

Legislative Efforts to Control Statutory Interpretation Threat or Equality Assurance?

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The issue of statutory construction has been front and center for many years. The words “plain and unambiguous,” “strict constructionist,” and “activist judges” have been engrained in the nation’s legal lexicon. Naturally, when assessing a court’s interpretation of a particular statute, many will focus on the outcome. Yet, the tools used in a statutory analysis often play a pivotal role in reaching that result. For instance, a court’s interpretation of a “plain and unambiguous” statute may be quite different if the court looks only to the text as opposed to other sources, including legislative history.

Plain-Meaning Rule vs. Legislative Intent

Although some may presume that the courts should have control over how they interpret a statute, recent events in Connecticut have called this presumption into question. In 2003, a divided Connecticut Supreme Court decided *State v. Courchesne*, 262 Conn. 537 (2003), a death penalty case. What made this death penalty case noteworthy is that the court (without any request to do so) abandoned the plain-meaning rule when interpreting statutes. The court held that in conducting a “reasoned search for the intent of the legislature” it would in *all* cases consider extra-textual sources, including most notably, legislative history and the policy that the statute was designed to implement. To reach this result, the court provided an extensive critique of the plain-meaning rule, which, according to the majority, has “led this court into a number of declarations that are, in our view, intellectually and linguistically dubious, and risk leaving the court open to the criticism of being result-oriented in interpreting statutes.” *Id.* at 571. As a result, in the post-*Courchesne* world, a threshold finding of ambiguity would not be necessary before a court could look to extra-textual sources.

The dissenters on the Connecticut Supreme Court were aghast—calling the decision “nothing short of breathtaking.” For the dissenters, the plain-meaning rule should be adhered to because it ensured that “common law” judging would not carry the day. Or in other words, a judge’s policy stance on

issues could not override the clear language employed by the legislature.

The majority’s vision of the world of statutory construction lasted less than four months. In June 2003, the Connecticut General Assembly curbed what it perceived as an activist court by passing a law that required that the plain-meaning rule be followed if the text of the statute was plain and unambiguous. See CONN. GEN. STAT. § 1-2z (2007).

As to be expected, following the passage of this law, there were rumblings from some (including the author of the majority opinion of *Courchesne*) that this legislative edict was unconstitutional as violative of the separation of powers clause. This position, however, has gained little traction. Indeed, it does not appear that the current court has any interest in engaging in a constitutional showdown with the legislature.

Nonetheless, regardless of what Connecticut does, it is worthwhile to consider whether such statutes are a harbinger for things to come. Several states faithfully follow the plain-meaning rule; others have discarded it without legislative response. The Texas legislature has provided statutory construction aids for its courts. Yet, it appears that no state legislature has issued as soundly a rebuke to perceived judicial activism as the Connecticut General Assembly.

Impact of Legislative Enactments

The question remains whether a legislative enactment designed to control the rules of statutory interpretation is a threat to judicial independence or merely the preservation of legislative power. On the one hand, as the majority author of *Courchesne* noted in a subsequent case, legislative acts such as those adopted in Connecticut can be construed as directing judges “how to *think* about the process of statutory interpretation,” and thus may violate the separation of powers clause and infringe upon judicial independence. See *Kinsey v. Pacific Employers Ins. Co.*, 891 A.2d 959, 971 (Conn. 2006) (Borden, J., concurring). On the other, it can be argued that the Constitution says nothing about the method that the judiciary must employ when interpreting statutes, and thus, it is fair game for the legislature to ensure that isolated statements made in the context of political proceedings are not used to determine the meaning of statutes—particularly because it is possible that a judge’s preferences or policy beliefs can leak into the decision-making process. Indeed, it is not uncommon for a court to find that a legislator didn’t mean what he or she said.

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As in many debates, there are meritorious arguments on both sides. But, perhaps more importantly, both sides understand that the rules that govern statutory interpretation can have a significant (if not determinative) impact on the outcome of a case. As a result, it will not be surprising if other legislative bodies try to use the rules of statutory construction to rein in judges who they believe are overstepping their bounds. And, for their part, judges will continue to insist that it is necessary for an independent judiciary to set the rules of the statutory game. ❖