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The Use of Intentionalism, Textualism, Purposivism, Lenity, and the Absurd Doctrine When Evaluating Legislative Intent and Legislative History

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ABSTRACT: This essay aims to illustrate how to use effectively the theories of intentionalism, textualism, purposivism, the principle of lenity and the absurd doctrine when a statute or a case is the focus of the analysis. Legislative intent and legislative history of a statute or a case are paramount in this effort. The benefit of using these tools in evaluating federal and state laws cannot be underestimated. Many legal scholars, practitioners, and students will likely find these techniques valuable. The legal analytical technique of issue, rule, analysis, and conclusion (IRAC) is of fundamental importance when conducting a legal analysis. However, theories of intentionalism, textualism, purposivism, the duty of lenity, and the absurd doctrine are used in the analysis section of an IRAC argument. They increase the competence in the legal profession when fashioning arguments. The more tools that are in a legal scholar's, practitioner's, or student's tool bag, the stronger their arguments, provided that the instruments are used correctly. The intent of this essay is to help those in the legal profession as well as law students use the right tools at the right time. It should be remembered when the only tool that one has is a hammer, everything looks like a nail. Thus, adding tools to an individual's legal tool bag is the goal of this essay.

KEYWORDS: Absurd Doctrine Intentionalism Legislative History Legislative Intent Lenity Purposivism Textualism

List of Abbreviations

Abbreviations	Description of Abbreviations
ACA	Affordable Care Act
CRA	Civil Rights Act of 1964
IRAC	Issue, Rule, Analysis, and Conclusion
NYS-ABCL	New York State Alcoholic Beverage Control Law
RFRA	Religious Freedom Restoration Act
WRLDA	Westchester Retail Liquor Dealers Association

INTRODUCTION

The purpose of this essay is to show how to use effectively the theories of intentionalism, textualism, purposivism, the principle of lenity and the absurd doctrine when legislative intent and legislative history of a statute, or even a case, are analyzed. The advantage of using these instruments in assessing federal and state laws is that they are quite useful in assessing federal and state laws. Many legal scholars, practitioners, and students are likely woefully ignorant of these techniques. The legal analytical technique of issue, rule, analysis, and conclusion (IRAC) is a staple of legal analysis. However, theories of intentionalism, textualism, purposivism, the duty of lenity, and the absurd doctrine bear particular importance in the analysis section of an IRAC argument. They increase the proficiency in the legal profession when constructing arguments. The more paraphernalia are available to a legal scholar, practitioner, or student, the better their arguments. It is assumed that these tools will be appropriately applied without misuse. It is hoped that this piece will help individuals apply the right tools at the right time. In furtherance of this reasonable expectation is the goal of this essay.

INTENTIONALISM AND THE AMENDMENT TO ILLINOIS HOUSE BILL 558

In this section, the notion of intentionalism is defined, and then it is explained by discussing an amendment to Illinois House Bill 558. The intention of House Bill 558 was to warrant that electrical meters attached to residential rental properties within 60 days, thereby assuring the accuracy of the readings. As part of the intentionalism interpretation, the groups affected by the amendment are described along with the amendment's effective date.

The Use of Intentionalism, Textualism, Purposivism, Lenity, and the Absurd Doctrine When Evaluating Legislative Intent and Legislative History

Definition Of Intentionalism

According to Blaker, the theory of intentionalism maintains that "the laws of statutes are determined by the enacting legislators' subjective law-making intentions."[1] Intentionalists support the notion that the primary or exclusive use of legal interpretation is to discover the intentions of the legislators who enacted the legislation or the constitutional framers or ratifiers.[2] Under intentionalism, the text may be an important guide to appreciating the intent of the bill sponsors. There are other factors such as legislative history that may override the actual text.[3] One significant branch of intentionalism is called *purposivism*.[4] According to purposivism, legal interpreters need to decide what purpose should be attributed to a statute and its subordinate provisions.[5] Under purposivism, the meanings of the words of a statute are not as important as its purpose.[6]

Amendment to Illinois House Bill 558

Consider the following amendment to Illinois House Bill 558 _____. The amendment is stated below:

AMENDMENT TO HOUSE BILL 558

AMENDMENT NO. _____. Amend House Bill 558 by replacing everything after the enacting clause with the following:

"Section 5. The Public Utilities Act is amended by adding Section 17-1000 as follows:

(220 ILCS 5/17-1000 new)

Sec. 17-1000. Inspection of connections to residential rental properties and individual rental units.

(a) A unit of local government may request that an electric cooperative or municipal system inspect the connection to a meter in a specified residential rental property or the submeter in an individual rental unit to which it delivers utility services to ensure that the billing of the property or unit is accurate. The electric cooperative or municipal system shall inspect the property or unit within 60 days after receipt of the request.

(b) An electric cooperative or municipal system shall post on its publicly available website any residential rental properties or individual rental units that are revealed to have a discrepancy between the service provided and the cost billed to the customer.

(c) An electric cooperative or municipal system shall report to the Attorney General any residential rental properties or individual rental units that are revealed to have a discrepancy between the service provided and the cost billed to the customer.".

The sponsor of the bill was Rep. Suzanne N. Ness. Rep. Ness represents the Illinois sixty-sixth (66th) House district. The bill was filed on March 21, 2023.

Intentionalism and Textualism Explained

According to the Amendment to House Bill 558 as stated above, the intention of the amendment is to ensure that electrical meters to residential rental property be inspected to ensure that the billing is accurate no more than sixty (60) days after a request is made. In this instance, the intent is to ensure any rental properties where the service is provided, the cost billed to the consumer must be publicly available on the property's website.[7] Also, a cooperative or municipal system must report to the Illinois Attorney General any discrepancies between the service provided and the cost billed to the customer. Essentially, the amendment is an effort to reveal differences between services rendered and the cost of the service.

Groups Affected by the Amendment

There are seven groups affected by the amendment. First, there are the electric companies that must be able to identify rental properties where the discrepancy exists. They must write a report to the Attorney General to identify the rental properties where the discrepancy exists. Second, there is the state government that collects the reports and must ensure that the reports are publicly available. This would usually involve the creation and maintenance of a publicly accessible database. Third, the companies that make and sell the equipment that is used in the identification process are affected because their current equipment may be insensitive in making the information readily available. In other words, the equipment manufacturers may have to produce new equipment that is acceptable under the amendment.

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[1] Jamie Blaker, Is Intentionalist Theory Indispensable to Statutory Interpretation?, 43 MONASH UNIVERSITY LAW REVIEW 1, 238-73 (2017), *available at* https://www.monash.edu/__data/assets/pdf_file/0008/1092680/07_Blaker.pdf.

[2] Mark Greenberg, Legal Interpretations, *Stanford Encyclopedia of Philosophy*, (Jul. 7, 2021), *available at* https://plato.stanford.edu/entries/legal-interpretation/.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] Proposed 220 ILCS 5/17-1000 (b).

Fourth, the individuals who install the equipment must ensure that the equipment is working properly. The installers may need additional training to install the new equipment. Fifth, the individual employees of the electric company must be able to gather the discrepancy data efficiently and effectively. This may involve using new measuring equipment that can identify the discrepancy. Sixth, the landlords must ensure that once the new equipment is installed, it works properly and is properly maintained. This may mean that a landlord is responsible for testing that the new equipment works correctly over an extended period. If the equipment is not working correctly, a landlord is likely responsible for informing the electric company that the new equipment should be replaced. Finally, the renter of the rental property is affected because they are the individuals that usually pay the electrical bills associated with a rental property.

Effective Date of the Amendment

Presuming that the amendment to Bill 558 is accepted by both the Illinois House and Senate and signed by the Governor of the State of Illinois, the amendment becomes effective when Bill 558 becomes law. Currently, there is no effective date associated with Bill 558, presuming that it becomes law at some point in the future.[8]

TEXTUALISM AND THE RELIGIOUS FREEDOM RESTORATION ACT

This section aims to define textualism, and then describes the Religious Freedom Restoration Act (RFRA) and its significance in *Hobby Lobby*.[9] When understanding legislation from a textualist perspective, there are critical terms that must be analyzed. In this instance, the key terms that were analyzed are "substantial burden" and "person." The consequences and policy issues are also described.

Definition of Textualism

According to Blaker, the theory of textualism "gives priority in statutory and constitutional interpretation to the relevant texts."[10] Textualism is typically the opposite of intentionalism or purposivism because it rejects searching for legislative intentions or statutory purposes that are not contained in the text.[11] When the meaning of the text is clear, textualists reject the appeal to other sources to alter the meaning of the text, even when there are inconsistencies between the textual meaning and the legislative purpose.[12]

Religious Freedom Restoration Act

This example aims to demonstrate by using textualism how Covid mask mandates may violate the RFRA by examining the definition of the term "substantially burdened" in *Hobby Lobby*[13] and other sources.

Covid Mask Mandates and the Religious Freedom Restoration Act

In July, 2021, Pres. Joseph Biden ordered federal employees and contractors to prove that they had been vaccinated for Covid-19, or wear masks while working and be tested for Covid.[14] It was mandated that the military wear masks.[15] The RFRA became law in 1993.[16] As applied to the states, the RFRA was held to be unconstitutional in 1997.[17] The Supreme Court ruled that Congress' enforcement power was not properly exercised.[18] However, it continues to apply to the federal government.[19] The states responded to the *City of Boerne* by passing State Religious Freedom Restoration Acts that apply to both state and local

[8] IL SB0558 | 2023-2024 | 103rd General Assembly, *LegiScan* (n.d.), *available at* https://legiscan.com/IL/bill/SB0558/2023.
[9] *Burwell v. Hobby Lobby*, 573 U.S. 682 (2014), *available at* https://supreme.justia.com/cases/federal/us/573/682/#tab-opinion-1970980.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id*.
[14] Scott Bomboy, The Constitutional Issues Related to Covid-19 Mask Mandates, *National Constitutional Center* (Aug. 21, 2021), *available at* https://constitutioncenter.org/blog/the-constitutional-issues-related-to-covid-19-mask-mandates.
[15] *Id.*
[16] Pub. L. No. 103-141, 107 Stat. 1488 (November 16, 1993), codified at 42 U.S.C. § 2000bb through 42 U.S.C. § 2000bb-4.
[17] *City of Boerne v. Flores*, 521 U.S. 507 (1997), *available at* https://supreme.justia.com/cases/federal/us/521/507/.
[18] *Id.*
[19] *Gonzales v. O Centro Espírita Beneficente União do Vegetal*, 546 U.S. 418 (2006), *available at* https://supreme.justia.com/cases/federal/us/546/418/ and *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S., *supra*, note 9 (Here, these cases did not address whether Congress violated the Establishment Clause when it carved out religious exemptions of federal laws).

governments.[20] Like the federal RFRA, which serves as a model, state RFRA laws demand that the Sherbert Test[21] be employed, where strict scrutiny is used in deciding whether the Free Exercise Clause of the First Amendment has been violated.[22]

Given the text of the federal RFRA and the fact that the applicability of the RFRA has been limited by the Court only to federal employees, it can be argued that the Covid mask mandates violate the Free Exercise Clause of the First Amendment. Strict scrutiny requires that a law or a government mandate must be narrowly tailored to serve a compelling government interest.[23] With the decision in *Trump v. Hawaii*,[24] which overruled *Korematsu v. United States*,[25] there has never been a case where the federal government was able to successfully argue that it had a compelling government interest. Thus, a textualist argument would likely prevail when Covid mask mandates were at issue.

Definition of Substantial Burden

According to Section 2(a)(3) of the RFRA, "governments should not substantially burden religious exercise without compelling justification."[26] In Section 3(a) of the RFRA, the government "shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability," except if it furthers a "compelling governmental it is the "least restrictive means of furthering that compelling governmental interest."[27]

Hobby Lobby observed that "a [g]overnment action that imposes a substantial burden on religious exercise must serve a compelling government interest"[28] and the government interest must be the least restrictive means of achieving that interest.[29] According to the Law Insider, a substantial burden is a "requirement in an occupational regulation that imposes a significant difficulty or cost on an individual seeking to enter into or continue in a lawful occupation."[30] A substantial burden must be more than an incidental burden.[31] In terms of the free exercise of religion, it could be argued a government worker who decides not to wear a mask for religious reasons, the mask mandates do not permit them to exercise their religion as they go about their daily business. The government worker would have to demonstrate that the burden was not incidental in performing their jobs. Thus, the Law Insider's definition of "substantial burden" appears to be consistent with the employment of the term in the federal RFRA.

Definition of "Person" in King v. Burwell

According to *Burwell*,[32] the Patient Protection and Affordable Care Act (ACA) of 2010 demands that "each person to maintain insurance coverage or make a payment to the Internal Revenue Service, where a tax credit may be available."[33] According to Black's Law Dictionary, a person is a natural person, such as a human being, or an artificial person, such as a corporation.[34] Justice Roberts, the Justice who wrote the opinion, observed that the ACA suffers from inartful drafting.[35] Justice Roberts, in his effort to analyze the law, examined its intent or purpose, meaning that he applied a common sense understanding of the ACA. Given that some of the text is ambiguous, the Court looked at the broader structure of the Act. Thus, the word "person" seems to have been interpreted in its common legal meaning as a natural person or a human being.

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[20] Travis Weber, State Religious Freedom Restoration Acts (RFRAs): What Are They and Why Are They Needed?, *Family Research Council* (Mar. 2015), *available at* https://downloads.frc.org/EF/EF15C119.pdf.
[21] *Sherbert v. Verner*, 374 U.S. 398 (1963), *available at* https://supreme.justia.com/cases/federal/us/374/398/ and *Wisconsin v. Yoder*, 406 U.S. 205 (1971), *available at* https://supreme.justia.com/cases/federal/us/406/205/.
[22] Pub. L. No. 103-141, *supra*, note 15.
[23] Equal Protection: Strict Scrutiny of Racial Classifications, *Congressional Research Service* (Apr. 27, 2023), *available at* https://crsreports.congress.gov/product/pdf/IF/IF12391#:~:text=To%20pass%20the%20strict%20scrutiny,only%20criteria%20used%20to%20classify.
[24] *Trump v. Hawaii*, 585 U.S. ___ (2018), *available at* https://supreme.justia.com/cases/federal/us/585/17-965/#tab-opinion-3920355.
[25] *Korematsu v. United States*, 323 U.S. 214 (1944), *available at* https://supreme.justia.com/cases/federal/us/323/214/.
[26] *Religious Freedom Restoration Act* (Mar. 11, 1993), *available at* http://www.prop1.org/rainbow/rfra.htm.
[27] *Id.*
[28] *Burwell v. Hobby Lobby*, 573 U.S. at 573.
[29] 42 U.S.C. §2000bb–1(b), *available at* https://www.law.cornell.edu/uscode/text/42/2000bb-1.
[30] Substantial Burden Definition, *Law Insider* (n.d.), *available at* https://www.lawinsider.com/dictionary/substantial-burden#:~:text=Substantial%20burden%20means%20a%20requirement%20in%20an%20occupational%20regulation%20that,that%20is%20more%20than%20incidental.
[31] *Id.*
[32] *King v. Burwell*, 576 U.S. 473 (2015), *available at* https://casetext.com/case/king-v-burwell-2.
[33] *Id.*
[34] BRYAN A. GARDNER (ED. IN CHIEF), BLACK'S LAW DICTIONARY, 1178 (8th ed.1999).
[35] *King v. Burwell*, *supra*, note 31.

The contrast is between a natural person or human being, and an artificial person or a corporation. A human being does not give up being a human being when they form a corporation. A corporation is a legal fiction, it has neither a mind nor a body.[36] In contrast, a human being possesses both a mind a body. Thus, it is entirely reasonable that the Court asserted that individuals forfeited their rights under the RFRA when they formed corporations.

Consequences and Policy Issues

The consequence of the Court's implied definition of "person" in *Burwell* is that no human being is exempt from the ACA. All natural persons, whether or not they incorporate, must obtain health insurance that is compatible with the Act. The policy issue in *Burwell* is that if the plaintiff had won, millions of Americans that had qualified for federal subsidies under the Act and lived in one of the 36 states that had not established state-run health insurance exchanges could have lost those subsidies, and would have no longer been able to afford health insurance.[37] A decision for the plaintiffs would have been a tragedy because millions of Americans would have suffered, where the alternative may have been death or a shortened life of pain. As for corporations and businesses, a ruling for the defendant could have added corporate expenses for employees, thereby reducing the corporate work force in their effort to remain profitable. It should be remembered the purpose of a corporation is to maximize shareholder value from a financial perspective,[38] and to maximize profits (or equivalently, to minimize costs) from an economic perspective.[39] Had the plaintiffs won, corporations would likely have received a financial benefit in the short-run, but the loss of employees and the training costs associated with the hiring of new workers would have been substantial in the long-run.

PURPOSIVISM AND PEOPLE V. RYAN

The purpose of this section is to define purposivism and then discuss how it was applied in *People v. Ryan*.[40] In Ryan, an individual who purchased an alcoholic beverage for his own\ use in another state was arrested when he brought the beverage into New York State. The purpose of the law was to regulate merchants, not individuals who were not sellers of alcoholic beverages. The court applied the principles of purposivism in analyzing the law.

Definition of Purposivism

According to Blaker, the theory of intentionalism maintains that "the laws of statutes are determined by the enacting legislators' subjective law-making intentions."[41] Intentionalists support the notion that the primary or exclusive use of legal interpretation is to discover the intentions of the legislators who enacted legislation or the constitutional framers or ratifiers.[42] Under intentionalism, the text may be an important guide to appreciating the intent of the bill sponsors. There are other factors such as legislative history that may override the actual text.[43] One significant branch of intentionalism is called *purposivism*.[44]

According to purposivism, legal interpreters need to decide what purpose should be attributed to a statute and its subordinate provisions.[45] Under purposivism, the meanings of the words of a statute are not as important as its purpose.[46] According to the Merriam-Webster Dictionary, purposivism is "any of various theories of nature or of human and animal behavior that regard purpose or conscious intent as a basal fact."[47] A basal fact is a fact that is "essential for maintaining the fundamental vital activities of an organism."[48]

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[36] *See generally*, Joshua Knobe, Do Corporations Have Minds?, *The New York Times* (Jun. 15, 2015), *available at* https://archive.nytimes.com/opinionator.blogs.nytimes.com/2015/06/15/do-corporations-have-minds/.
[37] Eric Black, The What and Why of King v. Burwell — and What's at Stake for Health-Care Access, *MinnPost* (Jun. 14, 2015), *available at* https://www.minnpost.com/eric-black-ink/2015/06/what-and-why-king-v-burwell-and-whats-stake-health-care-access/?gad=1&gclid=EAIaIQobChMI0vvt7vzj_wIVeg-zAB3NXA2OEAAYAiAAEgIJlfD_BwE.
[38] *Dodge v. Ford*, 204 Mich. 459, 170 N.W. 668 (Mich. 1919), *available at* https://casetext.com/case/dodge-v-ford-motor-co.
[39] PAUL KRUGMAN AND ROBIN WELLS, MICROECONOMICS (4th ed. 2015), *available at* https://www.academia.edu/43024032/_Paul_Krugman_Robin_Wells_Microeconomics_z_lib_org_.
[40] *People v. Ryan*, 274 N.Y. 149 (1937), *available at* https://www.casemine.com/judgement/us/59147de4add7b04934447771.
[41] Jamie Blaker, *supra*, note 1.
[42] Mark Greenberg, *supra*, note 2.
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] Purposivism, *Merriam-Webster Dictionary* (n.d.), *available at* https://www.merriam-webster.com/dictionary/purposivism#:~:text=pur·%E2%80%8Bpos·%E2%80%8Biv,intent%20as%20a%20basal%20fact.
[48] Basal, *Merriam-Webster Dictionary* (n.d.), *available at* https://www.merriam-webster.com/dictionary/basal#:~:text=%3A%20of%20or%20relating%20to%20the,a%20basal%20diet.

People v. Ryan

Ryan is an excellent case that can be employed to demonstrate how to use purposivism.[49] In *Ryan*, the defendant was indicted for bringing liquor and wine into New York Ste. At the time, this was a violation of Section 102, subdivision 1(d) of the NYS-ABCL, which stated that "[n]o common carrier or other person shall bring or carry into the state any liquors and/or wines, unless the same shall be consigned to a person duly licensed hereunder to traffic in liquors and/or wines, as the case may be."[50]

After waiving immunity, Ryan testified before a New York grand jury. From the record, it appeared that the defendant needed a particular manufactured wine for medicinal purposes that was not available in New York State.[51] The defendant found the required wine in one of the A. P. stores in Danbury, Connecticut and another store located in Greenwich, Connecticut, near the New York State line. On December 14, 1935, Ryan bought 11 bottles of wine and one bottle of hard liquor, put them in his car, proceeded to cross the New York State line. The employees of the Westchester Retail Liquor Dealers Association (WRLDA) observed Ryan and followed him from Greenwich into New York State. Individuals from the WRLDA forced him off the road, forcing Ryan to stay until a Port Chester police officer arrived, who then arrested them for violating the statute. The beverages in Ryan's possession were for personal use and not subject to taxation in New York State.[52] Thus, the purpose of ABCL can be inferred to deal with individuals and companies that transport alcohol as part of their business endeavors, and not individual customers whose possession of alcohol beverages is for personal use.

Interpretation of the Statute Using Purposivism

Based on a reading of Section 102 paragraph 1 subdivision (b) of the New York State Alcoholic Beverage Control Law, the intent of the law is to specify the limits or circumstances whereby a common carrier may bring alcoholic beverages into New York State. A person who brings alcoholic beverages into New York State must be licensed by New York State. A licensed person may use a truck, steamship, or railroad car to transport alcohol. If a person purchases alcoholic beverages outside the United States the purchase is not deemed to be for personal use. Finally, a common carrier cannot transport alcohol to an unlicensed individual.

Opinion Regarding the Conclusion in People v. Ryan

There are several issues with Section 102 paragraph 1 subdivision (b) of the New York State Alcoholic Beverage Control Law (NYS-ABCL). First, the law does not address individuals who purchase alcohol in the United States, but not in New York State. From the perspective of purposivism, the purchase of alcohol in another state is legal. The principle is that what is not forbidden is permitted. Thus, the result under Section 102 paragraph 1 subdivision (b) of the NYS-ABCL would be completely different from the result arrived at in *Ryan*.[53] The individual purchasing of an alcoholic beverage would be completely legal under Section 102 paragraph 1 subdivision (b) of the New York State Alcoholic Beverage Control Law.

LENITY AND MUSCARELLO V. UNITED STATES

In this section, the rule of lenity is defined and then discussed by examining *Muscarello*.[54] In *Muscarello*, the Court noted that some statutory ambiguity was insufficient to apply the rule of lenity because many statutes contain some lenity.[55] In contrast, the Court applied intentionalism and textualism to arrive at their opinion. Finally, the Court stated what the result would have been had lenity been applied.[56]

Definition of the Rule of Lenity

According to the Legal Information Institute, the rule of lenity, also called the rule of strict construction, states that "when a law is unclear or ambiguous, the court should apply it in the way that is most favorable to the defendant, or to construe the statute against the state."[57] The rule of lenity satisfies the constitutional objective of separation of power by limiting the scope of statutory language in criminal statutes by permitting the courts to formulate the nature of the crime and its punishment.[58] The other constitutional objective is to protect the ability of the legislature to make laws, limiting the court's ability to perform legislative functions.[59] The rule of lenity also promotes the principle that criminal law notifies individuals that specific acts are punishable

[49] *People v. Ryan*, 274 N.Y., *supra*, note 40.
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *People v. Ryan*, 274 N.Y., *supra*, note 40.
[54] *Muscarello v. United States*, 524 U.S. 125, 138-39 (1998), *available at* https://supreme.justia.com/cases/federal/us/524/125/#tab-opinion-1960345.
[55] *Id.*
[56] *Id.*
[57] Rule of Lenity, *Legal Information Institute* (May 2022), *available at* https://www.law.cornell.edu/wex/rule_of_lenity.
[58] *Id.*
[59] *Id.*

under criminal law.[60] The rule is applicable when there is more than one interpretation of a statute. The rule demands that the court select the interpretation that is the most beneficial, or the least detrimental, to the defendant.[61]

Muscarello v. United States

In this subsection, the essay points out that the rule of lenity was inapplicable in *Muscarello*.[62] The subsection proceeds by discussing why intentionalism and textualism was employed. Finally, it is shown what would have been the result had lenity been used.

The Rule of Lenity Was Inapplicable

In the majority opinion in *Muscarello*,[63] the Court observed that the mere existence of some statutory ambiguity is insufficient to apply the rule of lenity because most statutes possess a certain degree of lenity.[64] According to *Wells*, the rule of lenity only applies if after thoroughly examining a statute the rule of lenity can be invoked if the courts can only guess the intent of Congress.[65] The Court observed that the existence of some statutory ambiguity is insufficient to warrant using the rule of lenity because many statutes are ambiguous to some degree.[66] According to the Court, the rule of lenity applies only when there is a "grievous ambiguity" in a statute and the courts must guess what Congress intended.[67] The Court opined that in *Muscarello*, there was no "grievous ambiguity" because the interpretation in *Muscarello* was no different than in other criminal cases reviewed by the Court.[68] The Court also stated that even if it invoked the rule of lenity, there was no guarantee that the defense would win.[69]

Thus, the generally accepted meaning of the word "carry" encompasses the carrying of a firearm in a vehicle.[70] Also, the Court believed that the limiting phrase "during and relation to" should prevent the statute from being misused by avoiding a risk of harm.[71] Thus, the Court decided not to apply the rule of lenity.

The Theory the Court Did Apply

The majority of the Court applied a combination of intentionalism and textualism in interpreting 18 U. S. C. § 924(c)(I).[72] In the majority argument, the Court used various sources to define the word "carry," including the Oxford English Dictionary, Webster's Third New International Dictionary, and the Random House Dictionary of the English Language.[73] The Court also reviewed the meaning of the word "carry" as defined in the Barnhart Dictionary of Etymology as well as looking at the word's meaning in the King James Version, Daniel Defoe's *Robinson Crusoe* and Herman Melville's *Moby Dick*.[74] The Court also examined the legislative history and intent to arrive at what Congress meant when it used the term "carry."[75] The result of the analysis was that the Court opined that the word "carry" meant that a firearm could be on one's person or in one's vehicle.

If the Rule of Lenity Was Applied

It the court did apply the rule of lenity, then the dissent written by Justice Ginsburg is likely to be the appropriate analysis to use. In her dissent, Justice Ginsburg observed that the term "carries a firearm" for § 924(c)(1) purposes would mean that a firearm was on one's person, and not necessarily on one's premises or in one's vehicle.[76] The point of the dissent is that the five-year mandatory sentence under the majority's interpretation goes against McFadden, where the severity of the sentence is consistent with

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[60] *See generally*, David S. Romantz, *Reconstructing the Rule of Lenity*, 40 CARDOZO LAW REVIEW 2, *available at* https://cardozolawreview.com/reconstructing-the-rule-of-lenity/.
[61] *Id.*
[62] *Muscarello v. United States*, 524 U.S., *supra*, note 54.
[63] *Id.*
[64] David S. Romantz, *supra*, note 60 at 138.
[65] *United States v. Wells*, 519 U. S. 482, 499 (1997) (quoting *Reno v. Koray*, 515 U.S. 50, 65 (1995), *available at* https://supreme.justia.com/cases/federal/us/519/482/, in turn quoting *Smith v. United States*, 508 U.S. 223, 239 (1993), *available at* https://supreme.justia.com/cases/federal/us/508/223/ and *Ladner v. United States*, 358 U.S. 169, 178 (1958), *available at* https://supreme.justia.com/cases/federal/us/358/169/).
[66] *Smith v. United States*, 508 U.S., supra, note 65 at 240.
[67] *Muscarello v. United States*, 524 U.S., *supra*, note 54 at 139 (quoting *United States v. Wells*, 519 U. S. 482, 499 (1997), *available at* https://supreme.justia.com/cases/federal/us/519/482/).
[68] *Muscarello v. United States*, 524 U.S., *supra*, note 54 at 139.
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] 18 U.S.C. § 924(c)(I), *available at* https://www.law.cornell.edu/uscode/text/18/924.
[73] *Muscarello v. United States*, 524 U.S., *supra*, note 54 at 128.
[74] *Id.* at 129.
[75] *Id.* at 131.
[76] *Id.* at 140.

the seriousness of the crime.[77] Justice Ginsburg also noted that the mandatory minimum statute is in direct contrast to the sentencing guidelines passed by Congress.[78] Thus, if the rule of lenity was applied, the defendant would not have received a five-year mandatory sentence for having a firearm in the glove compartment or trunk of a vehicle.

ABSURDITY DOCTRINE AND UNITED STATES V. TAYLOR

This section aims to define the absurdity doctrine and review *Taylor*.[79] The section describes the statutory interpretation employed in *Taylor*. In their dissents Justices Alito and Thomas by showing that what would be the result under the doctrine; namely, the defendant would have been convicted for a non-crime.

Definition of the Absurdity Doctrine

The absurdity doctrine "authorizes a judge to ignore a statute's plain words in order to avoid the outcome those words would require in a particular situation."[80] According to Israeloff, under the absurdity doctrine "a court will construe a statute by applying the plain meaning of the words used unless it would lead to absurd or nonsensical results that the legislature could not possibly have intended."[81] One example of where the absurdity doctrine would apply is when a statute technically demands that a defendant requires that individual to register as a sex offender even though the person was neither accused nor convicted of a sex crime. In such instances, the court may disregard the plain language of the statute to avoid an unjust outcome.[82] Thus the idea behind the absurdity outcome is to prevent an unjust outcome when the circumstances may satisfy the plain language of a statute.

The court is required to return the responsibility to resolve an ambiguity in a statute according to the plain language of a statute. In the example listed above, the effect would be that an individual could be legally held to be a sex offender when in fact that individual was neither charged nor convicted of a sex crime. Thus, if the court returned the responsibility back to the plain language of a statute, the effect could be detrimental to an individual.

United States v. Taylor

In *Taylor*, the holding that a Hobbs Act attempted robbery is not a crime of violence within the meaning of 18 U.S.C. § 924(c).[83] According to 18 U.S.C. § 924(c), the term "crime of violence" means "an offense that is a felony and (A) has as an element the use, attempted use, or threatened use of physical force against the person or property of another."[84] The Hobbs Act of 1946 was named after Rep. Sam Hobbs (D-AL). The law prohibits actual or attempted robbery or extortion, including conspiracy, involving interstate or foreign commerce. The statute originally addressed anti-racketeering disputes between labor and management. However, it is currently employed in cases involving public corruption, commercial disputes, and corruption directed at members of labor unions.[85] Finally, 18 U.S.C. § 1951(a), a person who "in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both."[86]

Statutory Interpretation

The theory of statutory interpretation that was used by *Taylor* was likely textualism, where, according to Blaker, textualism "gives priority in statutory and constitutional interpretation to the relevant texts."[87] Textualism is typically the opposite of intentionalism or purposivism because it rejects searching for legislative intentions or statutory purposes that are not contained in the text.[88] In Taylor, the Court opined that lower courts were tasked with looking at the elements of a crime, and ask whether the

[77] *United States v. McFadden*, 13 F.3d 463, 466 (CA1 1994) (Breyer, C. J., dissenting), *available at* https://casetext.com/case/us-v-mcfadden-9.
[78] *Muscarello v. United States*, 524 U.S., *supra*, note 54 at 141.
[79] *United States v. Taylor*, 142 S. Ct. 2015 (2022), *available at* https://casetext.com/case/united-states-v-taylor-1453.
[80] Michael D. Cicchini, *The New Absurdity Doctrine*, 125 PENN STATE LAW REVIEW 2, 353-87, *available at* https://www.pennstatelawreview.org/wp-content/uploads/2021/03/Article-1-Cicchini-New-Absurdity-Doctrine.pdf.
[81] Sim Israeloff, The Absurdity Doctrine Disfavored by the Courts, *Statutory Interpretation* (Jun. 8, 2020), *available at* https://www.reverseandrender.com/2020/06/articles/statutory-interpretation/the-absurdity-doctrine-disfavored-by-the-courts/.
[82] *Id.*
[83] *United States v. Taylor*, 142 S. Ct., *supra*, note 79.
[84] 18 U.S.C. § 924(c)(3)(A), *available at* https://www.law.cornell.edu/uscode/text/18/924.
[85] 2402. Hobbs Act – Generally, *United States Department of Justice Archives* (Jan. 17, 2020), *available at* https://www.justice.gov/archives/jm/crim.inal-resource-manual-2402-hobbs-act-generally.
[86] 18 U.S.C. § 1951(a), *available at* https://www.law.cornell.edu/uscode/text/18/1951.
[87] Jamie Blaker, *supra*, note 1.
[88] *Id.*

government should prove the use, attempted use, or threatened use of force.[89] The Court observed that the Fourth Circuit was correct in recognizing that the government need not prove the elements, but the defendant may not be convicted under 18 U.S.C. § 924(c).[90]

Palatability of Absurdity

Although Justices Alito and Thomas discuss the absurdity doctrine in some detail in their dissents, their words do not have the force of law. The definition of the absurdity doctrine as given by Cicchini is preferred because it "authorizes a judge to ignore a statute's plain words in order to avoid the outcome those words would require in a particular situation."[91] It is a simple and straightforward definition, one that is seemingly easy to implement in practice.

LEGISLATIVE HISTORY AND LEGISLATIVE INTENT

The purpose of this section is to define legislative intent and legislative history, discuss the difference between the definitions, and then examine Weber, where it is shown how legislative history was employed by the majority. The section observed that the House Judiciary Committee was instrumental in ensuring that the Civil Rights Act (CRA) of 1964 became law.

Definition of Legislative History

According to Black's Law Dictionary, legislative history is "[t]he background or events leading to the enactment of a statute, including hearings, committee reports, and floor debates."[92] According to the Merriam-Webster Dictionary, legislative history is "a published record (as of drafts and commentary by the drafters) relating to the passing of particular legislation."[93] Sekula defined legislative history as consisting "of documents preceding and accompanying the enactment of a law. These documents generally include bills, public laws, floor debates, committee hearings, prints, and reports. They can be used to determine the legislative intent of a statute."[94]

Definition of Legislative Intent

Black's Law Dictionary states that legislative intent is "[t]he design or plan that the legislature had at the time of enacting a statute."[95] Legislative intent can be dormant provided that "the intent that legislature would have had if a given ambiguity, inconsistency, or omission had been called to the legislature's minds."[96] This intent is sometimes called *dormant intent*.[97] Merriam-Webster's Dictionary defines legislative intent as "the ends sought to be achieved by a legislature in an enactment" of a statute.[98] Courts frequently examine legislative intent for guidance when interpreting and applying the law.[99] According to Ballotpedia, legislative intent is "a practice used by judges, lawyers, and other court officials to determine the goals of legislators at the time of a bill's passage."[100] The practice includes examining the plain language of a statute, including debate, transcripts, available drafts, and committee notes associated with the statute.[101] Research into legislative intent usually stems from the use of vague or general language that does not necessarily address the issue under consideration.[102]

Difference Between the Definitions

The difference between legislative history and legislative intent can now be specified. Legislative history is the documents that record the sequence of events that show what happened during the transformation of the creation of a bill into law. The documents either be hard copies or digital documents. The legislative history is the vehicle that contains the legislative intent. The

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[89] *United States v. Taylor*, *supra*, note 74.
[90] *Id.*
[91] Cicchini, *supra*, note 71.
[92] BRYAN A. GARNER (CHIEF ED.), LEGISLATIVE HISTORY, BLACK'S LAW DICTIONARY (8th ed.1999) at 919.
[93] Legislative History, *Merriam-Webster Dictionary* (n.d.), *available at* https://www.merriam-webster.com/legal/legislative%20history.
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[96] *Id.*
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[98] Legislative Intent, *Merriam-Webster Dictionary* (n.d.), *available at* https://www.merriam-webster.com/legal/legislative%20intent.
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[100] Legislative Intent, *Ballotpedia* (n.d.), *available at* https://ballotpedia.org/Legislative_intent#:~:text=Legislative%20intent%20is%20a%20practice,time%20of%20a%20bill's%20passage.
[101] *Id.*
[102] *Id.*

difference between legislative history and legislative intent is similar to that between a printed book and the ideas or stories in the book. Legislative history can be compared to the book itself, whereas the legislative intent would essentially be similar to ideas that are expressed in a book.

Which One is More Important in Statutory Interpretation

What is more critical, legislative history or legislative intent? It is legislative intent, but with that said, it should be remembered that without a legislative history documenting legislative intent, legislative intent would be impossible to discern. We are not mind readers. As humans, we cannot read the thoughts of others, at least not with current technology. Without a legislative history, legislative intent is lost as it fades into the ether, never to be gathered together again. Both legislative history and legislative intent are essential in promoting statutory interpretation. One cannot have one without the other. Legislative history and legislative intent go hand-in-hand on the journey of statutory interpretation. It is as simple as that.

EXAMPLE OF HOW TO USE LEGISLATIVE HISTORY AND LEGISLATIVE INTENT

In this subsection, *Weber* is employed as an example of how to apply legislative history and legislative intent.[103] The subsection discusses the majority opinion of the Court, along with the contribution House Judiciary Committee played in passing the Civil Rights Act (CRA) of 1964. The article points out that the definition of "discrimination" was not included in the definition, probably to give the courts leeway in determining its meaning. Finally, several comments from former Rep. Clark MacGregor (R-MN), one of the several congressional leaders that guided the CRA into becoming law.

Types of Legislative History Employed by the Majority

In *Weber*, the 5-2 majority of the Supreme Court used the statements of the members of Congress in supporting the decision that Title VII of the CRA was constitutional, and that affirmative action efforts were the appropriate mechanism. In particular, the words of Rep. MacGregor stated that as "[i]mportant as the scope and extent of this bill is, it is also vitally important that all Americans understand what this bill does not cover."[104] These words of a representative who was a member of the House Judiciary Committee were quite revealing and insightful. It was the perspective that quotas were a temporary stop-gap measure that would eventually no longer be needed that probably had the greatest impact on the Court. It should be remembered that decades, if not hundreds of years, of discrimination were attempted to be corrected. The faster it is corrected, the fewer the people will suffer the consequences of that discrimination. From a societal and policy perspective, this is indeed a good thing.

House Minority Judicial Committee

The House Judiciary Committee was established in 1813.[105] The Committee is the second oldest standing committee in Congress.[106] Today and in the past, the Committee has been at the forefront of many significant issues that have faced the United States, including "protecting constitutional freedoms and civil liberties, oversight of the U.S. Departments of Justice and Homeland Security, legal and regulatory reform, innovation, competition and anti-trust laws, terrorism and crime, and immigration reform."[107] The Committee presides over all proposed amendments to the Constitution.[108] Because the CRA substantially affected the rights and behaviors of the American public, it was entirely appropriate for the Committee to be involved in bringing the CRA in being signed into law.

Discrimination Definition Left Out

It is not clear whether Congress purposefully left out the definition of the word "discrimination." According to Black's Law Dictionary, discrimination means "the effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, ages, sex, nationality, religion, or handicap."[109] The fact that the definition of discrimination is absent from the CRA could mean that Congress considered the possibility that protected classes could increase as time progressed, given that race and nationality are currently protected classes. By not defining the term discrimination, Congress could have been planning for greater legal protections for other minorities that could have been given protected status in the future. Currently, it is apparent that transgenderism is currently a protected class de jour. At the time that the CRA was passed, transgenderism was likely not on the Congressional mind. Even so, the fact that transgenderism has lately become all the rage, the

[103] *Steelworkers v. Weber*, 443 U.S. 193, fn. 7 (1979), *available at* https://supreme.justia.com/cases/federal/us/443/193/.
[104] *Id*.
[105] The Committee, *United States House of Representatives Judiciary Committee* (n.d.), *available at* https://judiciary.house.gov/the-committee#:~:text=The%20Committee%20has%20jurisdiction%20over,the%20House%20Floor%20each%20year.
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] BRYAN A. GARDNER (ED. IN CHIEF), BLACK'S LAW DICTIONARY (8th ed. 1999), 500.

lack of a definition of discrimination may be the impetus to assuring that transgenderism achieves protected status under the law where strict scrutiny applies.

Forbidding Discrimination in a Voluntary Employment Setting

To answer the question of whether Congress intended to forbid discrimination for any race in a voluntary employment setting, one must examine what Rep. MacGregor said regarding how Title VII was interpreted at the time that the CRA was passed. In moments before the final bill was passed. Rep. MacGregor, the individual who shepherded the bill through the House Judiciary Committee, said that it was vitally important for the American public to understand the extent and scope of the bill. According to Rep. MacGregor, the bill was not intended to promote racial balancing in public schools. On the contrary, the purpose of the CRA was to specifically exclude racial balancing in public schools because of the controversy that existed at time. However, the point of the CRA was to specifically address racial balancing in an employment setting. There is no reason not to believe what Rep. MacGregor said about the bill just before it was passed. Thus, the answer to the question is yes.

CONCLUSION

This essay aimed to demonstrate how to effectively employ the theories of intentionalism, textualism, purposivism, the principle of lenity and the absurd doctrine when the legislative intent and legislative history of a statute are being analyzed. These tools can be quite useful in evaluating a federal or state law, or even legal rules in case analysis. Unfortunately, these techniques are likely not as well understood in the majority of the legal profession as is preferred. Thus, the point of this essay is to provide legal scholars, practitioners, and students alike with an understanding of these legal instruments so that they may increase their proficiency in providing legal arguments in their practice and study of the law. The more utensils that an attorney or law student has at their disposal, the better their arguments will be, provided they appropriately apply these tools as they were intended to be used. Although there is always the possibility of misuse, a thorough understanding of these devices ensures a higher likelihood of effective implementation so that the right tools are employed at the right time. It is a reasonable expectation, one that should be strived for.

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