Fat Smitty's and Friends

A Guide to Statutory Interpretation

Kolby K. Reddish

1

Why do the canons of statutory interpretation matter, particularly for Government Attorneys?

- Government attorneys are usually the *first step* in interpretation and enforcement of the law.

- The canons and rules are regularly and consistently applied by the judiciary in resolving cases and disputes.

- Canons of statutory construction help educate clients and other stakeholders.

2

From IRPC Preamble: Attorneys as Educators

"As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority."

"A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process."

3

From Justice Brody's Recent Interview:
Sarah E. Tompkins for *The Advocate*

- There seems to be a trend with the current composition of the Idaho Supreme Court to provide more of an explanation of the principles behind its decisions. Is that a deliberate plan or focus of this Supreme Court?

- "Speaking for myself, it is important for any legal decision to walk through all of the steps that any lawyer would need to walk through when analyzing a legal issue. We have used this phrase in a recent opinion: *'You have to show your work.'* Just like a math problem. Contrary to what some might think, there really is a methodology and logic behind the rule of law."

4

Statutory Interpretation Steps

"Interpretation of a statute 'must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written."
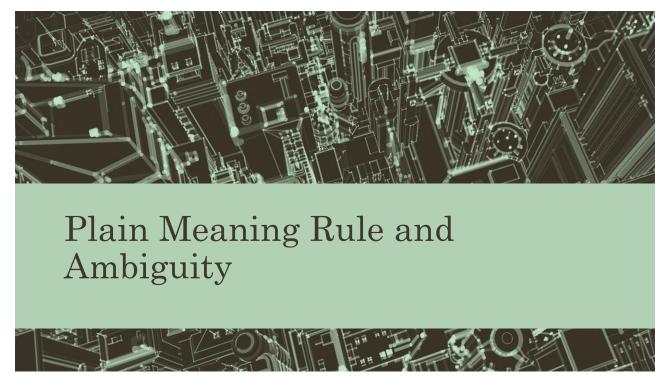
Florer v. Walizada, 168 Idaho 932, 489 P.3d 843, 846 (2021) (*quoting State v. Ambstad,* 164 Idaho 403, 405, 431 P.3d 238, 240 (2018))

Plain Meaning and Ambiguity

↓

Consulting and Determining Legislative Intent

↓

Consulting the Canons

5

Plain Meaning Rule and Ambiguity

6

Plain Meaning Rule

- "Interpretation of a statute 'must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written."
  - Similar language in Idaho Code § 73-113(1). Nullities disfavored - Idaho Code § 73-113(2).

- Best understood with reference to 2012 case of *Verska v. Saint Alphonsus Regional Medical Center*. If you're citing to a pre-*Verska* statutory interpretation case, **use caution.**
  - *"The Court was faced with the question of the Court's authority to modify the plain language of a statute because the plaintiffs argued that the result of the unambiguous language would lead to an absurd result. The plaintiffs contended that "[t]he literal wording of a statute cannot be honored if it creates unreasonable, absurd results" based upon dicta* from past decisions of the Court."*
  - Court cited separation of powers' concerns: "we have never* revised or voided an unambiguous statute on the ground that it is patently absurd or would produce absurd results when construed as written, and we do not have the authority to do so."

- *"The most fundamental premise underlying judicial review of the legislature's enactments is that . . . the courts must assume that the legislature meant what it said." Id. at 894–95, 265 P.3d at 507–08 (emphasis added).* Practice takeaway: if your argument is premised on inserting or ignoring words out of the statute—you're going to have a tough argument.

7

Ambiguity

- "A statute is ambiguous where the language is capable of more than one reasonable construction."
  - *Porter v. Bd. of Trustees, Preston School Dist. No. 201*, 141 Idaho 11, 14, 105 P.3d 671, 674 (2004).

- "Ambiguity is not established merely because different interpretations are presented by the parties. If that were the test then all statutes whose meanings are contested in litigation could be considered ambiguous."
  - *Bonner Cty. v. Cunningham*, 156 Idaho 291, 295, 323 P.3d 1252, 1256 (Ct. App. 2014).

- "Where . . . there is an ambiguity in the statute, the Court will construe the statute to give effect to the legislative intent."
  - *State v. Doe*, 140 Idaho 271, 274, 92 P.3d 521, 524 (2004).

8

Determining Legislative Intent

- "To determine [Legislative] intent, we examine not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history."
  - *State v. Doe*, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009).

- This is the step where the different canons can be used to examine "the reasonableness of proposed constructions."

- Determining a single "Legislative intent" is incredibly difficult to predict.
  - *Idaho Telephone Company v. Baird*, 91 Idaho 425, 423 P.2d 337 (1967); and *Idaho State Tax Commission v. Simmons*, 111 Idaho 343, 723 P.2d 887 (1986).

9

Useful Canons

- *In pari materia* – "statutes (and constitutional provisions) relating to the same subject—or those that are *in pari materia*—must be construed together."

- *Expressio unius est exclusio alterius* – "where a constitution or statute specifies certain things, the designation of such things excludes all others."

- *Noscitur a sociis* – "a word is known by the company it keeps."

- *Ejusdem generis* – "where general words of a statute follow an enumeration of persons or things, such general words will be construed as meaning persons or things of like or similar class or character to those specifically enumerated[.]"

10

Non-Statutory Legally Operative Language

- <u>Court Rules:</u> "We are not constrained by the constitutional separation of powers when interpreting rules promulgated by the Court. Today we make it clear that while the interpretation of a court rule must always begin with the plain, ordinary meaning of the rule's language it may be tempered by the rule's purpose. **We will not interpret a rule in a way that would produce an absurd result.**" *State v. Montgomery*, 163 Idaho 40, 408 P.3d 38 (2017).
    - *State v. Chambers*, 166 Idaho 837, 465 P.3d 1076 (2020).
- <u>Admin Rules:</u> *J.R. Simplot v. Idaho State Tax Commission*, 120 Idaho 849, 820 P.2d 1206 (1991).
    - Four factor test—"First, we must determine if the agency has been entrusted with the responsibility to administer the statute at issue. Second, the agency's statutory construction must be reasonable. Third, we must determine whether the statutory language at issue does not expressly treat the precise question at issue. Finally, we must ask whether any of the rationales underlying the rule of deference are present."

11

Idaho Constitution

- Court has leaned heavily into historical precedent
    - *State v. Clarke*, 165 Idaho 393, 446 P.3d 451 (2019).
    - Court reversed long-standing precedent that was inconsistent with the intent of the framers of the Idaho Constitution after examining "the practices at common law and the statutes of Idaho when our constitution was adopted and approved by the citizens of Idaho."
    - Practice tip: look at *Proceedings and Debates* and the statutes immediately before and after statehood (1890).
- Court has espoused strict Originalism rather than Textualism
    - "[T]he Idaho Constitution is an instrument whose meaning is fixed at its creation—wholly unlike the nature of rules established at common law which may undergo 'steady and imperceptible change.'" *Planned Parenthood Great Nw. v. State*, 171 Idaho 374, 378, 522 P.3d 1132, 1163 (2023).
    - Ordered liberty test is applicable for a challenger that would seek to argue for a new constitutional right implicit in the Idaho Constitution.

12