E.2d 703 (1st Dist. 1999).

Indiana. Capehart v. Capehart, 771 N.E.2d 657 (Ind. Ct. App. 2002).

Lake Cent. School Corp. v. Hawk Development Corp., 793 N.E.2d 1080 (Ind. Ct. App. 2003); Jackson v. City of Jeffersonville, 771 N.E.2d 703 (Ind. Ct. App. 2002).

Kansas. Steele v. City of Wichita, 250 Kan. 524, 826 P.2d 1380 (1992); Unified School Dist. No. 279, Jewell County v. Secretary of Kansas Dept. of Human Resources, 247 Kan. 519, 802 P.2d 516, 64 Ed. Law Rep. 918, 136 L.R.R.M. (BNA) 2448 (1990); Stauffer Communications, Inc. v. Mitchell, 246 Kan. 492, 789 P.2d 1153, 17 Media L. Rep. (BNA) 1739 (1990).

Louisiana. Central Louisiana Elec. Co., Inc. v. Westinghouse Elec. Corp., 579 So. 2d 981 (La. 1991).

Maine. Bartlett v. Town of Stonington, 1998 ME 50, 707 A.2d 389 (Me. 1998).

Maryland. State v. Bricker, 321 Md. 86, 581 A.2d 9 (1990); Consolidated Rail Corp. v. State, 87 Md. App. 287, 589 A.2d 569 (1991).

Michigan. Montano v. General Motors Corp., 187 Mich. App. 230, 466 N.W.2d 707 (1990).

Nebraska. Canas v. Maryland Cas. Co., 236 Neb. 164, 459 N.W.2d 533, 89 A.L.R.4th 1045 (1990).

New Jersey. Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123, 527 A.2d 1368, 1987-2 Trade Cas. (CCH) P 67674 (1987).

This includes a delegation of regulatory authority. DiVigenze v. Chrysler Corp., 345 N.J. Super. 314, 785 A.2d 37 (App. Div. 2001).

New Mexico. State v. Muniz, 2003-NMSC-021, 134 N.M. 152, 74 P.3d 86 (2003).

New York. Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington, 97 N.Y.2d 86, 735 N.Y.S.2d 873, 761 N.E.2d 565 (2001).

North Carolina. State v. Johnson, 124 N.C. App. 462, 478 S.E.2d 16 (1996).

Griffin v. Price, 108 N.C. App. 496, 424 S.E.2d 160 (1993), rev'd on other grounds, 334 N.C. 686, 435 S.E.2d 72 (1993).

North Dakota. Matter of Estate of Ridl, 455 N.W.2d 188 (N.D. 1990).

Oklahoma. State ex rel. Dept. of Public Safety v. 1985 GMC Pickup, Serial No. 1GTBS14EOF2525894, OK Tag No. ZPE852, 1995 OK 75, 898 P.2d 1280 (Okla. 1995).

Oregon. Clackamas County v. 102 Marijuana Plants, 323 Or. 680, 920 P.2d 149 (1996); Managed Healthcare Northwest, Inc. v. Department of Consumer and Business Services, 189 Or. App. 444, 75 P.3d 912 (2003), decision aff'd, 338 Or. 92, 106 P.3d 624 (2005).

Pennsylvania. Tierney v. Pennsylvania Assigned Claims Plan, 319 Pa. Super. 299, 466 A.2d 168 (1983).

South Carolina. Fidelity and Cas. Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982).

South Dakota. State v. Ventling, 452 N.W.2d 123 (S.D. 1990).

Utah. Amax Magnesium Corp. v. Utah State Tax Com'n, 796 P.2d 1256 (Utah 1990).

Vermont. In re Cottrell, 158 Vt. 500, 614 A.2d 381 (1992).

Washington. State v. Rhodes, 58 Wash. App. 913, 795 P.2d 724 (Div. 2 1990).

West Virginia. Rose v. Oneida Coal Co., Inc., 195 W. Va. 726, 466 S.E.2d 794 (1995).

Wisconsin. CH2M Hill, Inc. v. Black & Veatch, 206 Wis. 2d 370, 557 N.W.2d 829 (Ct. App. 1996).

Wyoming. Wyrulec Co. v. Schutt, 866 P.2d 756 (Wyo. 1993).

Zimmer, FERC's Authority to Impose Monetary Remedies for Federal Power Act and Natural Gas Act Violation: An Anaylsis, 57 Admin L Rev 543 (2005).

[FN4] **United States.** Ward v. Allstate Ins. Co., 45 F.3d 353 (10th Cir. 1994); Sterling Federal Systems, Inc. v. Goldin, 16 F.3d 1177, 39 Cont. Cas. Fed. (CCH) P 76615 (Fed. Cir. 1994); In re Pak, 378 B.R. 257, Bankr. L. Rep. (CCH) P 81059 (B.A.P. 9th Cir. 2007).

Alabama. Archer Daniels Midland Co. v. Seven Up Bottling Co. of Jasper, Inc., 746 So. 2d 966, 1999-1 Trade Cas. (CCH) P 72560 (Ala. 1999).

Alaska. Matter of Property, Business, and Bldg. Located at 2120 S. 4th Ave., Lot 16, Block 8 of Resubdivision of Home Addition No. 2, 177 Ariz. 599, 870 P.2d 417 (Ct. App. Div. 2 1994).

Arkansas. Fewell v. Pickens, 346 Ark. 246, 57 S.W.3d 144 (2001); Thomas v. Cornell, 316 Ark. 366, 872 S.W.2d 370 (1994).

California. Mundy v. Superior Court, 31 Cal. App. 4th 1396, 37 Cal. Rptr. 2d 568 (4th Dist. 1995), as modified, (Feb. 27, 1995).

Colorado. Bynum v. Kautzky, 784 P.2d 735 (Colo. 1989).

Florida. Akel v. Dorcelus, 793 So. 2d 1049 (Fla. Dist. Ct. App. 4th Dist. 2001).

Illinois. Chicago and North Western Transp. Co. v. Illinois Commerce Com'n, 230 Ill. App. 3d 812, 172 Ill. Dec. 763, 596 N.E.2d 42 (1st Dist. 1992).

Indiana. Nass v. State ex rel. Unity Team, Local 9212, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), 718 N.E.2d 757, 162 L.R.R.M. (BNA) 2664 (Ind. Ct. App. 1999).

Indiana. Deaton v. City of Greenwood, 582 N.E.2d 882 (Ind. Ct. App. 1991).

Louisiana. Central Louisiana Elec. Co., Inc. v. Westinghouse Elec. Corp., 579 So. 2d 981 (La. 1991).

Maine. Bartlett v. Town of Stonington, 1998 ME 50, 707 A.2d 389 (Me. 1998).

Michigan. Travelers Ins. v. U-Haul of Michigan, Inc., 235 Mich. App. 273, 597 N.W.2d 235 (1999).

Michigan State Bldg. & Const. Trades Council, AFL-CIO v. Director, Dept. of Labor, 241 Mich. App. 406, 616 N.W.2d 697 (2000).

Missouri. In re K.C.M., 85 S.W.3d 682 (Mo. Ct. App. W.D. 2002) (abrogated on other grounds by, In re M.D.R., 124 S.W.3d 469 (Mo. 2004)).

Montana. Montana Wildlife Federation v. Sager, 190 Mont. 247, 620 P.2d 1189 (1980).

Nebraska. Premium Farms v. County of Holt, 263 Neb. 415, 640 N.W.2d 633 (2002).

Nevada. Nevada Com'n on Ethics v. Ballard, 120 Nev. 862, 102 P.3d 544 (2004).

New Jersey. Gonzalez v. Board of Educ. of Elizabeth School Dist., Union County, 325 N.J. Super. 244, 738 A.2d 974, 138 Ed. Law Rep. 1104 (App. Div. 1999).

New York. Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington, 97 N.Y.2d 86, 735 N.Y.S.2d 873, 761 N.E.2d 565 (2001).

North Carolina. State v. Johnson, 124 N.C. App. 462, 478 S.E.2d 16 (1996).

Oklahoma. State ex rel. Dept. of Public Safety v. 1985 GMC Pickup, Serial No. 1GTBS14EOF2525894, OK Tag No. ZPE852, 1995 OK 75, 898 P.2d 1280 (Okla. 1995).

Oregon. Clackamas County v. 102 Marijuana Plants, 323 Or. 680, 920 P.2d 149 (1996).

Pennsylvania. Tierney v. Pennsylvania Assigned Claims Plan, 319 Pa. Super. 299, 466 A.2d 168 (1983).

Rhode Island. Chappell v. Rhode Island Dept. of Human Services, 2003 WL 21297134 (R.I. Super. Ct. 2003).

South Carolina. Fidelity and Cas. Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982).

South Dakota. Kayser v. South Dakota State Elec. Com'n, 512 N.W.2d 746 (S.D. 1994); Whalen v. Whalen, 490 N.W.2d 276 (S.D. 1992) (holding modified on other grounds by, Sjolund v. Carlson, 511

N.W.2d 818 (S.D. 1994)).

Vermont. Town of Killington v. State, 172 Vt. 182, 776 A.2d 395, 155 Ed. Law Rep. 1237 (2001).

West Virginia. Williams v. West Virginia Dept. of Motor Vehicles, 187 W. Va. 406, 419 S.E.2d 474 (1992).

Wisconsin. Where two statutes relate to the same factual occurrences and can reasonably be read to conflict with one another, the Court is required to construe the statutes together and, to the greatest extent possible, harmonize them to achieve the results intended by the legislature. City of Madison v. State Dept. of Workforce Development, Equal Rights Division, 2003 WI 76, 262 Wis. 2d 652, 664 N.W.2d 584 (2003).

Wyoming. Wyoming Governmental Claims Act will be considered as a whole and applied in the manner that fits its purpose. Vigil v. Ruettgers, 887 P.2d 521 (Wyo. 1994).

Zimmer, FERC's Authority to Impose Monetary Remedies for Federal Power Act and Natural Gas Act Violation: An Anaylsis, 57 Admin L Rev 543 (2005).

[FN5] **United States.** U.S. v. McCord, 33 F.3d 1434 (5th Cir. 1994); F.T.C. v. University Health, Inc., 938 F.2d 1206, 1991-2 Trade Cas. (CCH) P 69508 (11th Cir. 1991); In re Air Crash Off Long Island, New York, on July 17, 1996, 1998 WL 292333 (S.D. N.Y. 1998), decision aff'd and remanded on other grounds, 209 F.3d 200, 2000 A.M.C. 1217 (2d Cir. 2000).

Ward v. Allstate Ins. Co., 45 F.3d 353 (10th Cir. 1994); U.S. ex rel. Totten v. Bombardier Corp., 380 F.3d 488 (D.C. Cir. 2004), cert. denied, 544 U.S. 1032, 125 S. Ct. 2257, 161 L. Ed. 2d 1059 (2005); In re Maple-Whitworth, Inc., 375 B.R. 558, 48 Bankr. Ct. Dec. (CRR) 245 (B.A.P. 9th Cir. 2007); In re Pak, 378 B.R. 257, Bankr. L. Rep. (CCH) P 81059 (B.A.P. 9th Cir. 2007).

Alabama. Archer Daniels Midland Co. v. Seven Up Bottling Co. of Jasper, Inc., 746 So. 2d 966, 1999-1 Trade Cas. (CCH) P 72560 (Ala. 1999).

Alaska. Matter of Property, Business, and Bldg. Located at 2120 S. 4th Ave., Lot 16, Block 8 of Resubdivision of Home Addition No. 2, 177 Ariz. 599, 870 P.2d 417 (Ct. App. Div. 2 1994).

Arkansas. Fewell v. Pickens, 346 Ark. 246, 57 S.W.3d 144 (2001).

California. Mundy v. Superior Court, 31 Cal. App. 4th 1396, 37 Cal. Rptr. 2d 568 (4th Dist. 1995), as modified, (Feb. 27, 1995).

Colorado. Dempsey v. Romer, 825 P.2d 44 (Colo. 1992); Graber v. Westaway, 809 P.2d 1126 (Colo. Ct. App. 1991).

Connecticut. City of Groton v. Yankee Gas Services Co., 224 Conn. 675, 620 A.2d 771 (1993).

Florida. Akel v. Dorcelus, 793 So. 2d 1049 (Fla. Dist. Ct. App. 4th Dist. 2001).

Idaho. Evans v. Teton County, 139 Idaho 71, 73 P.3d 84 (2003).

Illinois. People v. Wade, 326 Ill. App. 3d 396, 260 Ill. Dec. 74, 760 N.E.2d 491 (3d Dist. 2001), as modi-

fied on other grounds, (Nov. 30, 2001).

Indiana. Griffith v. Jones, 577 N.E.2d 258 (Ind. Ct. App. 1991), opinion vacated on other grounds, 602 N.E.2d 107 (Ind. 1992).

Words in a single section of a statute will be construed with due regard for all sections of the act and with regard for the legislative intent to carry out the spirit and purpose of the act. Collins v. Thakkar, 552 N.E.2d 507, 89 A.L.R.4th 877 (Ind. Ct. App. 1990).

Louisiana. Central Louisiana Elec. Co., Inc. v. Westinghouse Elec. Corp., 579 So. 2d 981 (La. 1991).

Maine. Bartlett v. Town of Stonington, 1998 ME 50, 707 A.2d 389 (Me. 1998).

Maryland. Liverpool v. Baltimore Diamond Exchange, Inc., 369 Md. 304, 799 A.2d 1264, 47 U.C.C. Rep. Serv. 2d 1233 (2002).

Michigan. In re Forfeiture of $1,923,235, 247 Mich. App. 547, 637 N.W.2d 247 (2001).

Missouri. Hagely v. Board of Educ. of Webster Groves School Dist., 841 S.W.2d 663, 79 Ed. Law Rep. 684 (Mo. 1992) (implied overruling on other grounds recognized by,State ex rel. Yarber (Clint), Minor, by His Mother and Next Friend, Yarber (Cheryl) v. McHenry (Hon. James F.), Judge of 19th Circuit Court, 1994 WL 712716 (Mo. Ct. App. W.D. 1994), transferred to Mo. S. Ct., 915 S.W.2d 325, 107 Ed. Law Rep. 361 (Mo. 1995)); Division of Labor Standards, Department of Labor and Indus. Relations v. Chester Bross Const. Co., 42 S.W.3d 637 (Mo. Ct. App. E.D. 2001)

Montana. Montana Wildlife Federation v. Sager, 190 Mont. 247, 620 P.2d 1189 (1980).

Nebraska. Premium Farms v. County of Holt, 263 Neb. 415, 640 N.W.2d 633 (2002).

New Hampshire. In conducting its analysis regarding statutory interpretation, the court will focus on the statute as a whole, not on isolated words or phrases. Kaplan v. Booth Creek Ski Group, Inc., 147 N.H. 202, 785 A.2d 412, Blue Sky L. Rep. (CCH) P 74244 (2001).

New Mexico. State v. Smith, 2004-NMSC-032, 136 N.M. 372, 98 P.3d 1022 (2004).

State of N.M., ex rel. NM Gaming Control Bd. v. Ten Gaming Devices, 138 N.M. 426, 2005-NMCA-117, 120 P.3d 848 (Ct. App. 2005), cert. granted, 138 N.M. 440, 2005-NMCERT-009, 120 P.3d 1183 (2005), cert. quashed, 139 N.M. 353, 2006-NMCERT-003, 132 P.3d 1039 (2006); Helen G. v. Mark J.H., 2008-NMSC-002, 143 N.M. 246, 175 P.3d 914 (2007).

Waterfall, State v. Muniz: Authorizing Adult Sentencing of Juveniles Absent a Conviction that Authorizes an Adult Sentence, 35 N M L Rev 229 (2005).

New York. Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington, 97 N.Y.2d 86, 735 N.Y.S.2d 873, 761 N.E.2d 565 (2001).

North Carolina. State v. Johnson, 124 N.C. App. 462, 478 S.E.2d 16 (1996).

North Dakota. Trinity Medical Center, Inc. v. Holum, 544 N.W.2d 148 (N.D. 1996).

Courts are not free to disregard the letter of the statutue under the pretext of pursuing its spirit. Trinity Medical Center, Inc. v. Holum, 544 N.W.2d 148 (N.D. 1996).

Oklahoma. State ex rel. Dept. of Public Safety v. 1985 GMC Pickup, Serial No. 1GTBS14EOF2525894, OK Tag No. ZPE852, 1995 OK 75, 898 P.2d 1280 (Okla. 1995).

Oregon. Clackamas County v. 102 Marijuana Plants, 323 Or. 680, 920 P.2d 149 (1996).

Pennsylvania. Tierney v. Pennsylvania Assigned Claims Plan, 319 Pa. Super. 299, 466 A.2d 168 (1983).

Rhode Island. Sweetman v. Town of Cumberland, 117 R.I. 134, 364 A.2d 1277 (1976).

South Carolina. Fidelity and Cas. Ins. Co. of New York v. Nationwide Ins. Co., 278 S.C. 332, 295 S.E.2d 783 (1982)

South Dakota. Herrmann v. Board of Com'rs of City of Aberdeen, 285 N.W.2d 855 (S.D. 1979).

Texas. In re D.R.L.M., 84 S.W.3d 281 (Tex. App. Fort Worth 2002).

Vermont. In re Cottrell, 158 Vt. 500, 614 A.2d 381 (1992).

Washington. State v. Walter, 66 Wash. App. 862, 833 P.2d 440 (Div. 1 1992).

Willoughby v. Department of Labor and Industries of the State of Wash., 147 Wash. 2d 725, 57 P.3d 611 (2002).

West Virginia. Cox v. Amick, 195 W. Va. 608, 466 S.E.2d 459 (1995).

Wisconsin. In Interest of Antonio M.C., 182 Wis. 2d 301, 513 N.W.2d 662 (Ct. App. 1994); In Interest of R.W.S., 162 Wis. 2d 862, 471 N.W.2d 16 (1991); Aero Auto Parts, Inc. v. State, Dept. of Transp., Division of Highways, 78 Wis. 2d 235, 253 N.W.2d 896 (1977).

HMO-W Inc. v. SSM Health Care System, 266 Wis. 2d 69, 2003 WI App 137, 667 N.W.2d 733 (Ct. App. 2003); Dotty Dumpling's Dowry, Ltd. v. Community Development Authority of City of Madison, 257 Wis. 2d 377, 2002 WI App 200, 651 N.W.2d 1 (Ct. App. 2002).

Wyoming. Wyrulec Co. v. Schutt, 866 P.2d 756 (Wyo. 1993).

Gomez, The Consequences of Nonappearance: Interpreting New Section 242B of the Immigration and Nationality Act, 30 San Diego L Rev 75 (1993); Levenson, FERC-SEC Overlapping Jurisdiction and the Ohio Power Litigation: A Loss for Ratepayers, 68 Ind LJ 1417 (1993); Melvin, The Desegregation of Children With Disabilities, 44 DePaul L Rev 599, 651 (1995). Mullane, Statutory Interpretation in Arkansas: How Arkansas Courts Interpret Statutes. A Rational Approach, 2005 Ark. L. Notes 73.

[FN6] **United States.** Kelly v. Wauconda Park Dist., 801 F.2d 269, 41 Fair Empl. Prac. Cas. (BNA) 1376, 41 Empl. Prac. Dec. (CCH) P 36694 (7th Cir. 1986).

U.S. v. Pacheco, 225 F.3d 148 (2d Cir. 2000).

U.S. v. Clifford, 197 F. Supp. 2d 516 (E.D. Va. 2002).

Owasso Independent School Dist. No. I-011 v. Falvo, 534 U.S. 426, 122 S. Ct. 934, 151 L. Ed. 2d 896, 161 Ed. Law Rep. 33 (2002).

Arkansas. Barclay v. First Paris Holding Co., 344 Ark. 711, 42 S.W.3d 496 (2001).

Colorado. Gonzales v. Allstate Ins. Co., 51 P.3d 1103 (Colo. Ct. App. 2002).

Florida. Courts may construe "and" as "or" in statutes in which the construction based on a strict reading of the statute would lead to an unintended or unreasonable result and would defeat the legislative intent of the statute. Byte Intern. Corp. v. Maurice Gusman Residuary Trust No. 1, 629 So. 2d 191 (Fla. Dist. Ct. App. 3d Dist. 1993).

Iowa. TLC Home Health Care, L.L.C. v. Iowa Dept. of Human Services, 638 N.W.2d 708 (Iowa 2002).

Wisconsin. State v. Leitner, 2002 WI 77, 253 Wis. 2d 449, 646 N.W.2d 341 (2002).

[FN7] **United States.** Smith v. U.S., 508 U.S. 223, 113 S. Ct. 2050, 124 L. Ed. 2d 138 (1993) (overruling on other grounds recognized by, U.S. v. Regans, 125 F.3d 685 (8th Cir. 1997)); Steve Jackson Games, Inc. v. U.S. Secret Service, 36 F.3d 457 (5th Cir. 1994); Matter of Dyke, 943 F.2d 1435, 22 Bankr. Ct. Dec. (CRR) 223, 25 Collier Bankr. Cas. 2d (MB) 986, 14 Employee Benefits Cas. (BNA) 2376, Bankr. L. Rep. (CCH) P 74305 (5th Cir. 1991) (abrogated on other grounds by, Patterson v. Shumate, 504 U.S. 753, 112 S. Ct. 2242, 119 L. Ed. 2d 519, 23 Bankr. Ct. Dec. (CRR) 89, 26 Collier Bankr. Cas. 2d (MB) 1119, 15 Employee Benefits Cas. (BNA) 1481, Bankr. L. Rep. (CCH) P 74621A (1992)); F.T.C. v. University Health, Inc., 938 F.2d 1206, 1991-2 Trade Cas. (CCH) P 69508 (11th Cir. 1991); Imazio Nursery, Inc. v. Dania Greenhouses, 69 F.3d 1560, 36 U.S.P.Q.2d 1673, 135 A.L.R. Fed. 747 (Fed. Cir. 1995); In re Roxford Foods Litigation, 790 F. Supp. 987 (E.D. Cal. 1991); Brodheim v. Rowland, 783 F. Supp. 1245 (N.D. Cal. 1991), aff'd in part, vacated in part on other grounds, 993 F.2d 716 (9th Cir. 1993) (overruling recognized by, Agrio v. Gomez, 17 F.3d 393 (9th Cir. 1994)); In re Air Crash Off Long Island, New York, on July 17, 1996, 1998 WL 292333 (S.D. N.Y. 1998), decision aff'd and remanded on other grounds, 209 F.3d 200, 2000 A.M.C. 1217 (2d Cir. 2000).

Majid v. Wilhelm, 110 F. Supp. 2d 251 (S.D. N.Y. 2000); U.S. v. Clifford, 197 F. Supp. 2d 516 (E.D. Va. 2002).

Alabama. Michael v. Beasley, 583 So. 2d 245 (Ala. 1991).

Arkansas. Barclay v. First Paris Holding Co., 344 Ark. 711, 42 S.W.3d 496 (2001).

California. A court must not view isolated language out of context, but instead interpret the statute as a whole, so as to make sense of the entire statutory scheme. Carrisales v. Department of Corrections, 21 Cal. 4th 1132, 90 Cal. Rptr. 2d 804, 988 P.2d 1083, 81 Fair Empl. Prac. Cas. (BNA) 770, 77 Empl. Prac. Dec. (CCH) P 46196 (1999)

Cooley v. Superior Court, 29 Cal. 4th 228, 127 Cal. Rptr. 2d 177, 57 P.3d 654 (2002), as modified, (Jan. 15, 2003).

Colorado. Colorado State Bd. of Medical Examiners v. Saddoris, 825 P.2d 39 (Colo. 1992).

Connecticut. Red Rooster Const. Co. v. River Associates, Inc., 224 Conn. 563, 620 A.2d 118 (1993); Field v. Goldberg, 42 Conn. Supp. 306, 618 A.2d 80 (Super. Ct. 1991).

A statute is to be considered as a whole, with a view toward reconciling its separate parts in order to render a reasonable overall interpretation. Doyen v. Zoning Bd. of Appeals of Town of Essex, 67 Conn. App. 597, 789 A.2d 478 (2002).

Illinois. Mister v. A.R.K. Partnership, 197 Ill. App. 3d 105, 143 Ill. Dec. 166, 553 N.E.2d 1152 (2d Dist. 1990).

Iowa. Miller v. Westfield Ins. Co., 606 N.W.2d 301 (Iowa 2000); Barnes Beauty College v. McCoy, 279 N.W.2d 258 (Iowa 1979).

Massachusetts. Wilson v. Commissioner Of Transitional Assistance, 441 Mass. 846, 809 N.E.2d 524 (2004).

Michigan. Saint George Greek Orthodox Church of Southgate, Michigan v. Laupmanis Associates, P.C., 204 Mich. App. 278, 514 N.W.2d 516 (1994).

New Jersey. State v. Sisler, 177 N.J. 199, 827 A.2d 274 (2003).

New York. Rocovich v. Consolidated Edison Co., 78 N.Y.2d 509, 577 N.Y.S.2d 219, 583 N.E.2d 932 (1991).

North Dakota. State v. Mertz, 514 N.W.2d 662 (N.D. 1994).

South Dakota. Kayser v. South Dakota State Elec. Com'n, 512 N.W.2d 746 (S.D. 1994).

Texas. Cities of Austin, Dallas, Ft. Worth and Hereford v. Southwestern Bell Telephone Co., 92 S.W.3d 434 (Tex. 2002).

Washington. State v. Keller, 98 Wash. App. 381, 990 P.2d 423 (Div. 1 1999), aff'd, 143 Wash. 2d 267, 19 P.3d 1030 (2001).

Washington. Clark v. Pacificorp, 116 Wash. 2d 804, 809 P.2d 176 (1991), opinion superseded, 118 Wash. 2d 167, 822 P.2d 162 (1991).

West Virginia. State v. White, 188 W. Va. 534, 425 S.E.2d 210 (1992).

Wisconsin. Erdman v. Jovoco, Inc., 181 Wis. 2d 736, 512 N.W.2d 487, 1 Wage & Hour Cas. 2d (BNA) 1510 (1994).

Gomez, The Consequences of Nonappearance: Interpreting New Section 242B of the Immigration and Nationality Act, 30 San Diego L Rev 75 (1993); Levenson, FERC-SEC Overlapping Jurisdiction and the Ohio Power Litigation: A Loss for Ratepayers, 68 Ind LJ 1417 (1993).

[FN8] **United States.** Roper v. Nicholson, 20 Vet. App. 173 (2006).

Alaska. State v. Seyrafi, 201 Ariz. 147, 32 P.3d 430 (Ct. App. Div. 1 2001).

Montana. State v. Price, 2002 MT 229, 311 Mont. 439, 57 P.3d 42 (2002).

Tennessee. Norman v. Prather, 971 S.W.2d 398 (Tenn. Ct. App. 1997).

West Virginia. Napier v. Napier, 211 W. Va. 208, 564 S.E.2d 418 (2002).

[FN9] **United States.** Dersch Energies, Inc. v. Shell Oil Co., 314 F.3d 846 (7th Cir. 2002).

Collette v. St. Luke's Roosevelt Hosp., 132 F. Supp. 2d 256, 17 I.E.R. Cas. (BNA) 706, 144 Lab. Cas. (CCH) P 59317 (S.D. N.Y. 2001).

Alaska. State v. Razo, 195 Ariz. 393, 988 P.2d 1119 (Ct. App. Div. 2 1999)

California. People v. McNamee, 96 Cal. App. 4th 66, 116 Cal. Rptr. 2d 625 (4th Dist. 2002).

Gamble v. Los Angeles Dept. of Water and Power, 97 Cal. App. 4th 253, 118 Cal. Rptr. 2d 271 (2d Dist. 2002).

People v. Acosta, 29 Cal. 4th 105, 124 Cal. Rptr. 2d 435, 52 P.3d 624 (2002), as modified, (Aug. 16, 2002) and as modified, (Sept. 11, 2002).

Georgia. Joiner v. State, 239 Ga. App. 843, 522 S.E.2d 25 (1999) (disapproved of on other grounds by, Handschuh v. State, 270 Ga. App. 676, 607 S.E.2d 899 (2004)).

Illinois. Commonwealth Edison Co. v. Illinois Commerce Com'n, 332 Ill. App. 3d 1038, 266 Ill. Dec. 551, 775 N.E.2d 113 (2d Dist. 2002).

Louisiana. Lasyone v. Phares, 818 So. 2d 1068 (La. Ct. App. 1st Cir. 2002), writ denied, 827 So. 2d 423 (La. 2002).

Maryland. Fuge v. Fuge, 146 Md. App. 142, 806 A.2d 716 (2002).

Tennessee. State v. Cross, 93 S.W.3d 891 (Tenn. Crim. App. 2002).

Texas. In construing a statute, the court must presume that every word in a statute has been used for some purpose and that every word excluded was excluded for a purpose. Walker v. City of Georgetown, 86 S.W.3d 249 (Tex. App. Austin 2002).

Utah. Mariemont Corp. v. White City Water Imp. Dist., 958 P.2d 222 (Utah 1998).

Virginia. Smith v. Com., 38 Va. App. 840, 568 S.E.2d 462 (2002).

Washington. Heinsma v. City of Vancouver, 144 Wash. 2d 556, 29 P.3d 709, 26 Employee Benefits Cas.

(BNA) 2142 (2001).

[FN10] **United States.** Addison v. Holly Hill Fruit Products, 322 U.S. 607, 64 S. Ct. 1215, 88 L. Ed. 1488, 153 A.L.R. 1007 (1944); Mastro Plastics Corp. v. National Labor Relations Bd., 350 U.S. 270, 76 S. Ct. 349, 100 L. Ed. 309, 37 L.R.R.M. (BNA) 2587, 29 Lab. Cas. (CCH) P 69779 (1956); Swain v. Schweiker, 676 F.2d 543 (11th Cir. 1982); Clark v. Helms, 576 F. Supp. 1095 (D.N.H. 1983); Federal Deposit Ins. Corp. v. Miller, 781 F. Supp. 1271 (N.D. Ill. 1991).

Alaska. State v. Arthur, 125 Ariz. 153, 608 P.2d 90 (Ct. App. Div. 1 1980).

California. American Friends Service Committee v. Procunier, 33 Cal. App. 3d 252, 109 Cal. Rptr. 22 (3d Dist. 1973) (disapproved of on other grounds by, Engelmann v. State Bd. of Education, 2 Cal. App. 4th 47, 3 Cal. Rptr. 2d 264, 71 Ed. Law Rep. 834 (3d Dist. 1991)) (disapproved of on other grounds by, Engelmann v. State Bd. of Education, 2 Cal. App. 4th 47, 3 Cal. Rptr. 2d 264, 71 Ed. Law Rep. 834 (3d Dist. 1991)); In re Marriage of Cary, 34 Cal. App. 3d 345, 109 Cal. Rptr. 862 (1st Dist. 1973) (rejected on other grounds by, Marvin v. Marvin, 18 Cal. 3d 660, 134 Cal. Rptr. 815, 557 P.2d 106 (1976)) (overruling on other grounds recognized by, Mayors v. C.I.R., T.C. Memo. 1984-401, T.C.M. (P-H) P 84401, 48 T.C.M. (CCH) 680, 1984 WL 15051 (1984), decision rev'd on other grounds, 785 F.2d 757, 86-1 U.S. Tax Cas. (CCH) P 9300, 57 A.F.T.R.2d 86-1045 (9th Cir. 1986)).

Colorado. Doenges-Glass, Inc. v. General Motors Acceptance Corp., 175 Colo. 518, 488 P.2d 879, 9 U.C.C. Rep. Serv. 1139 (1971).

Connecticut. DeCilla v. Zoning Bd. of Appeals of City of New Haven, 27 Conn. Supp. 112, 231 A.2d 543 (C.P. 1967).

Hawaii. State v. Prevo, 44 Haw. 665, 44 Haw. 686, 361 P.2d 1044 (1961).

Illinois. Galvin v. Galvin, 72 Ill. 2d 113, 19 Ill. Dec. 9, 378 N.E.2d 510 (1978) (citing text); Group Securities, Inc. v. Carpentier, 19 Ill. App. 2d 513, 154 N.E.2d 837, Blue Sky L. Rep. (CCH) P 70403 (1st Dist. 1958).

Indiana. When interpreting the words of a single section of a statute, the Supreme Court must construe them with due regard for all other sections of the act and with regard for the legislative intent to carry out the spirit and purpose of the act. N.D.F. v. State, 775 N.E.2d 1085 (Ind. 2002).

Massachusetts. Killam v. March, 316 Mass. 646, 55 N.E.2d 945 (1944); Green v. Wyman-Gordon Co., 422 Mass. 551, 664 N.E.2d 808, 74 Fair Empl. Prac. Cas. (BNA) 1315, 12 I.E.R. Cas. (BNA) 333, 69 Empl. Prac. Dec. (CCH) P 44307, 51 A.L.R.5th 771 (1996).

Minnesota. International Trust Co. v. American Loan & Trust Co., 62 Minn. 501, 65 N.W. 78 (1895), on reargument, 62 Minn. 501, 65 N.W. 632 (1895).

A presumption exists that the legislature uses the same term consistently in different statutes. Angell v. Hennepin County, 565 N.W.2d 475 (Minn. Ct. App. 1997), aff'd and remanded on other grounds, 578 N.W.2d 343 (Minn. 1998).

Missouri. Abrams v. Ohio Pacific Exp., 819 S.W.2d 338 (Mo. 1991).

New Jersey. Jersey Central Power & Light Co. v. State Board of Tax Appeals, 131 N.J.L. 565, 37 A.2d 111 (N.J. Ct. Err. & App. 1944); Delaware Tp. v. Neeld, 52 N.J. Super. 63, 144 A.2d 801 (App. Div. 1958).

New Mexico. Arnold v. State, 94 N.M. 381, 610 P.2d 1210, 1980-2 Trade Cas. (CCH) P 63318 (1980); Methola v. Eddy County, 95 N.M. 329, 622 P.2d 234 (1980).

North Dakota. State v. Moen, 441 N.W.2d 643 (N.D. 1989).

Ohio. Humphrys v. Winous Co., 164 Ohio St. 254, 58 Ohio Op. 5, 129 N.E.2d 822 (1955); City of Euclid v. MacGillis, 117 Ohio App. 281, 19 Ohio Op. 2d 480, 179 N.E.2d 131 (8th Dist. Cuyahoga County 1962).

Oregon. The overall policy of the legislation was said to be an especially important consideration in the interpretation of a comprehensive zoning ordinance. Clatsop County v. Morgan, 19 Or. App. 173, 526 P.2d 1393 (1974).

Pennsylvania. Water and Power Resources Bd., Dept. of Forests and Waters v. Green Springs Co., 394 Pa. 1, 145 A.2d 178 (1958).

"A statute cannot be dissected into individual words, each one being thrown onto the anvil of dialectics to be hammered into a meaning which has no association with the words from which it has violently been separated." Bertera's Hopewell Foodland, Inc. v. Masters, 428 Pa. 20, 236 A.2d 197, 204 (1967) (overruled by on other grounds, Goodman v. Kennedy, 459 Pa. 313, 329 A.2d 224, 75 Lab. Cas. (CCH) P 53495 (1974)) (overruled on other grounds by, Goodman v. Kennedy, 459 Pa. 313, 329 A.2d 224, 75 Lab. Cas. (CCH) P 53495 (1974))).

South Dakota. Scott v. Class, 532 N.W.2d 399 (S.D. 1995).

Texas. American Family Life Assur. Co. of Columbus v. Texas Health Ins. Risk Pool, 2007 WL 1028855 (Tex. App. Austin 2007).

Vermont. Tower v. Tower, 120 Vt. 213, 138 A.2d 602 (1958); In re Cartmell's Estate, 120 Vt. 228, 138 A.2d 588 (1958); Conn v. Town of Brattleboro, 120 Vt. 315, 140 A.2d 6 (1958).

Wisconsin. Glover v. Marine Bank of Beaver Dam, 117 Wis. 2d 684, 345 N.W.2d 449 (1984).

Miles, ERISA Section 104(B)(4): What Documents do Employees have a Right to Demand from Their Employers?. 39 Wm & Mary L Rev 1741 (1998).

[FN11] **United States.** Faircloth v. Lundy Packing Co., 91 F.3d 648, 20 Employee Benefits Cas. (BNA) 2493 (4th Cir. 1996); Blome v. Aerospatiale Helicopter Corp., 924 F. Supp. 805, 1997 A.M.C. 1072 (S.D. Tex. 1996), aff'd, 114 F.3d 1184 (5th Cir. 1997)

U.S. v. Rosenthal, 266 F. Supp. 2d 1068 (N.D. Cal. 2003), aff'd in part, rev'd in part on other grounds, 445 F.3d 1239 (9th Cir. 2006), opinion amended and superseded on denial of reh'g, 454 F.3d 943 (9th Cir. 2006) and aff'd in part, rev'd in part on other grounds, 454 F.3d 943 (9th Cir. 2006); Thom v. U.S., 134 F. Supp. 2d 1093, 2001-1 U.S. Tax Cas. (CCH) P 50345, 87 A.F.T.R.2d 2001-1874 (D. Neb. 2001), judgment aff'd, 283 F.3d 939, 2002-1 U.S. Tax Cas. (CCH) P 50293, 2002-2 U.S. Tax Cas. (CCH) P 50529, 89 A.F.T.R.2d 2002-1384 (8th Cir. 2002).

California. Cooley v. Superior Court, 29 Cal. 4th 228, 127 Cal. Rptr. 2d 177, 57 P.3d 654 (2002), as modified, (Jan. 15, 2003); Lewis C. Nelson & Sons, Inc. v. Clovis Unified School Dist., 90 Cal. App. 4th 64, 108 Cal. Rptr. 2d 715, 154 Ed. Law Rep. 905 (5th Dist. 2001), as modified, (June 27, 2001).

Colorado. Walgreen Co. v. Charnes, 819 P.2d 1039 (Colo. 1991).

Delaware. State Dept. of Labor, Div. of Unemployment Ins. v. Reynolds, 669 A.2d 90 (Del. 1995).

Illinois. Harvel v. City of Johnston City, 146 Ill. 2d 277, 166 Ill. Dec. 888, 586 N.E.2d 1217 (1992); Stanton v. Republic Bank of South Chicago, 202 Ill. App. 3d 476, 147 Ill. Dec. 724, 559 N.E.2d 1064 (1st Dist. 1990).

Hawaii. State v. Chun, 102 Haw. 383, 76 P.3d 935 (2003); State v. Rapoza, 95 Haw. 321, 22 P.3d 968 (2001).

Kansas. Marshall v. Kansas Medical Mut. Ins. Co., 276 Kan. 97, 73 P.3d 120 (2003).

Massachusetts. Green v. Wyman-Gordon Co., 422 Mass. 551, 664 N.E.2d 808, 74 Fair Empl. Prac. Cas. (BNA) 1315, 12 I.E.R. Cas. (BNA) 333, 69 Empl. Prac. Dec. (CCH) P 44307, 51 A.L.R.5th 771 (1996); Shrewsbury Edgemere Associates Ltd. Partnership v. Board of Appeals of Shrewsbury, 409 Mass. 317, 565 N.E.2d 1214 (1991).

Minnesota. City of Rochester v. People's Co-op. Power Ass'n Inc., 466 N.W.2d 753, 120 Pub. Util. Rep. 4th (PUR) 611 (Minn. Ct. App. 1991), rev'd on other grounds, 483 N.W.2d 477 (Minn. 1992).

Missouri. 20th & Main Redevelopment Partnership v. Kelley, 774 S.W.2d 139 (Mo. 1989).

When construing an ambiguous statute, law favors a construction that harmonizes with reason, gives effect to the legislature's intent, and tends to avoid absurd result, however the ultimate guide is the intent of the legislature. Maples v. Department of Social Services, Div. of Family Services of State of Mo., 11 S.W.3d 869 (Mo. Ct. App. S.D. 2000).

Nebraska. Hill v. Women's Medical Center of Nebraska, 254 Neb. 827, 580 N.W.2d 102 (1998).

New Jersey. In re T.S., 364 N.J. Super. 1, 834 A.2d 419 (App. Div. 2003) (disapproved of on other grounds by, In re T.T., 188 N.J. 321, 907 A.2d 416 (2006)).

New York. Rangolan v. County of Nassau, 96 N.Y.2d 42, 725 N.Y.S.2d 611, 749 N.E.2d 178 (2001).

Oklahoma. Sanford v. Anadarko Petroleum Corp., 2001 OK CIV APP 90, 32 P.3d 218, 150 O.G.R. 267 (Div. 3 2001).

Rhode Island. State v. Bryant, 670 A.2d 776 (R.I. 1996).

Texas. Strasburger Enterprises, Inc. v. TDGT Ltd. Partnership, 110 S.W.3d 566 (Tex. App. Austin 2003).

Utah. De Baritault v. Salt Lake City Corp., 913 P.2d 743 (Utah 1996); Clover v. Snowbird Ski Resort, 808 P.2d 1037 (Utah 1991).

Scislowski, The Payment/Deposit Warranty: Allow a Drawer to Hold a Depository Bank Liable for Collecting an Item with a Forged Indorsement, 28 Akron L Rev 573 (1995).

Utah Dept. of Public Safety, Driver License Div. v. Robot Aided Mfg. Center, Inc., 2005 UT App 199, 113 P.3d 1014 (Utah Ct. App. 2005)

Washington. Citizens For Fair Share v. State Dept. of Corrections, 117 Wash. App. 411, 72 P.3d 206 (Div. 2 2003).

Wisconsin. City of Madison v. State Dept. of Workforce Development, Equal Rights Division, 2003 WI 76, 262 Wis. 2d 652, 664 N.W.2d 584 (2003).

[FN12] **United States.** U.S. v. Bonanno Organized Crime Family of La Cosa Nostra, 879 F.2d 20, R.I.C.O. Bus. Disp. Guide (CCH) P 7252 (2d Cir. 1989).

California. People v. Morris, 46 Cal. 3d 1, 249 Cal. Rptr. 119, 756 P.2d 843 (1988), enforcement granted in part, rev'd in part on other grounds, (Sept. 1, 1988) and (disapproved of by, In re Sassounian, 9 Cal. 4th 535, 37 Cal. Rptr. 2d 446, 887 P.2d 527 (1995)); People v. Weems, 54 Cal. App. 4th 854, 62 Cal. Rptr. 2d 903 (6th Dist. 1997).

Connecticut. Visco v. Cody, 16 Conn. App. 444, 547 A.2d 935 (1988).

District of Columbia. Thomas v. District of Columbia Dept. of Employment Services, 547 A.2d 1034 (D.C. 1988).

Hawaii. State v. Chun, 102 Haw. 383, 76 P.3d 935 (2003).

Iowa. Stearns v. Kean, 303 N.W.2d 408 (Iowa 1981).

Louisiana. In re RLV, 484 So. 2d 206 (La. Ct. App. 1st Cir. 1986).

Mississippi. Adams v. Yazoo & M.V.R. Co., 75 Miss. 275, 22 So. 824 (1897).

New York. Henry Modell and Co., Inc. v. Minister, Elders and Deacons of Reformed Protestant Dutch Church of City of New York, 68 N.Y.2d 456, 510 N.Y.S.2d 63, 502 N.E.2d 978 (1986).

North Dakota. The court determines the intent of the legislature in enacting the statute in question by comparing every section of the statute as part of the whole, BASF Corp. v. Symington, 512 N.W.2d 692 (N.D. 1994).

Rhode Island. Sorenson v. Colibri Corp., 650 A.2d 125 (R.I. 1994).

[FN13] **United States.** O'Connell v. Shalala, 79 F.3d 170 (1st Cir. 1996); Leach v. F.D.I.C., 860 F.2d 1266, R.I.C.O. Bus. Disp. Guide (CCH) P 7090 (5th Cir. 1988); Greenpeace, Inc. v. Waste Technologies Industries, 9 F.3d 1174, 37 Env't. Rep. Cas. (BNA) 1769, 24 Envtl. L. Rep. 20103 (6th Cir. 1993).

Colorado. Stevens v. People, 796 P.2d 946 (Colo. 1990).

Michigan. G.C. Timmis & Co. v. Guardian Alarm Co., 468 Mich. 416, 662 N.W.2d 710 (2003).

Virginia. Dotson v. Com., 18 Va. App. 465, 445 S.E.2d 492 (1994).

[FN14] **England.** Attorney General v. Sillem, 2 H&C 431, 159 Eng. Rep. 178 (1864).

United States. The specific provision of subsection (d) controls the general provisions in (f). American Postal Workers Union, AFL-CIO v. U.S. Postal Service, 707 F.2d 548 (D.C. Cir. 1983).

Dingess v. Nicholson, 19 Vet. App. 473 (2006), aff'd, 483 F.3d 1311 (Fed. Cir. 2007) and aff'd, 2007 WL 1686737 (Fed. Cir. 2007).

Alabama. Calhoun County Com'n v. Hooks, 728 So. 2d 625 (Ala. Civ. App. 1997), rev'd on other grounds, 728 So. 2d 631 (Ala. 1998).

Alaska. Matter of Hutchinson's Estate, 577 P.2d 1074 (Alaska 1978).

Colorado. People v. District Court, 834 P.2d 236 (Colo. 1992).

Connecticut. State v. White, 169 Conn. 223, 363 A.2d 143 (1975).

District of Columbia. District of Columbia v. Thompson, 593 A.2d 621 (D.C. 1991).

Illinois. County of Will v. Village of Rockdale, 226 Ill. App. 3d 634, 168 Ill. Dec. 617, 589 N.E.2d 1017 (3d Dist. 1992).

Florida. Sharer v. Hotel Corp. of America, 144 So. 2d 813 (Fla. 1962).

Maryland. State Dept. of Assessments and Taxation v. Ellicott-Brandt, Inc., 237 Md. 328, 206 A.2d 131 (1965).

Michigan. People v. Patterson, 428 Mich. 502, 410 N.W.2d 733 (1987).

Nebraska. Belgum v. City of Kimball, 163 Neb. 774, 81 N.W.2d 205, 62 A.L.R.2d 1295 (1957).

Oklahoma. Home-Stake Production Co. v. Board of Equalization of Seminole County, 1966 OK 115, 416 P.2d 917 (Okla. 1966); McSpadden v. Mahoney, 1964 OK 260, 402 P.2d 656 (Okla. 1964).

Utah. White v. Utah State Bd. of Pardons, 778 P.2d 20 (Utah Ct. App. 1989).

Wisconsin. Glover v. Marine Bank of Beaver Dam, 117 Wis. 2d 684, 345 N.W.2d 449 (1984); Student Ass'n of University of Wisconsin-Milwaukee v. Baum, 74 Wis. 2d 283, 246 N.W.2d 622 (1976).

Isaacson, Rape By Fraud or Impersonation: A Necessary Addition To Michigan's Criminal Sexual Conduct Statute, 44 Wayne L Rev 1781 (1999); Melvin, The Desegregation of Children With Disabilities, 44 DePaul L Rev 599, 645 (1995); Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum L Rev 527 (1947).

[FN15] **United States.** Foley Bros. v. Filardo, 336 U.S. 281, 69 S. Ct. 575, 93 L. Ed. 680 (1949); Litchfield Securities Corp. v. U.S., 325 F.2d 667, 64-1 U.S. Tax Cas. (CCH) P 9106, 12 A.F.T.R.2d 6042 (2d Cir. 1963); Standard Sur. & Cas. Co. of New York v. State of Oklahoma ex rel. Thilsted, 145 F.2d 605 (C.C.A. 10th Cir. 1944); Federal Sav. and Loan Ins. Corp. v. Shelton, 789 F. Supp. 1360 (M.D. La. 1992).

Where the statute's scope is narrow, its language precise, and its application foreseeably mechanical, it would take a strong showing of rare and exceptional circumstances to convince a court that the statute (the "Pickle Amendment" to the Social Security Act) should not be applied as written. Ciampa v. Secretary of Health and Human Services, 687 F.2d 518 (1st Cir. 1982).

U.S. v. Rosenthal, 266 F. Supp. 2d 1068 (N.D. Cal. 2003), aff'd in part, rev'd in part on other grounds, 445 F.3d 1239 (9th Cir. 2006), opinion amended and superseded on denial of reh'g, 454 F.3d 943 (9th Cir. 2006) and aff'd in part, rev'd in part on other grounds, 454 F.3d 943 (9th Cir. 2006).

Connecticut. Mahoney v. Lensink, 17 Conn. App. 130, 550 A.2d 1088 (1988), judgment aff'd in part, rev'd in part on other grounds, 213 Conn. 548, 569 A.2d 518 (1990).

Illinois. Niebling v. Town of Moline, 8 Ill. 2d 11, 131 N.E.2d 535 (1956); Karlson v. Murphy, 387 Ill. 436, 56 N.E.2d 839 (1944).

Indiana. Indiana State Highway Commission v. Indiana Civil Rights Commission, 424 N.E.2d 1024 (Ind. Ct. App. 1981).

Louisiana. In re RLV, 484 So. 2d 206 (La. Ct. App. 1st Cir. 1986).

New York. Bright Homes, Inc. v. Wright, 8 N.Y.2d 157, 203 N.Y.S.2d 67, 168 N.E.2d 515 (1960).

Pennsylvania. The fact that words in a statute have not been used in a technical sense before does not make them ambiguous or unclear. The words should be given their common and approved usage. Wajert v. State Ethics Commission, 491 Pa. 255, 420 A.2d 439 (1980).

South Dakota. In the enactment of statutes pertaining to the approval of budget and contracts of the conservancy subdistrict by the Board of Water and Natural Resources, the legislature used the word "approval" in its generally accepted sense and intended to grant the Board more than ministerial powers and effectively conferred discretionary authority. Oahe Conservancy Subdistrict v. Janklow, 308 N.W.2d 559 (S.D. 1981).

Washington. Application of Eng, 113 Wash. 2d 178, 776 P.2d 1336 (1989).

See Potter, Statutory Interpretation—"Plain Meaning Rule"—Equal Pay Law, 13 Duq. L Rev 639 (1975); Note, Back to the Drawing Board: The Settlement Class Action and the Limits of Rule 23, 109 Harv L Rev 828 (1996).

Ochoa, Copyright, Derivative Works and Fixation: Is Galoob a Mirage, or does the Form(gen) of the Alleged Derivative Work Matter?, 20 Santa Clara Compuer & High Tech L. J. 991 (2004).

[FN16] **United States.** Sturges v. Crowninshield, 17 U.S. 122, 4 L. Ed. 529, 1819 WL 2136 (1819).

Connecticut. Where an ambiguity does not appeal, the court cannot in the interest of public policy engraft

amendments onto the statutory language. Burnham v. Administrator, Unemployment Compensation Act, 184 Conn. 317, 439 A.2d 1008 (1981).

Florida. A child eleven years and nine months old could reasonably have been construed to come within both subsections of a sexual battery statute proscribing certain acts against "person 11 years of age or younger" and "person over the age of 11 years," a result that could not have been intended. Thus the subsections were ambiguous and should be construed. State v. Carroll, 378 So. 2d 4 (Fla. Dist. Ct. App. 4th Dist. 1979) (disapproved of on other grounds by, Hansen v. State, 421 So. 2d 504 (Fla. 1982)).

Illinois. In construing a statute, the court's role is to examine the entire statute for guidance as to the legislative intent, to determine the objective that the statute seeks to accomplish and the evils it attempts to remedy, and upon ascertaining the legislature's intent, to give it effect. Schaumburg State Bank v. Bank of Wheaton, 197 Ill. App. 3d 713, 144 Ill. Dec. 151, 555 N.E.2d 48 (2d Dist. 1990).

Michigan. Lawrence v. Michigan Dept. of Corrections, 88 Mich. App. 167, 276 N.W.2d 554 (1979).

[FN17] **United States.** Markham v. Cabell, 326 U.S. 404, 66 S. Ct. 193, 90 L. Ed. 165 (1945); Johnson v. Al Tech Specialties Steel Corp., 731 F.2d 143, 34 Fair Empl. Prac. Cas. (BNA) 861, 34 Empl. Prac. Dec. (CCH) P 34296 (2d Cir. 1984); Faircloth v. Lundy Packing Co., 91 F.3d 648, 20 Employee Benefits Cas. (BNA) 2493 (4th Cir. 1996); U.S. v. Otherson, 637 F.2d 1276 (9th Cir. 1980); In re Roxford Foods Litigation, 790 F. Supp. 987 (E.D. Cal. 1991); U.S. v. Shell Oil Co., 605 F. Supp. 1064, 22 Env't. Rep. Cas. (BNA) 1473, 15 Envtl. L. Rep. 20337 (D. Colo. 1985); State of Nev. ex rel. Dept. of Transp. v. U.S., 925 F. Supp. 691, 43 Env't. Rep. Cas. (BNA) 1163, 26 Envtl. L. Rep. 21443 (D. Nev. 1996); Health Care Review Inc. v. Shalala, 926 F. Supp. 274, 51 Soc. Sec. Rep. Serv. 71 (D.R.I. 1996); In re Dever, 164 B.R. 132 (Bankr. C.D. Cal. 1994).

The Rescissions Act providing expedited procedure for quick approval of timber salvage sales in the damaged areas of the nation's forests targeted in light of past fire and drought damage, does not call for merger of environmental assessment under the NEPA and biological evaluation under an Emergency Supplemental Appropriation but, rather, the Act calls for a single document providing environmental analysis at the sole discretion of the concerned Secretary to delve into the environmental impact in any manner the Secretary deems appropriate and feasible. Ozark Chapter/Sierra Club v. Thomas, 924 F. Supp. 103, 26 Envtl. L. Rep. 21396 (E.D. Mo. 1996).

Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 122 S. Ct. 708, 151 L. Ed. 2d 635, 27 Employee Benefits Cas. (BNA) 1065 (2002).

Alabama. State ex rel. Richardson v. Morrow, 276 Ala. 385, 162 So. 2d 480 (1964).

Alaska. Commercial Fisheries Entry Com'n v. Apokedak, 680 P.2d 486 (Alaska 1984); Christie v. State, 580 P.2d 310 (Alaska 1978).

Arkansas. City of Fort Smith v. Tate, 311 Ark. 405, 844 S.W.2d 356 (1993).

Connecticut. Kim v. Magnotta, 249 Conn. 94, 733 A.2d 809 (1999); Rosado v. Bridgeport Roman Catholic Diocesan Corp., 77 Conn. App. 690, 825 A.2d 153 (2003), judgment rev'd on other grounds, 276 Conn. 168, 884 A.2d 981 (2005).

Idaho. Magnuson v. Idaho State Tax Commission, 97 Idaho 917, 556 P.2d 1197 (1976).

Illinois. Harvel v. City of Johnston City, 146 Ill. 2d 277, 166 Ill. Dec. 888, 586 N.E.2d 1217 (1992); Maiter v. Chicago Bd. of Ed., 82 Ill. 2d 373, 47 Ill. Dec. 721, 415 N.E.2d 1034 (1980); Carlson v. Moline Bd. of Educ., School Dist. No. 40, 231 Ill. App. 3d 493, 172 Ill. Dec. 897, 596 N.E.2d 176, 75 Ed. Law Rep. 1155 (3d Dist. 1992); Ferrari v. Byerly Aviation, Inc., 131 Ill. App. 2d 747, 268 N.E.2d 558 (3d Dist. 1971).

Indiana. Combs v. Cook, 238 Ind. 392, 151 N.E.2d 144 (1958).

Kansas. State v. Payne, 183 Kan. 396, 327 P.2d 1071 (1958).

Kentucky. George v. Scent, 346 S.W.2d 784 (Ky. 1961).

Maryland. Berlin v. Aluisi, 57 Md. App. 390, 470 A.2d 388 (1984).

Massachusetts. School Committee of Brockton v. Teachers' Retirement Bd., 393 Mass. 256, 471 N.E.2d 61, 21 Ed. Law Rep. 651 (1984).

Missouri. Eminence R-1 School Dist. v. Hodge, 635 S.W.2d 10, 5 Ed. Law Rep. 303 (Mo. 1982).

New Jersey. Modern Indus. Bank v. Taub, 134 N.J.L. 260, 47 A.2d 348 (N.J. Ct. Err. & App. 1946); Adler v. Livak, 308 N.J. Super. 219, 705 A.2d 1218 (App. Div. 1998).

New Mexico. State v. Wylie, 71 N.M. 447, 379 P.2d 86 (1963).

New York. The court must assume that every provision of a statute was enacted to serve some useful purpose, and that an enforceable result was intended. Lewis v. Individual Practice Ass'n of Western New York, Inc., 187 Misc. 2d 812, 723 N.Y.S.2d 845 (Sup 2001).

North Carolina. City of Greensboro v. Smith, 241 N.C. 363, 85 S.E.2d 292 (1955).

Oklahoma. Sharp v. Tulsa County Election Bd., 1994 OK 104, 890 P.2d 836, 98 Ed. Law Rep. 424 (Okla. 1994), as supplemented on reh'g, (Jan. 31, 1995).

Oregon. Cal-Roof Wholesale, Inc. v. State Tax Commission, 242 Or. 435, 410 P.2d 233 (1966).

Tennessee. Where the rules of civil procedure conflict with the provisions of an act and the conflict can not be resolved harmoniously, the resolution of the conflict will be in favor of the rules of civil procedure. Mid-South Pavers, Inc. v. Arnco Const., Inc., 771 S.W.2d 420 (Tenn. Ct. App. 1989).

Texas. Chapa v. Spivey, 999 S.W.2d 833 (Tex. App. Tyler 1999).

Washington. De Grief v. City of Seattle, 50 Wash. 2d 1, 297 P.2d 940 (1956).

Curtis, A Better Theory of Legal Interpretation, 3 Vand L Rev 407 (1950).

[FN18] **United States.** BFP v. Resolution Trust Corp., 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556, 25 Bankr. Ct. Dec. (CRR) 1051, 30 Collier Bankr. Cas. 2d (MB) 345, Bankr. L. Rep. (CCH) P 75885 (1994); Good Samaritan Hosp. v. Shalala, 508 U.S. 402, 113 S. Ct. 2151, 124 L. Ed. 2d 368, 41 Soc. Sec.

Rep. Serv. 91 (1993); Chair King, Inc. v. Houston Cellular Corp., 131 F.3d 507, 26 Media L. Rep. (BNA) 1244 (5th Cir. 1997); Matter of Thalheim, 853 F.2d 383 (5th Cir. 1988); U.S. v. Richards, 67 F.3d 1531 (10th Cir. 1995), opinion vacated on reh'g en banc on other grounds, 87 F.3d 1152 (10th Cir. 1996); Rickard v. Auto Publisher, Inc., 735 F.2d 450, 222 U.S.P.Q. 808 (11th Cir. 1984); U.S. v. Shell Oil Co., 605 F. Supp. 1064, 22 Env't. Rep. Cas. (BNA) 1473, 15 Envtl. L. Rep. 20337 (D. Colo. 1985); Mundell v. Beverly Enterprises-Indiana, Inc., 778 F. Supp. 459 (S.D. Ind. 1991); Dailey v. National Hockey League, 780 F. Supp. 262, 14 Employee Benefits Cas. (BNA) 2364 (D.N.J. 1991), order rev'd on other grounds, 987 F.2d 172, 16 Employee Benefits Cas. (BNA) 1609 (3d Cir. 1993); Brooklyn Bridge Park Coalition v. Port Authority of New York and New Jersey, 951 F. Supp. 383, 44 Env't. Rep. Cas. (BNA) 1209, 27 Envtl. L. Rep. 20788 (E.D. N.Y. 1997).

The meaning of an unclear section in a statute may be clarified by its context within the statute as a whole. Guidry v. Sheet Metal Workers Intern. Ass'n, Local No. 9, 10 F.3d 700, 17 Employee Benefits Cas. (BNA) 1826 (10th Cir. 1993), on reh'g en banc, 39 F.3d 1078, 18 Employee Benefits Cas. (BNA) 2313 (10th Cir. 1994).

To read out of a statute a provision setting forth a specific condition or to attempt to put forth the provisions applicability is not proper. Natural Resources Defense Council, Inc. v. U.S. E.P.A., 822 F.2d 104, 26 Env't. Rep. Cas. (BNA) 1153, 17 Envtl. L. Rep. 21043 (D.C. Cir. 1987).

Alabama. Kirkland v. State, 529 So. 2d 1036 (Ala. Crim. App. 1988); Harris v. State, 500 So. 2d 1292 (Ala. Crim. App. 1986).

California. In re Stonewall F., 208 Cal. App. 3d 1054, 256 Cal. Rptr. 578 (3d Dist. 1989) (disapproved of on other grounds by, People v. Atkins, 25 Cal. 4th 76, 104 Cal. Rptr. 2d 738, 18 P.3d 660 (2001)).

Colorado. Gonzales v. District Court In and For Otero County, 629 P.2d 1074 (Colo. 1981).

Illinois. Harvel v. City of Johnston City, 146 Ill. 2d 277, 166 Ill. Dec. 888, 586 N.E.2d 1217 (1992).

Indiana. Kinder v. Doe, 540 N.E.2d 111 (Ind. Ct. App. 1989).

Maryland. Chen v. State, 370 Md. 99, 803 A.2d 518 (2002).

Massachusetts. Dowell v. Commissioner of Transitional Assistance, 424 Mass. 610, 677 N.E.2d 213 (1997).

Michigan. City of Manistee v. Employment Relations Com'n, 168 Mich. App. 422, 425 N.W.2d 168 (1988).

Minnesota. First Nat. Bank of Deerwood v. Gregg, 556 N.W.2d 214 (Minn. 1996).

Nevada. City Council of City of Reno v. Reno Newspapers, Inc., 105 Nev. 886, 784 P.2d 974, 17 Media L. Rep. (BNA) 2150 (1989).

New Jersey. Accountemps Div. of Robert Half of Philadelphia, Inc. v. Birch Tree Group, Ltd., 115 N.J. 614, 560 A.2d 663 (1989).

In re Registrant J.M., 167 N.J. 490, 772 A.2d 349 (2001).

North Carolina. In re King, 79 N.C. App. 139, 339 S.E.2d 87 (1986).

South Carolina. The statute as a whole must receive a practical, reasonable and fair interpretation consonant with the legislature's purpose, design, and policy. * D.W. Flowe & Sons, Inc. v. Christopher Const. Co., 326 S.C. 17, 482 S.E.2d 558 (1997) (overruled on other grounds by, Evins v. Richland County Historic Preservation Com'n, 341 S.C. 15, 532 S.E.2d 876 (2000)).

South Dakota. While courts should not enlarge a statute beyond its language if its terms are clear and unambiguous, in cases where a literal approach would undermine the law, the legislative intent ought not to be limited by simply reading the statute's language; the courts should also consider the purpose of the enactment and the goal sought to be attained. State v. Davis, 1999 SD 98, 598 N.W.2d 535 (S.D. 1999).

Texas. Beldon Roofing & Remodeling Co. v. San Antonio Water System, 898 S.W.2d 351 (Tex. App. San Antonio 1995), writ denied, (Aug. 1, 1995).

Utah. Faux v. Mickelsen, 725 P.2d 1372 (Utah 1986); Matter of Adoption of M.L.T., 746 P.2d 1179 (Utah Ct. App. 1987).

Miller v. Weaver, 2003 UT 12, 66 P.3d 592, 175 Ed. Law Rep. 334, 19 I.E.R. Cas. (BNA) 1671 (Utah 2003).

Vermont. St. Gelais v. Walton, 150 Vt. 245, 552 A.2d 782 (1988).

[FN19] **United States.** Lawson v. Suwannee Fruit & S.S. Co., 336 U.S. 198, 69 S. Ct. 503, 93 L. Ed. 611, 1949 A.M.C. 411 (1949); Shapiro v. U.S., 335 U.S. 1, 68 S. Ct. 1375, 92 L. Ed. 1787 (1948); Singer v. U.S., 323 U.S. 338, 65 S. Ct. 282, 89 L. Ed. 285 (1945).

When a statute is amenable to more than one interpretation the court should adopt the interpretation most consistent with the legislature's intent. Acadia Ins. Co. v. McNeil, 116 F.3d 599, 1997 A.M.C. 2409 (1st Cir. 1997), certified question answered, 142 N.H. 815, 711 A.2d 873, 1998 A.M.C. 1986 (1998).

California. Gage v. Jordan, 23 Cal. 2d 794, 147 P.2d 387 (1944).

When there is an apparent lack of harmony in a statute, the construction should be given which will bring the provisions together. Louisiana-Pacific Corp. v. Humboldt Bay Mun. Water Dist., 137 Cal. App. 3d 152, 186 Cal. Rptr. 833 (1st Dist. 1982).

Colorado. Ragsdale Bros. Roofing, Inc. v. United Bank of Denver, N.A., 744 P.2d 750 (Colo. Ct. App. 1987).

Connecticut. When the language used in the statute is doubtful in meaning, the true meaning may be ascertained by considering the statute in light of all its provisions [including the title]. Kim v. Magnotta, 249 Conn. 94, 733 A.2d 809 (1999); State v. Ryan, 48 Conn. App. 148, 709 A.2d 21 (1998).

District of Columbia. Johnson v. Collins, 516 A.2d 196 (D.C. 1986); Dobbs v. Duncan, 458 A.2d 719 (D.C. 1983).

Georgia. Oxford v. Macon Tel. Pub. Co., 104 Ga. App. 788, 123 S.E.2d 277 (1961).

Illinois. Harvel v. City of Johnston City, 146 Ill. 2d 277, 166 Ill. Dec. 888, 586 N.E.2d 1217 (1992); Morris v. Broadview, Inc., 385 Ill. 228, 52 N.E.2d 769 (1944).

Indiana. If there is no ambiguity the court cannot interpret the statute or substitute words to fit within the construc-tion different from that which the legislature clearly and expressly intended. Allstate Ins. Co. v. Larkin's Body Shop and Auto Care, Inc., 673 N.E.2d 846 (Ind. Ct. App. 1996).

Louisiana. In re Ackenhausen, 146 So. 2d 37 (La. Ct. App. 4th Cir. 1962), judgment aff'd, 244 La. 730, 154 So. 2d 380 (1963).

Maryland. Berlin v. Aluisi, 57 Md. App. 390, 470 A.2d 388 (1984).

Massachusetts. When a statute is amenable to more than one interpretation the court should adopt the interpretation most consistent with the legislature's intent. Peters v. United Nat. Ins. Co., 53 Mass. App. Ct. 775, 762 N.E.2d 881 (2002).

Michigan. Renne v. Oxford Tp., 5 Mich. App. 415, 146 N.W.2d 819 (1966), order aff'd, 380 Mich. 39, 155 N.W.2d 852 (1968).

The Penal Code was clearly intended to apply to females as well as males and the obvious intent of the legislature in amending the custody and maintenance provisions of the divorce law was to place mothers and fathers on an equal footing with regard to the responsibility of providing child support. People v. Gilliam, 108 Mich. App. 695, 310 N.W.2d 843 (1981).

In construing a statute, the court must give the language a valid and reasonable construction that reconciles inconsistencies and gives effect to all parts. Moore v. Fennville Public Schools Bd. of Educ., 223 Mich. App. 196, 566 N.W.2d 31, 119 Ed. Law Rep. 1133, 157 L.R.R.M. (BNA) 2249 (1997).

Missouri. Gilbert v. Edwards, 276 S.W.2d 611 (Mo. Ct. App. 1955).

New Jersey. State v. E. H. Miller Transp. Co., 74 N.J. Super. 474, 181 A.2d 537 (App. Div. 1962); Lloyd v. Vermeulen, 40 N.J. Super. 151, 122 A.2d 388 (Law Div. 1956), judgment aff'd, 40 N.J. Super. 301, 123 A.2d 21 (App. Div. 1956), judgment aff'd, 22 N.J. 200, 125 A.2d 393 (1956).

New Mexico. Reed v. Styron, 69 N.M. 262, 365 P.2d 912 (1961).

North Carolina. Legislative intent can be ascertained not only from the phraseology of the statute but also from the nature and the purpose of the act and the consequences which would follow its construction one way or the other. Sutton v. Aetna Cas. & Sur. Co., 325 N.C. 259, 382 S.E.2d 759 (1989).

North Dakota. State v. Hersch, 445 N.W.2d 626 (N.D. 1989).

Oklahoma. Roach v. Atlas Life Ins. Co., 1989 OK 27, 769 P.2d 158 (Okla. 1989).

Oregon. Local 1724B, American Federation of State, County and Municipal Employees AFL-CIO v. Board of County Com'rs of Lane County, 5 Or. App. 81, 482 P.2d 764, 77 L.R.R.M. (BNA) 2798, 65 Lab. Cas. (CCH) P 52541 (1971).

Rhode Island. When a statute is amenable to more than one interpretation the court should adopt the interpretation most consistent with the legislature's intent. Brown v. Travelers Ins. Co., 610 A.2d 127 (R.I. 1992).

Utah. Faux v. Mickelsen, 725 P.2d 1372 (Utah 1986).

Vermont. In re National Guard, 71 Vt. 493, 45 A. 1051 (1899).

Washington. Roza Irr. Dist. v. State, 80 Wash. 2d 633, 497 P.2d 166, 80 L.R.R.M. (BNA) 2924, 68 Lab. Cas. (CCH) P 52849 (1972).

If a statute is susceptible of two interpretations, that interpretation which best advances the overall legislative purpose should be adopted. City of Everett ex rel. Cattle v. Everett Dist. Court, Snohomish County, 31 Wash. App. 319, 641 P.2d 714 (Div. 1 1982).

[FN20] **United States.** J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc., 534 U.S. 124, 122 S. Ct. 593, 151 L. Ed. 2d 508, 60 U.S.P.Q.2d 1865 (2001); Orquera v. Ashcroft, 357 F.3d 413 (4th Cir. 2003).

Iowa. Burton v. University of Iowa Hospitals & Clinics, 566 N.W.2d 182, 119 Ed. Law Rep. 1138 (Iowa 1997).

Nebraska. Components of a series or collection of statutes pertaining to a certain subject matter may be conjunctively considered and construed to determine the intent of the Legislature so that different provisions of the act are consistent, harmonious and sensible. Creighton St. Joseph Regional Hosp. v. Nebraska Tax Equalization and Review Com'n, 260 Neb. 905, 620 N.W.2d 90 (2000).

New Jersey. In re T.S., 364 N.J. Super. 1, 834 A.2d 419 (App. Div. 2003) (disapproved of on other grounds by, In re T.T., 188 N.J. 321, 907 A.2d 416 (2006)).

North Carolina. Schout v. Schout, 140 N.C. App. 722, 538 S.E.2d 213 (2000).

However, if two statutes are totally irreconcilable the latter enactment will prevail.

Georgia. Patrick v. Head, 262 Ga. 654, 424 S.E.2d 615 (1993).

Minnesota. Altenburg v. Board of Sup'rs of Pleasant Mound Tp., 615 N.W.2d 874 (Minn. Ct. App. 2000).

Ohio. Sheffield v. Rowland, 87 Ohio St. 3d 9, 1999-Ohio-217, 716 N.E.2d 1121 (1999).

Oregon. Tides Ass'n of Unit Owners v. City Council of City of Seaside, 92 Or. App. 446, 759 P.2d 292 (1988).

South Carolina. National Advertising Co., Inc. v. Mount Pleasant Bd. of Adjustment, 312 S.C. 397, 440 S.E.2d 875 (1994).

[FN21] **United States.** Leisnoi, Inc. v. Stratman, 154 F.3d 1062, 29 Envtl. L. Rep. 20084, 141 O.G.R. 457 (9th Cir. 1998).

Alabama. Ex parte Hayes, 405 So. 2d 366, 1 Ed. Law Rep. 454 (Ala. 1981).

Arkansas. Bush v. State, 338 Ark. 772, 2 S.W.3d 761 (1999).

Connecticut. Ensign-Bickford Realty Corp. v. Zoning Com'n Town of Simsbury, 245 Conn. 257, 715 A.2d 701 (1998).

Louisiana. In re RLV, 484 So. 2d 206 (La. Ct. App. 1st Cir. 1986).

Oklahoma. Sharp v. Tulsa County Election Bd., 1994 OK 104, 890 P.2d 836, 98 Ed. Law Rep. 424 (Okla. 1994), as supplemented on reh'g, (Jan. 31, 1995).

Virginia. Hodges v. Com., Dept. of Social Services, Div. of Child Support Enforcement ex rel. Comptroller of Virginia, 45 Va. App. 118, 609 S.E.2d 61 (2005).

Wisconsin. Conflicting provisions of the law should be harmonized, if possible, and thus give effect to the idea behind the law. State v. Sweat, 208 Wis. 2d 409, 561 N.W.2d 695 (1997).

Gomez, The Consequences of Nonappearance: Interpreting New Section 242B of the Immigration and Nationality Act, 30 San Diego L Rev 75 (1993).

[FN22] **United States.** Dailey v. National Hockey League, 780 F. Supp. 262, 14 Employee Benefits Cas. (BNA) 2364 (D.N.J. 1991), order rev'd on other grounds, 987 F.2d 172, 16 Employee Benefits Cas. (BNA) 1609 (3d Cir. 1993).

Federbush, Damages Under FDUTPA [Florida Deceptive and Unfair Trade Practices Act], 78-May Fla B J 20 (2004).

[FN23] **United States.** Equal Employment Opportunity Commission v. Gilbarco, Inc., 615 F.2d 985, 21 Fair Empl. Prac. Cas. (BNA) 1045, 21 Empl. Prac. Dec. (CCH) P 30555 (4th Cir. 1980); U.S. v. Cross, 121 F.3d 234, 1997 FED App. 0229P (6th Cir. 1997); Arredondo v. U.S., 120 F.3d 639, 1997 FED App. 0239P (6th Cir. 1997)); Lyons v. Ohio Adult Parole Authority, 105 F.3d 1063, 1997 FED App. 0025P (6th Cir. 1997) and (implied overruling on other grounds recognized by,McDonnell v. Cisneros, 84 F.3d 256, 70 Fair Empl. Prac. Cas. (BNA) 1459, 68 Empl. Prac. Dec. (CCH) P 44065 (7th Cir. 1996); In re Gledhill, 76 F.3d 1070, 35 Collier Bankr. Cas. 2d (MB) 648, Bankr. L. Rep. (CCH) P 76955, 34 Fed. R. Serv. 3d 1267 (10th Cir. 1996); Aeron Marine Shipping Co. v. U.S., 695 F.2d 567, 1984 A.M.C. 607 (D.C. Cir. 1982); Hill v. Morgan Power Apparatus Corp., 259 F. Supp. 609 (E.D. Ark. 1966), judgment aff'd, 368 F.2d 230 (8th Cir. 1966); Russell v. Department of Air Force, 915 F. Supp. 1108 (D. Colo. 1996); In re Thomas, 85 B.R. 608, 19 Collier Bankr. Cas. 2d (MB) 219 (Bankr. N.D. Ala. 1988), order rev'd on other grounds, 91 B.R. 117, 18 Bankr. Ct. Dec. (CRR) 147 (N.D. Ala. 1988), opinion aff'd, 883 F.2d 991, 19 Bankr. Ct. Dec. (CRR) 1358, Bankr. L. Rep. (CCH) P 73128 (11th Cir. 1989); In re Mr. Gatti's, Inc., 164 B.R. 929, 25 Bankr. Ct. Dec. (CRR) 571 (Bankr. W.D. Tex. 1994) (rejected on other grounds by, In re CHS Electronics, Inc., 265 B.R. 339, 38 Bankr. Ct. Dec. (CRR) 39 (Bankr. S.D. Fla. 2001)).

"However inclusive the general language of the statute, it will not be held to apply or prevail over matters specifically dealt with in another part of the same enactment." In re Brown, 329 F. Supp. 422 (S.D. Iowa 1971).

U.S. v. Yarbrough, 55 M.J. 353 (C.A.A.F. 2001).

In re Dornier Aviation (North America), Inc., 58 U.C.C. Rep. Serv. 2d 1041 (Bankr. E.D. Va. 2005); al-Marri v. Wright, 487 F.3d 160 (4th Cir. 2007), reh'g en banc granted, (Aug. 22, 2007).

Arkansas. Scott v. Greer, 229 Ark. 1043, 320 S.W.2d 262 (1959).

California. Yoffie v. Marin Hospital Dist., 193 Cal. App. 3d 743, 238 Cal. Rptr. 502 (1st Dist. 1987); People v. One 1962 Chevrolet Bel Air, 248 Cal. App. 2d 725, 56 Cal. Rptr. 878 (2d Dist. 1967).

Delaware. A stepparent custody statute, as the most recent expression of legislative intent in limited circumstances where the stepparent seeks custody after the death of a natural custodial parent, superseded an earlier, more general statutory provision giving preference to a natural parent unless the child was dependent or neglected. Tailor v. Becker, 708 A.2d 626 (Del. 1998).

Hunter v. Dairyland Ins. Co., 2006 WL 1816223 (Del. Super. Ct. 2006).

Florida. McDonald v. State, 957 So. 2d 605 (Fla. 2007).

Idaho. Specific statute will control over the more general statute, especially where the more general statute is vague or ambiguous. Richardson v. One 1972 GMC Pickup, 121 Idaho 599, 826 P.2d 1311 (1992).

Illinois. Winnebago County v. Davis, 156 Ill. App. 3d 535, 108 Ill. Dec. 717, 509 N.E.2d 143, 39 Ed. Law Rep. 1207 (2d Dist. 1987).

Iowa. This harmonization would also include a state statute and a county resolution. Decatur County v. Public Employment Relations Bd., 564 N.W.2d 394, 157 L.R.R.M. (BNA) 2574 (Iowa 1997).

This harmonization would also include a state statute and a county resolution. Decatur County v. Public Employment Relations Bd., 564 N.W.2d 394, 157 L.R.R.M. (BNA) 2574 (Iowa 1997).

Kentucky. Porter v. Com., 841 S.W.2d 166 (Ky. 1992); Renaker v. Com., 889 S.W.2d 819 (Ky. Ct. App. 1994).

Louisiana. Where one section of an act deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible. State v. One 1990 GMC Sierra Classic Truck, VIN No. 1GTCS142XL25052929, 646 So. 2d 492 (La. Ct. App. 4th Cir. 1994), writ denied, 650 So. 2d 254 (La. 1995).

Maryland. State v. Ghajari, 346 Md. 101, 695 A.2d 143 (1997); Director of Finance of Prince George's County v. Cole, 296 Md. 607, 465 A.2d 450 (1983).

Massachusetts. Case of Dalbec, 69 Mass. App. Ct. 306, 867 N.E.2d 792 (2007).

Michigan. Frank v. William A. Kibbe & Assoc., Inc., 208 Mich. App. 346, 527 N.W.2d 82 (1995); People v. Young, 206 Mich. App. 144, 521 N.W.2d 340 (1994), decision rev'd on other grounds, 451 Mich. 569, 548 N.W.2d 900 (1996).

Minnesota. First Nat. Bank of Deerwood v. Gregg, 556 N.W.2d 214 (Minn. 1996); Reserve Min. Co. v. Minnesota Pollution Control Agency, 294 Minn. 300, 200 N.W.2d 142, 4 Env't. Rep. Cas. (BNA) 1513, 3

Envtl. L. Rep. 20170 (1972); State v. Smoot, 737 N.W.2d 849 (Minn. Ct. App. 2007), review denied, (Nov. 21, 2007).

Mississippi. Kilgore v. Barnes, 508 So. 2d 1042 (Miss. 1987).

Missouri. Short v. Short, 947 S.W.2d 67 (Mo. Ct. App. S.D. 1997).

Nebraska. To the extent there is a conflict between two statutes on the same subject the special statute controls over the general. Ways v. Shively, 264 Neb. 250, 646 N.W.2d 621 (2002).

Where one section of an act deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible. State v. One Thousand Nine Hundred Forty-Seven Dollars in U.S. Currency, 583 N.W.2d 611 (1998).

New Jersey. City of East Orange v. Livingston Tp., 102 N.J. Super. 512, 246 A.2d 178 (Law Div. 1968), judgment aff'd, 54 N.J. 96, 253 A.2d 546 (1969).

New Mexico. A "guest statute," being more specific, supersedes the applicability of a general nonstatutory rule of law known as the family purpose doctrine. Lopez v. Barreras, 77 N.M. 52, 419 P.2d 251 (1966).

New York. National Organization for Women v. Metropolitan Life Ins. Co., 131 A.D.2d 356, 516 N.Y.S.2d 934 (1st Dep't 1987).

Oklahoma. Where there is a conflict between two statutes the more specific statute gets priority over the more general one. Wagnon v. State Farm Fire and Cas. Co., 1997 OK 160, 951 P.2d 641 (Okla. 1997), as corrected, (Apr. 3, 1998).

Western Auto Supply Co. v. Oklahoma Tax Commission, 1958 OK 144, 328 P.2d 414 (Okla. 1958).

Pennsylvania. Com. v. Klingensmith, 437 Pa. Super. 453, 650 A.2d 444 (1994).

South Carolina. Byrd v. Irmo High School, 321 S.C. 426, 468 S.E.2d 861, 108 Ed. Law Rep. 1003 (1996); Stone v. State (City of Orangeburg), 313 S.C. 533, 443 S.E.2d 544 (1994).

South Dakota. State v. Arguello, 1996 SD 57, 548 N.W.2d 463 (S.D. 1996).

Texas. Cantu v. State, 842 S.W.2d 667 (Tex. Crim. App. 1992); County of Maverick v. Ruiz, 897 S.W.2d 843, 100 Ed. Law Rep. 433 (Tex. App. San Antonio 1995); City of Baytown v. Angel, 469 S.W.2d 923, 46 A.L.R.3d 1388 (Tex. Civ. App. Houston 14th Dist. 1971), writ refused n.r.e., (Nov. 24, 1971).

Virginia. City of Winchester v. American Woodmark Corp., 250 Va. 451, 464 S.E.2d 148 (1995).

Washington. Wilson Sporting Goods Co. v. Pedersen, 76 Wash. App. 300, 886 P.2d 203 (Div. 1 1994); State v. Austin, 59 Wash. App. 186, 796 P.2d 746 (Div. 1 1990).

Wisconsin. Where one section of an act deals with a subject in general terms and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible. State v. Elliott, 203 Wis. 2d 95, 551 N.W.2d 850 (Ct. App. 1996).

Levenson, FERC-SEC Overlapping Jurisdiction and the Ohio Power Litigation: A Loss for Ratepayers, 68 Ind LJ 1417 (1993); Maizel, Setoff and Recoupment in Bankruptcy, 753 PLI/Comm 733 (1997).

Provisions of a special act prevail over those in a general act in the event of conflict. City of Piney Point Village v. Harris County, 479 S.W.2d 358 (Tex. Civ. App. Houston 1st Dist. 1972), writ refused n.r.e., (Oct. 4, 1972).

Yates, Collins & Chin, A War on Drugs or a War on Immigrants? Expanding the Definition of "Drug Trafficking" in Determining Aggravated Felon Status for Noncitizens, 64 Md. L. Rev. 875 (2005).

[FN24] **Alaska.** McGee v. State, 162 P.3d 1251 (Alaska 2007).

Maine. Ziegler v. American Maize-Products Co., 658 A.2d 219 (Me. 1995).

[FN25] **United States.** Russell v. Department of Air Force, 915 F. Supp. 1108 (D. Colo. 1996).

In re Trak Auto Corp., 367 F.3d 237, 42 Bankr. Ct. Dec. (CRR) 255, 52 Collier Bankr. Cas. 2d (MB) 1009, Bankr. L. Rep. (CCH) P 80085 (4th Cir. 2004).

Michigan. Houghton Lake Area Tourism & Convention Bureau v. Wood, 255 Mich. App. 127, 662 N.W.2d 758 (2003).

Georgia. If two statutes are totally irreconcilable the latter enactment will prevail. Patrick v. Head, 262 Ga. 654, 424 S.E.2d 615 (1993).

Minnesota. If two statutes are totally irreconcilable the latter enactment will prevail. Altenburg v. Board of Sup'rs of Pleasant Mound Tp., 615 N.W.2d 874 (Minn. Ct. App. 2000).

Ohio. If two statutes are totally irreconcilable the latter enactment will prevail. Sheffield v. Rowland, 87 Ohio St. 3d 9, 1999-Ohio-217, 716 N.E.2d 1121 (1999).

Oregon. If two statutes are totally irreconcilable the latter enactment will prevail. Tides Ass'n of Unit Owners v. City Council of City of Seaside, 92 Or. App. 446, 759 P.2d 292 (1988).

South Carolina. If two statutes are totally irreconcilable the latter enactment will prevail. National Advertising Co., Inc. v. Mount Pleasant Bd. of Adjustment, 312 S.C. 397, 440 S.E.2d 875 (1994).

[FN26] **Alabama.** Alabama State Bd. of Health ex rel. Baxley v. Chambers County, 335 So. 2d 653 (Ala. 1976); In re Ashworth, 291 Ala. 723, 287 So. 2d 843 (1974).

Louisiana. Morgan Building and Spas, Inc. v. Cutrer, 739 So. 2d 990 (La. Ct. App. 1st Cir. 1999).

Louisiana. In re RLV, 484 So. 2d 206 (La. Ct. App. 1st Cir. 1986).

North Carolina. The subject of two acts of the legislature which are applicable to the same subject should be reconciled if this can be done by fair and reasonable interpretation, but if they cannot be reconciled the last enacted shall prevail. Clark v. Visiting Health Professionals, Inc., 136 N.C. App. 505, 524 S.E.2d 605

(2000).

Pennsylvania. Com. v. Klingensmith, 437 Pa. Super. 453, 650 A.2d 444 (1994).

South Carolina. Southeastern Freight Lines v. City of Hartsville, 313 S.C. 466, 443 S.E.2d 395 (1994).

South Dakota. State v. Arguello, 1996 SD 57, 548 N.W.2d 463 (S.D. 1996).

Texas. County of Maverick v. Ruiz, 897 S.W.2d 843, 100 Ed. Law Rep. 433 (Tex. App. San Antonio 1995).

Where a portion of the statute has to be declared ineffective due to an irreconcilable conflict with the other portion of the statute, the later addition to the statute will take precedence. H & C Communications, Inc. v. Reed's Food Intern., Inc., 887 S.W.2d 475 (Tex. App. San Antonio 1994).

Virginia. If two different terms are used in the same act, it is presumed to mean to different things. Greenberg v. Com. ex rel. Atty. Gen. of Virginia, 255 Va. 594, 499 S.E.2d 266 (1998).

Washington. United Parcel Service, Inc. v. State, Dept. of Revenue, 102 Wash. 2d 355, 687 P.2d 186 (1984).

[FN27] **United States.** Zimmerman v. Cambridge Credit Counseling Corp., 409 F.3d 473, 95 A.F.T.R.2d 2005-2640 (1st Cir. 2005); Grapevine Imports, Ltd. v. U.S., 71 Fed. Cl. 324, 2006-1 U.S. Tax Cas. (CCH) P 50352, 97 A.F.T.R.2d 2006-2936 (2006).

[FN28] **United States.** Lawson v. Singletary, 85 F.3d 502 (11th Cir. 1996) (overruling on other grounds recognized by, Adams v. C.I.R., 170 F.3d 173, 99-1 U.S. Tax Cas. (CCH) P 50307, 83 A.F.T.R.2d 99-1001 (3d Cir. 1999)).

J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Intern., Inc., 534 U.S. 124, 122 S. Ct. 593, 151 L. Ed. 2d 508, 60 U.S.P.Q.2d 1865 (2001).

Alaska. Irby-Northface v. Com. Elec. Co., 664 P.2d 557 (Alaska 1983).

District of Columbia. Dean v. District of Columbia, 653 A.2d 307 (D.C. 1995).

Illinois. Stewart v. Industrial Com'n, 135 Ill. App. 3d 661, 90 Ill. Dec. 368, 481 N.E.2d 1279 (4th Dist. 1985), judgment aff'd, 115 Ill. 2d 337, 105 Ill. Dec. 215, 504 N.E.2d 84 (1987); Davis v. Bughdadi, 120 Ill. App. 3d 236, 76 Ill. Dec. 38, 458 N.E.2d 177 (5th Dist. 1983).

Kansas. Barten v. Turkey Creek Watershed Joint Dist. No. 32 of Dickinson and Marion Counties, 200 Kan. 489, 438 P.2d 732 (1968).

Louisiana. Louisiana Smoked Products, Inc. v. Savoie's Sausage and Food Products, Inc., 696 So. 2d 1373, 1997-2 Trade Cas. (CCH) P 71980 (La. 1997).

Michigan. G.C. Timmis & Co. v. Guardian Alarm Co., 468 Mich. 416, 662 N.W.2d 710 (2003); Theophelis v. Lansing General Hosp., 430 Mich. 473, 424 N.W.2d 478 (1988).

New Jersey. Sandler v. Board of Adjustment of Springfield Tp., 113 N.J. Super. 333, 273 A.2d 775 (App. Div. 1971).

New York. New York State Bankers Ass'n v. Albright, 38 N.Y.2d 430, 381 N.Y.S.2d 17, 343 N.E.2d 735 (1975).

South Carolina. Rowe v. Hyatt, 321 S.C. 366, 468 S.E.2d 649 (1996).

Texas. Citizens Bank of Bryan v. First State Bank, Hearne, 580 S.W.2d 344 (Tex. 1979).

Washington. Alderwood Water Dist. v. Pope & Talbot, Inc., 62 Wash. 2d 319, 382 P.2d 639 (1963).

[FN29] **United States.** U.S. v. Alpers, 338 U.S. 680, 70 S. Ct. 352, 94 L. Ed. 457 (1950); Crosse & Blackwell Company v. F.T.C., 262 F.2d 600 (4th Cir. 1959); Gibran v. Alfred A. Knopf, Inc., 153 F. Supp. 854, 115 U.S.P.Q. 214 (S.D. N.Y. 1957), judgment aff'd, 255 F.2d 121, 117 U.S.P.Q. 218 (2d Cir. 1958); International Longshoremen's & Warehousemens's Union v. Juneau Spruce Corp., 13 Alaska 536, 342 U.S. 237, 72 S. Ct. 235, 96 L. Ed. 275, 29 L.R.R.M. (BNA) 2249, 20 Lab. Cas. (CCH) P 66704 (1952).

Illinois. Anderson v. City of Park Ridge, 396 Ill. 235, 72 N.E.2d 210 (1947); Karlson v. Murphy, 387 Ill. 436, 56 N.E.2d 839 (1944); Stewart v. Industrial Com'n, 135 Ill. App. 3d 661, 90 Ill. Dec. 368, 481 N.E.2d 1279 (4th Dist. 1985), judgment aff'd, 115 Ill. 2d 337, 105 Ill. Dec. 215, 504 N.E.2d 84 (1987).

Indiana. Simon v. City of Auburn, Ind., Bd. of Zoning Appeals, 519 N.E.2d 205 (Ind. Ct. App. 1988); Havens v. Woodfill, 148 Ind. App. 366, 266 N.E.2d 221 (1971).

Iowa. This also applies to words and phrases that they should be construed uniformly through the entire statutes unless a contrary intent is manifested. Kehde v. Iowa Dept. of Job Service, 318 N.W.2d 202 (Iowa 1982).

Michigan. The statute provided that any person who receives mental health services who is physically, sexually, or otherwise abused has a right to pursue injunctive or other appropriate civil relief. But it did not abolish governmental immunity in those cases where one patient attacks another. Rocco v. Michigan Dept. of Mental Health, 114 Mich. App. 792, 319 N.W.2d 674 (1982), decision aff'd, 420 Mich. 567, 363 N.W.2d 641, 23 Ed. Law Rep. 671 (1984).

Minnesota. In re Raynolds' Estate, 219 Minn. 449, 18 N.W.2d 238 (1945).

New Jersey. Salz v. State House Commission, 18 N.J. 106, 112 A.2d 716 (1955); In re Huyler, 133 N.J.L. 171, 43 A.2d 278 (N.J. Sup. Ct. 1945).

Virginia. Norfolk Southern Ry. Co. v. Lassiter, 193 Va. 360, 68 S.E.2d 641 (1952).

Washington. Public Hosp. Dist. No. 2 of Okanogan County v. Taxpayers of Public Hosp. Dist. No. 2 of Okanogan County, 44 Wash. 2d 623, 269 P.2d 594 (1954); Groves v. Meyers, 35 Wash. 2d 403, 213 P.2d 483 (1950).

[FN30] **United States.** Leisnoi, Inc. v. Stratman, 154 F.3d 1062, 29 Envtl. L. Rep. 20084, 141 O.G.R. 457 (9th Cir. 1998); Universal Const. Co., Inc. v. Occupational Safety and Health Review Com'n, 182 F.3d 726,

18 O.S.H. Cas. (BNA) 1769, 1999 O.S.H. Dec. (CCH) P 31861 (10th Cir. 1999).

American Federation of Labor and Congress of Indus. Organizations v. Federal Election Com'n, 177 F. Supp. 2d 48 (D.D.C. 2001), judgment aff'd, 333 F.3d 168 (D.C. Cir. 2003).

California. Wasatch Property Management v. Degrate, 35 Cal. 4th 1111, 29 Cal. Rptr. 3d 262, 112 P.3d 647 (2005), as modified, (July 27, 2005).

New Jersey. Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218, 708 A.2d 401 (1998).

Minnesota. Genin v. 1996 Mercury Marquis, VIN No. 2MEBP95F9CX644211, License No. MN 225 NSG, 622 N.W.2d 114 (Minn. 2001).

Texas. White v. State, 930 S.W.2d 673 (Tex. App. Waco 1996).

[FN31] Kent's Comm (13th Ed 1884) 462.

Alabama. "Courts are not bound by grammatical rules and may ascertain the meaning of words by the context." Sparks v. West Point Mfg. Co., 274 Ala. 102, 145 So. 2d 816 (1962).

Alaska. Irby-Northface v. Com. Elec. Co., 664 P.2d 557 (Alaska 1983).

Connecticut. Pierson v. Administrator, Unemployment Compensation Act, 21 Conn. Supp. 144, 147 A.2d 692 (Super. Ct. 1958).

Illinois. Chastek v. Anderson, 83 Ill. 2d 502, 48 Ill. Dec. 216, 416 N.E.2d 247 (1981); Stewart v. Industrial Com'n, 135 Ill. App. 3d 661, 90 Ill. Dec. 368, 481 N.E.2d 1279 (4th Dist. 1985), judgment aff'd, 115 Ill. 2d 337, 105 Ill. Dec. 215, 504 N.E.2d 84 (1987); Steller v. Miles, 17 Ill. App. 2d 435, 150 N.E.2d 630 (3d Dist. 1958).

Massachusetts. Registrar of Motor Vehicles v. Board of Appeal on Motor Vehicle Liability Policies and Bonds, 382 Mass. 580, 416 N.E.2d 1373 (1981).

New Jersey. Schierstead v. City of Brigantine, 29 N.J. 220, 148 A.2d 591 (1959); State Bd. of Medical Examiners v. Warren Hospital, 102 N.J. Super. 407, 246 A.2d 78 (Dist. Ct. 1968), judgment aff'd, 104 N.J. Super. 409, 250 A.2d 158 (App. Div. 1969).

North Carolina. State v. Johnson, 298 N.C. 47, 257 S.E.2d 597 (1979).

Vermont. In re Boynton's Estate, 121 Vt. 98, 148 A.2d 115 (1959); Noble v. Fleming's Estate, 121 Vt. 57, 147 A.2d 889 (1959).

Washington. State v. McCraw, 127 Wash. 2d 281, 898 P.2d 838 (1995).

Epstein, "Primary Video" and Its Secondary Effects on Digital Broadcasting: Cable Carriage of Multiplexed Signals under the 1992 Cable Act and the First Amendment, 87 Marq. L. Rev. 525 (2004).

SUTHERLAND § 46:5

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Court of Appeals of New York.
Neville RANGOLAN et al., Respondents,
v.
COUNTY OF NASSAU et al., Appellants.
March 29, 2001.

Prisoner who was beaten by fellow inmate brought suit against county and county sheriff's department, alleging negligence and violation of his Eighth Amendment rights under § 1983. The United States District Court for the Eastern District of New York, Arthur Spatt, J., dismissed § 1983 claim, entered judgment for inmate on negligence claim, and ordered remittitur of damages, 51 F.Supp.2d 236. On cross-appeal, the Court of Appeals, 217 F.3d 77, affirmed in part and certified question. After accepting certification, the Court of Appeals, Ciparick, J., held that: (1) statutory provision stating that general scheme modifying common law rule of joint and several liability shall not be construed to restrict any liability arising by reason of a non-delegable duty, or by reason of the doctrine of respondeat superior, is not an exception to limited liability, but a savings provision that preserves vicarious liability, abrogating *Nwaru v. Leeds Mgt. Co.*, 236 A.D.2d 252, 654 N.Y.S.2d 338, and *Cortes v. Riverbridge Realty Co.*, 227 A.D.2d 430, 642 N.Y.S.2d 692, and (2) county thus was not barred from seeking apportionment of non-economic damages between itself and fellow inmate.

Certified question answered.

West Headnotes

[1] Labor and Employment 231H 3077

231H Labor and Employment
231HXVIII Rights and Liabilities as to Third Parties
231HXVIII(B) Acts of Employee
231HXVIII(B)1 In General
231Hk3077 k. Joint and Several Liability. Most Cited Cases
(Formerly 255k313 Master and Servant)

Negligence 272 483

272 Negligence
272XV Persons Liable
272k483 k. Vicarious Liability. Most Cited Cases

Negligence 272 484

272 Negligence
272XV Persons Liable
272k484 k. Joint and Several Liability. Most Cited Cases
Statutory provision stating that general statutory scheme modifying common law rule of joint and several liability by limiting a joint tort-feasor's liability in certain circumstances shall not be construed to restrict any liability arising by reason of a non-delegable duty, or by reason of the doctrine of respondeat superior, is not an exception to limited liability, but a savings provision that preserves vicarious liability; abrogating *Nwaru v. Leeds Mgt. Co.*, 236 A.D.2d 252, 654 N.Y.S.2d 338, and *Cortes v. Riverbridge Realty Co.*, 227 A.D.2d 430, 642 N.Y.S.2d 692. McKinney's CPLR 1602, subd. 2(iv).

[2] Counties 104 146

104 Counties
104VII Torts
104k146 k. Acts of Officers or Agents. Most Cited Cases

Counties 104 148

104 Counties
104VII Torts
104k148 k. Injuries by Mobs or Other Wrongdoers. Most Cited Cases
County which had been sued by prisoner for injuries sustained when he was assaulted by fellow inmate, based on county's alleged breach of a non-delegable duty, was not barred from seeking apportionment of non-economic damages between itself and fellow inmate by statutory provision stating that general statutory scheme modifying common law rule of joint and several liability shall not be construed to restrict

any liability arising by reason of a non-delegable duty, or by reason of the doctrine of respondeat superior. McKinney's CPLR 1602, subd. 2(iv).

[3] Torts 379 ⚷135

379 Torts
379I In General
379k129 Persons Liable
379k135 k. Joint and Several Liability. Most Cited Cases
(Formerly 379k22)
New York statutory scheme governing the limited liability of persons jointly liable modifies the common law rule of joint and several liability by limiting a joint tort-feasor's liability in certain circumstances. McKinney's CPLR 1601 et seq.

[4] Torts 379 ⚷135

379 Torts
379I In General
379k129 Persons Liable
379k135 k. Joint and Several Liability. Most Cited Cases
(Formerly 379k22)
Prior to enactment of statutory scheme governing the limited liability of persons jointly liable, a joint tort-feasor could be held liable for the entire judgment, regardless of its share of culpability. McKinney's CPLR 1601 et seq.

[5] Negligence 272 ⚷484

272 Negligence
272XV Persons Liable
272k484 k. Joint and Several Liability. Most Cited Cases
While statutory scheme governing the limited liability of persons jointly liable was intended to remedy the inequities created by joint and several liability on low-fault, "deep pocket" defendants, it is nonetheless subject to various exceptions that preserve the common law rule. McKinney's CPLR 1601 et seq.

[6] Labor and Employment 231H ⚷3077

231H Labor and Employment
231HXVIII Rights and Liabilities as to Third Parties
231HXVIII(B) Acts of Employee
231HXVIII(B)1 In General
231Hk3077 k. Joint and Several Liability. Most Cited Cases
(Formerly 255k313 Master and Servant)

Negligence 272 ⚷484

272 Negligence
272XV Persons Liable
272k484 k. Joint and Several Liability. Most Cited Cases

Negligence 272 ⚷549(10)

272 Negligence
272XVI Defenses and Mitigating Circumstances
272k545 Effect of Others' Fault
272k549 As Grounds for Apportionment; Comparative Negligence Doctrine
272k549(4) Scope and Application of Doctrine
272k549(10) k. Effect of Determination on Recovery; Methods of Apportionment. Most Cited Cases
Statutory provision stating that general scheme modifying common law rule of joint and several liability shall not be construed to restrict any liability arising by reason of a non-delegable duty, or by reason of the doctrine of respondeat superior, is not an exception to the rule of apportionment; rather, it reaffirms certain pre-existing statutory and common law limitations on liability. McKinney's CPLR 1602, subd. 2(iv).

[7] Labor and Employment 231H ⚷3077

231H Labor and Employment
231HXVIII Rights and Liabilities as to Third Parties
231HXVIII(B) Acts of Employee
231HXVIII(B)1 In General
231Hk3077 k. Joint and Several Liability. Most Cited Cases
(Formerly 255k313 Master and Servant)

Negligence 272 ⚷484

272 Negligence
272XV Persons Liable
272k484 k. Joint and Several Liability. Most

Cited Cases

Negligence 272 ⚿549(10)

272 Negligence
272XVI Defenses and Mitigating Circumstances
272k545 Effect of Others' Fault
272k549 As Grounds for Apportionment; Comparative Negligence Doctrine
272k549(4) Scope and Application of Doctrine
272k549(10) k. Effect of Determination on Recovery; Methods of Apportionment. Most Cited Cases
Statutory provision stating that general statutory scheme modifying common law rule of joint and several liability shall not be construed to restrict any liability arising by reason of a non-delegable duty, or by reason of the doctrine of respondeat superior, is not an exception to the rule of apportionment; rather, provision is a savings provision that preserves principles of vicarious liability, and ensures that a defendant is liable to the same extent as its delegate or employee, and that scheme is not construed to alter this liability.

[8] Municipal Corporations 268 ⚿809(2)

268 Municipal Corporations
268XII Torts
268XII(C) Defects or Obstructions in Streets and Other Public Ways
268k809 Liabilities of Persons Causing Defects or Obstructions
268k809(2) k. Contractors. Most Cited Cases
A municipality that delegates a duty for which the municipality is legally responsible, such as the maintenance of its roads, to an independent contractor, remains vicariously liable for the contractor's negligence, and cannot rely on statutory scheme which modifies common law rule of joint and several liability by limiting a joint tort-feasor's liability in certain circumstances to apportion liability between itself and its contractor. McKinney's CPLR 1601, subd. 1, 1602, subd. 2(iv).

[9] Labor and Employment 231H ⚿3077

231H Labor and Employment
231HXVIII Rights and Liabilities as to Third Parties
231HXVIII(B) Acts of Employee
231HXVIII(B)1 In General
231Hk3077 k. Joint and Several Liability. Most Cited Cases
(Formerly 255k313 Master and Servant)
Statutory provision stating that general statutory scheme modifying common law rule of joint and several liability shall not be construed to restrict any liability arising by reason of a non-delegable duty, or by reason of the doctrine of respondeat superior, prevents an employer from disclaiming respondeat superior liability by arguing that the true tortfeasor was its employee. McKinney's CPLR 1602, subd. 2(iv).

[10] Labor and Employment 231H ⚿3077

231H Labor and Employment
231HXVIII Rights and Liabilities as to Third Parties
231HXVIII(B) Acts of Employee
231HXVIII(B)1 In General
231Hk3077 k. Joint and Several Liability. Most Cited Cases
(Formerly 255k313 Master and Servant)

Municipal Corporations 268 ⚿743

268 Municipal Corporations
268XII Torts
268XII(A) Exercise of Governmental and Corporate Powers in General
268k743 k. Damages. Most Cited Cases

Negligence 272 ⚿484

272 Negligence
272XV Persons Liable
272k484 k. Joint and Several Liability. Most Cited Cases

Negligence 272 ⚿549(10)

272 Negligence
272XVI Defenses and Mitigating Circumstances
272k545 Effect of Others' Fault
272k549 As Grounds for Apportionment; Comparative Negligence Doctrine
272k549(4) Scope and Application of

Doctrine
272k549(10) k. Effect of Determination on Recovery; Methods of Apportionment. Most Cited Cases
Statutory provision stating that general statutory scheme modifying common law rule of joint and several liability shall not be construed to restrict any liability arising by reason of a non-delegable duty, or by reason of the doctrine of respondeat superior, does not preclude a municipality, landowner, or employer from seeking apportionment of damages between itself and other tort-feasors for whose liability it is not answerable. McKinney's CPLR 1602, subd. 2(iv).

[11] Labor and Employment 231H 3077

231H Labor and Employment
231HXVIII Rights and Liabilities as to Third Parties
231HXVIII(B) Acts of Employee
231HXVIII(B)1 In General
231Hk3077 k. Joint and Several Liability. Most Cited Cases
(Formerly 255k313 Master and Servant)

Negligence 272 484

272 Negligence
272XV Persons Liable
272k484 k. Joint and Several Liability. Most Cited Cases

Negligence 272 549(10)

272 Negligence
272XVI Defenses and Mitigating Circumstances
272k545 Effect of Others' Fault
272k549 As Grounds for Apportionment; Comparative Negligence Doctrine
272k549(4) Scope and Application of Doctrine
272k549(10) k. Effect of Determination on Recovery; Methods of Apportionment. Most Cited Cases
Legislature did not intend statutory provision stating that general statutory scheme modifying common law rule of joint and several liability shall not be construed to restrict any liability arising by reason of a non-delegable duty, or by reason of the doctrine of respondeat superior, to establish a free-standing exception to the apportionment rule; rather, provision was solely a savings provision, and was merely intended to insure that courts did not read adoption of general scheme as altering pre-existing law regarding respondeat superior or non-delegable duties. McKinney's CPLR 1602, subd. 2(iv).

[12] Statutes 361 212.6

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.6 k. Words Used. Most Cited Cases
Where the Legislature uses different terms in various parts of a statute, courts may reasonably infer that different concepts are intended.

[13] Statutes 361 206

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k206 k. Giving Effect to Entire Statute. Most Cited Cases
A statutory construction which results in the nullification of one part of a statute by another is impermissible, and violates the rule that all parts of a statute are to be harmonized with each other, as well as with the general intent of the statute.

[14] Statutes 361 206

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k206 k. Giving Effect to Entire Statute. Most Cited Cases
In construing a statute, court must give effect to all the language employed by the particular legislation.
***613 *43 **180** Montfort, Healy, McGuire & Salley, Garden City (James J. Keefe, Jr., of counsel), and Alfred F. Samenga, County Attorney of Nassau County, Mineola, for appellants.

***614 *44 Ginsberg & Broome, P.C., New York City (Robert M. Ginsberg of counsel), for respondents.

Robert & Robert, L.L.P., Melville (Clifford S. Robert of counsel), and Lenore Kramer, New York City, for New York **181 State Trial Lawyers Association, amicus curiae.

Michael D. Hess, Corporation Counsel of New York City (Paul L. Herzfeld, Francis F. Caputo and Stephen J. McGrath of counsel), for City of New York, amicus curiae.

***45 OPINION OF THE COURT**

CIPARICK, J.

[1][2] Under CPLR article 16, a defendant may apportion its liability for noneconomic damages among other tortfeasors provided that it is 50% or less at fault (CPLR 1601[1]). The issue before us, as certified by the United States Court of Appeals for the Second Circuit, is whether CPLR 1602(2)(iv) precludes apportionment where a defendant's liability arises from a breach of a non-delegable duty. We hold that CPLR 1602(2)(iv) is not an exception to apportionment under CPLR article 16, but a savings provision that preserves the principles of vicarious liability.

Plaintiff Neville Rangolan was incarcerated at the Nassau County Correctional Center where he was seriously beaten by Steven King, a fellow inmate. Rangolan had cooperated as a confidential informant against King, and his inmate file cautioned that he was not to be housed with King. A corrections officer, however, failed to notice the warning and placed Rangolan and King in the same dormitory. Rangolan and his wife commenced this action against defendant Nassau County in Federal court, alleging, among other things, negligence for failure to protect Rangolan and violation of his Eighth Amendment rights under 42 USC § 1983. The United States District Court dismissed Rangolan's section 1983 claim, but granted his motion for judgment as a matter of law on his negligence claim and ordered a trial on damages. The District Court denied the County's request to instruct the jury on apportionment of damages between the County and King, concluding that CPLR 1602(2)(iv) rendered apportionment under article 16 unavailable where the County's liability arose from a breach of a non-delegable duty.

The jury awarded Rangolan damages for past and future pain and suffering, and also awarded damages to Rangolan's wife for loss of services. On the County's motion, the Court ordered a new trial on damages unless the Rangolans stipulated to a reduced award. The Rangolans accepted the reduced ***46** award and both parties appealed to the United States Court of Appeals for the Second Circuit, which affirmed the dismissal of Rangolan's section 1983 claim. However, noting the absence of controlling precedent interpreting CPLR 1602(2)(iv), the Second Circuit certified to us the following question: "whether a tortfeasor such as the County can, in the facts and circumstances of this case, seek to apportion its liability with another tortfeasor such as King pursuant to N.Y.C.P.L.R. 1601, or whether N.Y.C.P.L.R. 1602(2)(iv) precludes such a defendant from seeking apportionment." We answer the first part of the question in the affirmative, and thus the second part in the negative.

Analysis

[3][4][5] CPLR article 16 modifies the common-law rule of joint and several liability by limiting a joint tortfeasor's liability in certain circumstances (L. 1986, ch. 682). Prior to article 16's enactment, a joint tortfeasor could be held liable for the entire judgment, regardless of its share of ***615** culpability (*see, Sommer v. Federal Signal Corp.*, 79 N.Y.2d 540, 556, 583 N.Y.S.2d 957, 593 N.E.2d 1365). The Governor's Advisory Commission on Liability Insurance, chaired by former Court of Appeals Judge Hugh R. Jones, had recommended ***182** that the rule of joint and several liability be amended "to assure that no defendant who is assigned a minor degree of fault can be forced to pay an amount grossly out of proportion to that assignment" (Insuring Our Future, Report of Governor's Advisory Commission on Liability Insurance, at 132 [Apr. 7, 1986]). Article 16, as enacted, limits a joint tortfeasor's liability for noneconomic losses to its proportionate share, provided that it is 50% or less at fault (CPLR 1601 [1]). While article 16 was intended to remedy the inequities created by joint and several liability on low-fault, "deep pocket" defendants, it is nonetheless subject to various exceptions that preserve the common-law rule. At issue here is whether CPLR 1602(2)(iv) is

one of those exceptions.

[6] CPLR 1602(2)(iv) provides that article 16 shall "not be construed to impair, alter, limit, modify, enlarge, abrogate or restrict * * * any liability arising by reason of a non-delegable duty or by reason of the doctrine of respondeat superior." This is not an exception to the rule of apportionment. Rather, it is one of four provisions in 1602(2) that reaffirm "certain pre-existing statutory and common law limitations on liability" (Alexander, Practice Commentaries, McKinney's Cons. Laws of N.Y., Book 7B, CPLR 1602, at 616).

[7][8][9][10] ***47** Specifically, CPLR 1602(2)(iv) is a savings provision that preserves principles of vicarious liability. It ensures that a defendant is liable to the same extent as its delegate or employee, and that CPLR article 16 is not construed to alter this liability (*see,* Alexander, Practice Commentaries, *op. cit.,* at 616-617; *see also,* Kreindler, Rodriguez, Beekman & Cook, New York Law of Torts § 10.11, at 602-603 [14 West's N.Y. Prac. Series 1997]). Thus, for example, a municipality that delegates a duty for which the municipality is legally responsible, such as the maintenance of its roads, to an independent contractor remains vicariously liable for the contractor's negligence, and cannot rely on CPLR 1601(1) to apportion liability between itself and its contractor (*see, Faragiano v. Town of Concord,* 96 N.Y.2d 776, 725 N.Y.S.2d 609, 749 N.E.2d 184 [decided today]; *see also,* Kreindler, Rodriguez, Beekman & Cook, *op. cit.,* at 602-603 [premises owner having a non-delegable duty]). Similarly, CPLR 1602(2)(iv) prevents an employer from disclaiming respondeat superior liability under article 16 by arguing that the true tortfeasor was its employee. However, nothing in CPLR 1602(2)(iv) precludes a municipality, landowner or employer from seeking apportionment between itself and other tortfeasors "for whose liability [it] is not answerable" (*id.,* at 603).

[11][12] Our interpretation of CPLR 1602(2)(iv) as a savings provision, and not an exception, is supported by the statutory scheme of CPLR 1602. CPLR 1602 includes several exceptions to the apportionment rule, all of which explicitly provide that article 16 shall "*not apply* " in certain circumstances (CPLR 1602 [3]-[11] [emphasis added]). CPLR 1602(2)(iv), however, does not contain this prefatory language, but instead provides that the limitations on liability shall "*not be construed* " to impair, limit or modify any liability arising from a non-delegable duty or respondeat superior (emphasis added) (*see also,* CPLR 1602[12] [containing the same shall "not be construed" language]). This language indicates that the Legislature did not intend 1602(2)(iv) to establish a free-standing exception to the apportionment rule. Rather,***616** 1602(2)(iv) was merely intended to insure that the courts did not read article 16 as altering pre-existing law regarding respondeat superior or non-delegable duties. Thus, it was solely a savings provision. Further, where, as here, the Legislature ****183** uses different terms in various parts of a statute, courts may reasonably infer that different concepts are intended (*Matter of Albano v. Kirby,* 36 N.Y.2d 526, 530, 369 N.Y.S.2d 655, 330 N.E.2d 615; McKinney's Cons. Laws of N.Y., Book 1, Statutes § 236, at 403). Given the precise "shall not apply" language ***48** chosen by the Legislature to describe the exceptions, the absence of such language in CPLR 1602(2)(iv) indicates that the Legislature never intended to include an exception for liability based on a breach of a non-delegable duty.

[13] Reinforcing this interpretation is the existence of a separate non-delegable duty exception under subdivision (8) of the same section. CPLR 1602(8) provides that article 16 "shall not apply" to any person held liable for violating article 10 of the Labor Law, which imposes on owners and contractors a non-delegable duty to maintain a safe workplace. To construe CPLR 1602(2)(iv) as creating a blanket non-delegable duty exception would render CPLR 1602(8) meaningless and redundant. Such a construction, "resulting in the nullification of one part of the [statute] by another," is impermissible (*Matter of Albano v. Kirby, supra,* 36 N.Y.2d, at 530, 369 N.Y.S.2d 655, 330 N.E.2d 615; McKinney's Cons. Laws of N.Y., Book 1, Statutes § 98, at 223), and violates the rule that all parts of a statute are to be harmonized with each other, as well as with the general intent of the statute (*Matter of Society of N.Y. Hosp. v. Del Vecchio,* 70 N.Y.2d 634, 636, 518 N.Y.S.2d 781, 512 N.E.2d 302).

[14] Thus, giving effect to "all the language employed by the particular legislation" (*Ferrin v. New York State Dept. of Correctional Servs.,* 71 N.Y.2d 42, 47, 523 N.Y.S.2d 485, 517 N.E.2d 1370), we conclude that CPLR 1602(2)(iv) is not an exception to limited liability but a savings provision that pre-

serves vicarious liability (*see,* Faragiano v. Town of Concord, 96 N.Y.2d 776, 725 N.Y.S.2d 609, 749 N.E.2d 184 *supra* [decided today]).

Our holding today is fully consistent with article 16's purpose. Reading 1602(2)(iv) as an exception would impose joint and several liability on municipalities, landowners and employers, who often owe a non-delegable duty or are vicariously liable for their agents' actions. Ironically, these are precisely the entities that article 16 was designed to protect (*see,* Insuring Our Future, Report of Governor's Advisory Commn. on Liability Insurance, *op. cit.,* at 130-131). To construe 1602(2)(iv) as an exception to apportionment would defeat the legislative goal of benefitting low-fault, "deep pocket" defendants by imposing joint and several liability whenever a defendant's liability is based on a non-delegable duty or respondeat superior.

Further, as this Court has recognized, there is no general rule as to what constitutes a non-delegable duty (*see,* Kleeman v. Rheingold, 81 N.Y.2d 270, 275, 598 N.Y.S.2d 149, 614 N.E.2d 712). Rather, the determination "necessarily entails a *sui generis* inquiry, since the conclusion ultimately rests on policy considerations" (*id.*). Given the *49 breadth of responsibilities that may be considered non-delegable, we cannot conclude that the Legislature intended to exclude the breach of every non-delegable duty from article 16.

Our reading of CPLR 1602(2)(iv) as a savings provision is also supported by the Governor's Approval Memorandum, which states:

> ***617 "*The bill also preserves rules of vicarious liability under which one party is liable to the same extent as another.* The crafting of these *exceptions and savings provisions* reflects careful deliberations over the appropriate situations **184 for a modified joint and several liability rule and demonstrates the benefits of addressing this important reform through the legislative process" (Governor's Approval Mem., Bill Jacket, L. 1986, ch. 682, reprinted in 1986 McKinney's Session Laws of N.Y., at 3184 [emphasis added]).

We reject the interpretations of some courts holding that CPLR 1602(2)(iv) creates a non-delegable duty exception to article 16 (*see, e.g.,* Nwaru v. Leeds Mgt. Co., 236 A.D.2d 252, 654 N.Y.S.2d 338; Cortes v. Riverbridge Realty Co., 227 A.D.2d 430, 642 N.Y.S.2d 692). None of these cases involve any meaningful analysis of CPLR 1602(2)(iv); rather, they assume, without explanation, that CPLR 1602(2)(iv) precludes application of CPLR 1601. As discussed above, that conclusion is incorrect.

Nor did our recent decisions in *Morales v. County of Nassau,* 94 N.Y.2d 218, 703 N.Y.S.2d 61, 724 N.E.2d 756 and *Cole v. Mandell Food Stores,* 93 N.Y.2d 34, 687 N.Y.S.2d 598, 710 N.E.2d 244 recognize a non-delegable duty exception to limited liability under article 16. In both cases, we held that the issue of whether a purported non-delegable duty exception applied was unreviewable because of the plaintiffs' failure to plead it (*Morales, supra,* 94 N.Y.2d, at 223, 703 N.Y.S.2d 61, 724 N.E.2d 756; *Cole, supra,* 93 N.Y.2d, at 38-39, 687 N.Y.S.2d 598, 710 N.E.2d 244). *Morales* and *Cole* should not be read as creating a non-delegable duty exception. Indeed, both appeals were resolved without reaching the question before us today: whether CPLR 1602(2)(iv) precludes apportionment for noneconomic damages among joint tortfeasors where liability arises from a breach of a non-delegable duty. Having determined that it does not, we conclude that the County is entitled to a jury charge on apportionment between itself and King.

Accordingly, we answer the certified question as follows: CPLR 1602(2)(iv) does not preclude a tortfeasor such as the County, in the facts and circumstances of this case, from seeking apportionment.

*50 Chief Judge KAYE and Judges SMITH, LEVINE, WESLEY, ROSENBLATT and GRAFFEO concur.

Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question by this Court pursuant to section 500.17 of the Rules of the Court of Appeals (22 NYCRR 500.17), and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified question answered as follows: CPLR 1602(2)(iv) does not preclude a tortfeasor such as the County, in the facts and circumstances of this case, from seeking apportionment.

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