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In The Court of Appeals of Maryland

No. 63
COA-REG-0063-2021

SEPTEMBER TERM, 2021

PRINCE GEORGE'S COUNTY,

Petitioner,

v.

ROBERT E. THURSTON, *et al.*,

Respondents.

REPLY BRIEF — PRINCE GEORGE'S COUNTY

(On Appeal from the Circuit Court for Prince George's County, Maryland
Honorable William A. Snoddy, Presiding)

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INTRODUCTION

As explained in argument below, when the 2002 and 2012 amendments to § 305 of the Charter are read together, it should be sufficient to reverse the circuit court's faulty ruling that the County Council was not authorized to adopt a resolution to change the Commission's proposal.

First, the 2002 amendment to § 305 **deleted** language that required Council to "*enact*" other law within "70-days" following presentation of the Commission's plan reestablishing the boundaries of Council districts to change the Commission's proposal—§ 305, as amended, merely required Council to *pass* other law.

Second, the 2002 amendment **added** language to § 305, which mandated that the Commission's plan became law "*as of the last day* of November"—abridging and, in some instances precluding, the Council's right to *enact a bill* under § 317 of the Charter *"on the last day"* of November to change the Commission's proposal.

Third, even if the Council *enacted* a bill *before the last day* of November to change the Commission's proposal, in accordance with the timing of the legislative process, it is not yet *passed*—setting up multiple

scenarios where the Commission's plan will become law *before* the legislative timeframe ran its course under § 317 to pass other law.

The 2012 amendment to § 305 resolved—by allowing the Council to adopt a resolution—inherent conflicts with legislative timeframes under § 317 to change the Commission's proposal before it became law.

ARGUMENT

I. Respondents Did Not Cross Appeal The Lower Court's Judgment Denying Its Request To Invalidate CB-55-2021

In Respondents' Brief, they present the following question: Under CB-55-2012, could the Council validly pass its own redistricting map by resolution, or was a bill required by the County Charter. Resp. Br. at 3.

In Count III of the emergency complaint filed in circuit court, Respondents sought a declaration to invalidate CB-55-2012. App 35-37. The circuit court denied the request. App 125.

After the County appealed the circuit court's judgment, App 126, Respondents did *not* file an appeal within 10 days after. App 1-11, Md. Rule 8-202. After the County filed its petition for writ of certiorari,

Respondents did *not* file a cross petition within 15 days after. Md. Rule 8-302.[1]

For the reasons stated above, to the extent Respondents are now requesting appellate review concerning the validity of CB-55-2012, such request should be denied.

II. In 2021, Council Was Not Required To **"Enact"** A Bill To Pass Other Law To Change Or Override The Commission's Proposal Because The 2002 Amendment **Deleted Prior** Language Requiring Council To **"Enact"** Other Law Within **70-Days** Following Presentation Of The Commission's Plan—And The 2012 Amendment Expressly Authorized Council To **Adopt** A **Resolution** To Pass Other Law Upon Notice and Public Hearing to Change The Commission's Proposal

Respondents argue that the Council cannot enact laws by any other means except those provided in the Charter. And that Article XI-A, Section 2 of the State Constitution provides that the express powers granted to a charter county shall not be enlarged or extended except by the General Assembly. Resp. Br. at 10, ¶ 2.

But the Council did not run afoul of the State Constitution or the Charter when it adopted CR-123-2021. Respondents ignore altogether

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[1] But *see Joseph H. Munson Co. v. Secretary of State*, 294 Md. 160, 448 A.2d 935 (1982), aff'd, 467 U.S. 947, 104 S.Ct. 2839, 81 L. Ed. 2d 786 (1984)(the filing of a cross-petition for writ of certiorari in the Court of Appeals cannot overcome the failure of a purported cross-appellant to have taken an appeal from the trial court's judgment).

that the Express Powers Act and the Charter provide for Charter amendments—like CB-55-2012—which has not been invalidated by any court. Md. Code Ann., Local Gov't Art., §§ 9-205, 10-204, 10-206 (Council may ***pass***…***any resolution***…that may aid in executing and enforcing any power in this article), Chrt. § 1105.

The 2012 amendment is part of the Charter and is specific to redistricting procedures. Since 2012, § 305 has *expressly* authorized the Council to *pass other law by adopting a resolution* to change the Commission's proposal and from its inception, the Charter has allowed for the automatic passage of a Redistricting Commissions' Plan without the need for further legislative action.

Respondents' argument, that, "[i]n other words, *by operation of the law*, the Commission plan became law 'on the last day of November' absent the Council's enactment of another law changing the Commission's plan." They claim that "[i]n no uncertain terms, the Charter declares that 'if no ***other law***' changing the proposal were enacted, then the Commission's plan 'as submitted' becomes law." Resp. Br. at 11, ⁋ 2 (Emphasis in original). Respondents fail to comprehend that when § 305 was amended in 2002 and 2012, significant changes occurred, which ultimately sanctioned the Council's adoption of CR-123-

2021, in order to pass the Council's Redistricting Plan instead of the Commission's.

The 2002 amendment mandated that the Commission's plan become law *as of* the last day of November and (in no uncertain terms) **deleted prior** language requiring the Council to **"enact"** other law within **70-Days following** presentation of the Commission's plan. As a result, the 2002 amendment required that if Council *passes no other law* (as opposed to *enacts*) as of the last day of November, the Commission's plan becomes law by operation of law.

Consequently, before the 2012 amendment, even if Council *enacted* a bill pursuant to § 317 on the "*last day of* November," no such enactment would override the Commission's proposal, because it automatically became law *as of* midnight on November 30. Thusly, in certain circumstances, even if Council enacted a bill *prior* to the last day of November to change the Commission's proposal, the Executive would nevertheless have ten (10) days thereafter to sign, veto or take no action on Council's plan, which would, in all likelihood, leave *insufficient* time for Council's plan (after enactment) to *pass* before the Commission's plan automatically becomes law. Chrt. §§ 317, 411.

Respondents argue that the 2012 amendment was, in actuality, intended to address what "act of the Council" should occur confirming

the Commission plan as law or would be required to satisfy § 305's requirement that it be published and codified under §§ 320 and 321. Resp. Br. at 11-12.

But this is a nonsensical and illogical reading of the Charter. In their brief, Respondents agree that:

> "Section 305 of the Charter plainly provides that unless the Council passes another law changing the Commission's plan, then the Commission's plan 'shall become law, as of the last day of November."
>
> "In other words, *by operation of law*, the Commission plan became law 'on the last day of November' absent the Council's enactment of another law changing the Commission's plan. In no uncertain terms, the Charter declares that 'if no ***other law***' changing the proposal were enacted, then the Commission's plan 'as submitted' becomes law." Resp. Br. at 11 (Emphasis in original).

Respondents' argument above, in and of itself, contradicts the position they also advance that additional language was required to clarify the process by which the Commission's plan becomes law. Moreover, Respondents can cite to no instance in the County's history in which, at the time the Commission's plan "automatically" became law,

the process was fraught with confusion, which would have prompted a Charter amendment to correct.[2]

Respondents' argument does not stop there, however. Instead, contradicting themselves, they argue further that the 2012 amendment was added to clarify what, by their own admission, required no clarification, that the Commission plan is the law as of the last day in November, if the Council passes no other law by resolution.

It is hard to imagine that, after the 1974 amendment to "untangle certain procedural snarls"[3] that Respondents still contend *today* that §§ 320 and 321 of the Charter are *silent* as to what "act of the Council" should occur to confirm that the Commission's plan "become law." Resp. Br. at pp. 11-12.

III. The 2012 Amendment Was Not Ratified To Authorize Council To Adopt A Resolution For The Commission's Plan To Become Law—Because **Before** And **After** The Amendment If Council Passed No Other Law Changing The Commission's Proposal, The Commission's Plan Became Law—**Without** Adoption Of A Resolution Subject To ***Another*** Notice And Public Hearing

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[2] In both 1991 and 2001, the Commission's plan became law, *by operation of law*, without confusion. Moreover, although the Respondents cite to other counties with similar provisions, triggering automatic adoption of the Commission's plan, none were cited for the proposition that a Charter amendment was required to clarify what act would be required for the automatic adoption to occur.

[3] *See* footnote 17 of Respondents' Brief.

According to Respondents when voters ratified the 2012 amendment, it was merely to add a single sentence to § 305 providing the legislative vehicle for the adoption of the Commission's plan to become law subject to notice and codification. Resp. Br. at 13, ¶ 1. But Respondents continue to ignore the legislative intent and background of the sentence added to § 305.

The legislative ***background*** and ***intent*** of the sentence added to § 305 is as follows:

> "This proposed Charter Amendment **authorizes the adoption of a County Council redistricting plan by resolution *upon notice and public hearing***." App 251. (Emphasis added).

And the sentence voters ratified that was added to § 305 was based on Ballot Question A, which stated as follows:

> **Prince George's County**
> **Question A**
> **Charter Required Referendum**
> **(CB-55-2012) Proposed Charter Amendment**
>
> **To authorize legislative action on the decennial County Council redistricting plan by resolution *upon notice and public hearing.*** App 252-268 (Emphasis added).

Nothing in the legislative history of the 2012 amendment indicate that the sentence added to § 305 was intended to provide a legislative vehicle for the adoption of the *Commission's plan* to become law subject

to notice and codification. Resp. Br. at 13, ¶ 1. But a logical reading of that vehicle was already established in § 305 by the following language: "If Council passes no other law changing the proposal, then the plan, as submitted, shall become law, as of the last day of November, as an act of the Council, subject to Sections 320 and 321 of this Charter."

Respondents also continue to ignore that the 2012 amendment did not *delete* any of the prior language in § 305 that *already* provided a legislative vehicle for the Commission's plan to become law. The entire legislative history leads to a single conclusion: the sentence added to § 305 in 2012 was to authorize legislative action on a **County Council redistricting plan by resolution upon notice and public hearing**—*not* the Commission's plan.

Respondents argue that "[t]he plain language of Section 305 now provides that upon inaction of the Council by the last day of November, the Commission's '*plan, as submitted, shall become law … as an act of the council, subject to Sections 320 and 321 of this Charter*,' and that '*such law shall be adopted by resolution*[.]'" Resp. Br. at 13. But statutory interpretation neither adds nor deletes words or engages in forced or subtle interpretation in an attempt to extend or limit the statute's meaning. *Bellard v. State*, 452 Md. 467, 481, 157 A.3d 272 (2017)

(quoting *Wagner v. State*, 445 Md. 404, 417-19, 128 A.3d 1 (2015)). The plain language of § 305 provides as follows:

> If the Council **p*asses no other law*** changing the proposal, then the plan, as submitted, ***shall become law***, as of the last day of November, as an act of the Council, ***subject to Sections 320 and 321 of this Charter***. ***Such law*** shall be adopted by resolution of the County Council upon notice and public hearing. (Emphasis added).

Based on the legislative background and intent of CB-55-2012, and the phrasing of Ballot Question A, the reasonable interpretation and construction of the last sentence in § 305 is, that it was added to authorize the **County Council to *pass other law* by *resolution upon notice and public hearing* to change** the Commission's proposal.

But Respondents contend that the last sentence in § 305 was a mandate for Council to use a "simple resolution" to acknowledge a legislative fact that the Commission's plan became law. Resp. Br. at 14. Such a reading of the last sentence in § 305 would not be construing the Charter so that no word, clause, sentence or phrase is not rendered surplusage, meaningless or nugatory. Nor does such an interpretation of the last sentence in § 305 discern legislative intent and legislative history of § 305 to confirm conclusions or resolve questions, by considering the consequences of alternative readings of the text in order to avoid illogical or nonsensical interpretations. Further, if the Court

carries this argument to its logical conclusion, the Court would be remiss not to hold that neither plan currently meets the requirements of § 305.

Prior to the 2012 amendment, *the Council* was ***already required*** to give *notice and public hearing* on the Commission's plan. And if the Council passed no other law changing the proposal, the Commission plan *became law*, as of the last day of November, as an act of the Council, subject to §§ 320 and 321 of the Charter—*because it was already given effect after notice and public hearing*. It would be illogical and nonsensical to amend § 305 to redo for the Commission's plan what has already been done.

Respondents next argue that "such law" in the last sentence of § 305 does not refer to the "other law" the Council may pass in § 305 because such a reading would run afoul of the plain language of the Charter, statutory construction, and basic grammar. Resp. Br. at 14. Respondents cite to four cases for the proposition that "such law" in the last sentence in § 305 applies only to the Commission's plan.[4] But none

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[4] The four cases are 1) *Board of Supervisors of Elections v. Weiss*, 217 Md. 133, 141 A.2d 734 (1958), 2) *United States v. Bowen*, 100 U.S. 508, 25 L. Ed. 631 (1879), 3) *United States v. Ahlers*, 305 F.3d 54 (1st Cir. 2002), and 4) *Barnhart v. Thomas*, 540 U.S. 20, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003).

of the cases negate that "such law" does not apply to the Council's law changing the Commission's plan.

In *Weiss,* this Court stated that [g]enerally the word "such" refers only to something which has been said before. The word always refers to some antecedent in the context of the instrument, which explains its meaning. "Such" is a relative adjective referring back to and identifying something previously spoken of. It naturally, by grammatical usage, refers to the last precedent antecedent. In this respect it is equivalent to "said," "aforesaid," "afore-described" and "same," **as to all of which the same grammatical rule applies**. 217 Md. at 138, 141 A.2d at 737 (Emphasis added). Although the Respondents cite to *Weiss* out of context, facts there involved the applicability of the word "such" to two separate sections of election law. In relevant part, this Court held that the word "such" in Md. Ann. Code art. 33, § 41(a) (1957) cannot refer *prospectively* to the term "general election" in Md. Ann. Code art. 33, § 50 (1957). In this case, "such law" in the last sentence of § 305 is not being referred *prospectively* to another section of the Charter but rather to law referred to in the same sentence.

Bowen works against Respondents' interpretation and construction of "such law" in the last sentence of § 305. *Bowen* involved a petition alleging that the United States unlawfully withheld from Charles Bowen

$270 when he was admitted as an inmate of the Soldiers Home because of a wound received by him in the military service of the United States. *Bowen* involved multiple sections of an Act, which is not the case here. At issue in *Bowen* was Sect. 4820 of the Revised Statutes which provided that the fact that one to whom a pension has been granted for wounds or disability received in the military service, has not contributed to the funds of the Soldiers' Home, shall not preclude him from admission thereto; but all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits. Bowen was the recipient of invalid pension but he had contributed to the funds of the Soldiers' Home. The single question in the case was whether that fact withdraws him from the clause which requires pensioners to surrender their pensions to the home while inmates of it. The Court concluded that if the qualifying word "such" is restricted to pensioners described in the sentence which immediately precedes it, then Bowen does not belong to that class, and is not bound to surrender his pension. The Court further concluded that there is no other class of pensioners described in that section to whom the word "such" can refer than those who have *not* contributed to the funds of the home, and Bowen does not belong to that class. 100 U.S. at 511-512, 25 L. Ed. At 631.

In the instant case, "such law" in the last sentence of § 305 is only referring to *other law* passed by the *County Council* because when the Commission plan *became law*, as of the last day of November, as an act of the Council, subject to §§ 320 and 321 of the Charter—*it was already given effect after notice and public hearing*. Therefore, the only plan, requiring a vehicle to become law, was the County Council's plan.

Respondents also cite *Barnhart* involved a social security disability claimant who sought judicial review of Commissioner of Social Security's denial of her application for disability benefits under the Social Security Act, which the Supreme Court upheld. At issue was § 423(d)(2)(A) of the Act, which states that a person qualifies as disabled, and thereby eligible for such benefits, only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. The Supreme Court reasoned that § 423(d)(1)(A) establishes two requirements for disability. First, an individual's physical or mental impairment must render him unable to do his previous work. Second, the impairment must also preclude him from engaging in any other kind of substantial gainful work. The parties agreed that the latter requirement is qualified by the clause that

immediately follows it -- which exists in the national economy. 540 U.S. 20, 124 S. Ct. 376, 157 L. Ed. 2d 333. Although *Barnhart* applied the antecedent rule, it was done in circumstances that does not fit any of the language in § 305. Perhaps more importantly, in speaking of the "rule of the last antecedent" the Supreme Court observed that this *rule is not an absolute and can assuredly be overcome by other indicia of meaning*. *See Nobleman v. American Sav. Bank*, 113 S. Ct. 2106, 2111 (1993)(Do not have to apply the "rule of last antecedent" if not practical).[5] *See also* 2A N. Singer, Sutherland on Statutory Construction § 47.33, p 369 (6th rev. ed. 2000) ("Referential and qualifying words and phrases, *where no contrary intention appears*, refer solely to the last antecedent") (Emphasis added).

The *Ahlers* case cited by Respondents, involved defendants, who plead guilty in the United States District Court for the District of Maine of conspiring to distribute, and to possess with intent to distribute, various controlled substances, and appealed their convictions. At issue in that case were the language and textual sentences of 28 U.S.C.S. § 3553(e) and § 3553(f) of the federal sentencing guidelines. 305 F.3d 54.

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[5] The Rehnquist Court's Canons of Statutory Construction. Rep. App 1.

In *Ahlers,* the defendants sought to reach not just beyond the immediately preceding sentence, but into an entirely different section of the law, which the Maine court rejected.

In this case, "such law" is language which is part of one sentence, the last sentence of § 305. It does not involve the language of two textual sentences or sentences in two different sections of the Charter. The "such law" language in the last sentence of § 305 refers to the law that is subject to adoption by resolution upon notice and public hearing, which refers to the plan the Council passes to change the Commission's plan—because when the Commission's plan *became law*, as of the last day of November, as an act of the Council, subject to §§ 320 and 321 of the Charter—*it was already given effect after notice and public hearing and needed no further legislative action other than compliance with* §§ 320 and 321 *of the Charter*.

The circuit court erred in holding that under § 317, a law can only be enacted by bill. Carrying the judge's ruling to its furthest extreme, neither the mechanism by which the Commission's plan becomes law under § 305, nor how the Council's plan becomes law under that section would comport; thus, the circuit court's ruling would preclude the County from executing its constitutionally mandated duty of redistricting.

The 2012 amendment clearly provides that the Council may change the Commission's plan by adopting a resolution upon notice and public hearing. The amendment clarifies that the process resulting in a law changing the Commission's plan is by resolution. This is the voter-approved language of § 305, which specifically incorporates the important procedural safeguards of adequate notice and public hearing, to allow the County's citizens an opportunity to engage in this important public process—this is precisely what occurred in November 2021.

IV. The Legislative History In CB-55-2012 Is Clear That The 2012 Amendment Was To Authorize Legislative Action For The Council To Pass Other Law By Resolution Changing The Commission's Proposal

The legislative ***background*** and ***intent*** of CB-55-2012 provides as follows:[6]

> "This proposed Charter Amendment **authorizes the adoption of a County Council redistricting plan by resolution *upon notice and public hearing***." App 251, 268. (Emphasis added).

Respondents argue that this "clearly refers to the Commission's plan." They contend this is the case because § 305 uses the term "plan" five times, each referring only to the Commission's plan. Resp. Br. at 19.

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[6] Rep. App 24, 31 (Transcripts of hearings on CB-55-2012).

But Respondents are wrong. When § 305 refers to the word "plan" it does so only in the context of when the Commission's plan is not subject to being *changed* by the Council. The word "plan" is replaced by the word "**proposal**" one-time in § 305—referring to the Commission's which is subject to being *changed* by the Council:

> ***If Council passes no other law changing the proposal***, then the plan, as submitted, shall become law, as of the last day of November, as an act of the Council, subject to Sections 320 and 321 of this Charter.

As Respondents concede, the only *plan* that automatically becomes law as an act of the Council in § 305 is the *Commission's plan*. Resp. Br. at 19. Ballot Question A, as ratified by the voters in 2012 is *devoid* of the words *Commission's plan*. Question A as proposed to the voters in 2012 says the complete opposite: To authorize legislative action on the decennial ***County Council redistricting plan*** by resolution upon notice and public hearing. Respondents further concede that the language used is the primary source of legislative intent and if the meaning of the amendment is plain and unambiguous, we should look no further. Resp. Br. at 20. *See also Mayor & City Council of Ocean City v. Bunting*, 168 Md. App. 134, 141, 895 A.2d 1068, 1072 (2006).

When the voters ratified Ballot Question A, it authorized the ***adoption*** of a ***County Council redistricting plan*** by ***resolution*** *upon notice and public hearing*. App 251, 253, 268.

V. Laws Are Adopted Throughout The Country By Passing Resolutions. After the 2002 and 2012 Amendments—Council Was Expressly Authorized To Adopt A Resolution To Pass Other Law Changing The Commission's Proposal

Respondents argue, relying on § 317, that the Council can only enact a law by passing a bill. Resp. Br. at 21. But the Respondents continue to ignore the fact that § 305 allows for the Commission's plan to become law automatically, as an act of the County Council. No bill is required in that process. Additionally, the Respondents further ignore, depending upon which plan is at issue, the fact that § 305 was amended in 2012, authorizing the Council to pass a law by **adoption** of a **resolution**. Simply put, the Respondents cannot justify their argument that it is not proper to pass the County Council's plan as law without a bill, while at the same time arguing that the Commission's plan can be passed without the same formality, since whichever plan is approved must become law.

The County fully supported the 2002 and 2012 amendments to § 305. None of the amendments were done under cover of night or to circumvent the County Executive. In 2002, County Attorney Leonard L. Lucchi approved the ballot question to amendment § 305. App 194. And in 2012,

County Attorney M. Andree Green approved the ballot question to further amend § 305. App 241. Moreover, there were *no* challenges to either ballot question to amend § 305.[7]

Respondents contend that the Council claims that it can act alone to adopt a new redistricting map. That has never been the Council's position. Instead, the County Council recognizes the role of a redistricting commission, appointed in accordance with the requirements set out in § 305, who in the first instance, must prepare, publish and make available a plan of Council districts and shall present that plan, together with a report explaining it, to the Council. The second step of the process, the Council's opportunity to present and pass its own plan instead of the commission's, is consonant with the dictates of § 305. As noted above, the method by which the Council is authorized to adopt its own plan as law, is based on the 2012 ballot question to amend § 305, which was certified by the then County Attorney and subsequently

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[7] Respondents devote much of their argument on the process to enact a bill and then to argue that Council's adoption of CR-123-2021 was intended to circumvent Executive participation and veto. To the extent these arguments are a back-door way to attack the validity of CB-55-2012, which authorized the Council to adopt a resolution to pass law to change the Commission's proposal, Respondents have abandoned and foreclosed any such argument when they elected not to appeal the circuit court's judgment denying their request to invalidate CB-55-2012.

ratified at the ballot box by voters of the County, who approved this amendment to the Charter.

Respondents argue that Council's reliance on § 10-206 of the Express Powers Act for the proposition that it may pass law by a resolution is all but foreclosed by this Court's decision in *Montgomery County v. Anchor Inn Seafood Restaurant*, 374 Md. 327, 822 A.2d 429 (2000). But *Anchor Inn* works against Respondents.

Anchor Inn involved a bill banning smoking in licensed bars and restaurants in Montgomery County which was introduced in a legislative session of the Montgomery County Council. Following a hearing, the bill passed by a five to four vote and was delivered to the County Executive, who vetoed it. On the same date that the bill was passed, the County Council purported to convene as the Board of Health and considered adopting, by resolution, a regulation that mirrored Bill No. 2-99. Resolution 14-70 was adopted on March 9, 1999, to take effect on January 1, 2002.

Following the adoption of the Resolution, the respondents, Anchor Inn Seafood Restaurant, numerous other restaurants located in Montgomery County, restaurant owners and employers and the City of Gaithersburg, filed declaratory judgment actions challenging the validity of the Resolution. After cross-motions for summary judgment,

the circuit court entered a judgment declaring the Resolution invalid. In a separate opinion accompanying the declaration that the Resolution was invalid, the circuit court delineated five alternative grounds for its decision. First, the court held that, under state law, the County Council did not have the authority to sit as the Board of Health without the participation of the County Executive. Second, the circuit court held that the Resolution was preempted by Maryland Code (1992, 1998 Repl. Vol.), § 2-105(d) of the Business Regulation Article. Third, the court concluded that the County Council, purporting to sit as an administrative agency, failed to comply with the Montgomery County Administrative Procedure Act. Fourth, the court took the position that the Resolution violated the separation of powers provisions in the Montgomery County Charter. Fifth, the Circuit Court held that the Resolution violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the equal protection principle embodied in Article 24 of the Maryland Declaration of Rights.

This Court fully agreed with the first ground relied upon by the circuit court for holding the Resolution invalid, namely that, under state law, the Montgomery County Council did not have the authority to act as the Board of Health without the participation of the County Executive. Consequently, the Court did not reach or express any opinion

with respect to the other alternative grounds relied upon in the circuit court's opinion. 374 Md. 327, 331-32, 822 A.2d 429, 430-431.

The facts in *Anchor Inn* are in stark contrast to the facts in this case. Here, the Council was not sitting as the Board of Health. Here, the circuit court did not invalidate CB-55-2012. But more importantly here, § 305 does not require participation of the County Executive when the County Council is acting pursuant to § 305.

As mentioned above, the 2012 amendment serves to specify that the Council may **change** the Commission's proposal by **adopting** a **resolution** *upon notice and public hearing*. The 2012 amendment clarifies that the process resulting in a *law* changing the Commission's proposal is by *resolution*. And it is no simple resolution; the voter-approved language specifically incorporates the important procedural safeguards of adequate notice and public hearing to allow the public to engage in this important public process.

VI. The Council's 2021 Redistricting Plan Implements And Administers Existing Redistricting Law

Respondents argue that the Council makes the remarkable assertion that the adoption of its own redistricting map was simply a "ministerial" or "administrative act." Resp. Br. at 27. Respondents mischaracterize Council's argument in a back door attempt to attack Council's 2021

Redistricting Plan on substantive or constitutional grounds as they made no such claims below. Council never attempted to diminish the redistricting process. The argument that Council advanced in its principal brief was as follows:

> The 2002 and 2012 Amendments to Section 305 of the Charter Harmonized Redistricting Procedures to Align with State Law to Authorize the County Council to Pass a Resolution to Administer and Implement Existing Redistricting Law

Pet. Br. at 18 (Argument Heading C). Council's brief states that § 305 is best characterized as ministerial in character and relating to administrative business to implementing and administering the redistricting process based on US Census data as required by § 305. Id. Council then argued that based on § 305, as amended in 2002 and 2012, it was authorized to *change* the Commission proposal by *adopting* a *resolution* as opposed to a *bill* because it was implementing existing redistricting law. Id. at 19.

Respondents argue next that Council knows that redistricting is no ministerial or administrative task because they have twice used bills to adopt its own plan and have never before used the vehicle of a resolution. They further argue that "to the extent there is any ambiguity in CB-55-2021, it should be construed against the Council, drafters of this Charter amendment." Resp. Br. at 28. But, at the risk of being redundant, the

validity of CB-55-2012 is *not* before this Court. Redistricting procedures in the Charter are mandatory. In its entirety, § 305 provides as follows:

Section 305. Redistricting Procedure.

> The boundaries of Council districts **shall** be reestablished in 1982 and every tenth year thereafter. Whenever district boundaries are to be reestablished the Council **shall** appoint, **not later than** February 1 of the year prior to the year in which redistricting is to be effective, a commission on redistricting, composed of two members from each political party chosen from a list of five names submitted by the Central Committee of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the immediately preceding regular election. The Council **shall** appoint one additional member of the Commission who shall serve as chairman. No person **shall** be eligible for appointment to the Commission if he holds any elected office. By September 1 of the year prior to the year in which redistricting is to be effective, the Commission **shall** prepare, publish, and make available a plan of Council districts and **shall** present that plan, together with a report explaining it, to the Council. The plan **shall** provide for Council districts that are compact, contiguous, and equal in population. **No less than** fifteen calendar days and **no more than** thirty calendar days after receiving the plan of the Commission, the Council **shall** hold a public hearing on the plan. If the Council passes no other law changing the proposal, then the plan, as submitted, **shall** become law, as of the last day of November, as an act of the Council, subject to Sections 320 and 321 of this Charter. Such law **shall** be adopted by resolution of the County Council upon notice and public hearing. (Emphasis added).

It is not an extraordinary claim that these mandatory actions in § 305 fall within the category of actions that are ordinarily ministerial in

character and relating to the administrative business of the municipality. Resp. Br. at 27. This is not only the view of the Council.

Recently, the County Executive, Angela D. Alsobrooks (D), answered multiple questions on WAMU's "The Politics Hour" referring to redistricting, by stating: **"I don't have any power to affect it. … This is exclusively within the province of the County Council."**[8] (Emphasis added).

CONCLUSION

For the reasons set forth herein, the circuit court's ruling, in sole reliance on the language in § 317, declaring that the Council is prohibited from enacting any law "except by bill," is clearly erroneous and should be reversed. To not do so would completely render nugatory the legal significance of the 2012 Charter amendment, even in light of the circuit court's own contradictory ruling, which expressly denied the specific relief sought by Respondents to invalidate it. Additionally, if the circuit court's ruling, that a proper interpretation of the language of § 317 requires a nullification of § 305 as amended, although Question A was ratified, is upheld, it would render portions of the Charter surplusage,

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[8] https://www.washingtonpost.com/dc-md-va/2021/11/10/prince-georges-redistricting/

superfluous, meaningless, or nugatory. *Harford County v. Board of Supervisors*, 272 Md. 33, 321 A.2d 151 (1974). This is true, in light of the rules of statutory construction as well as, in light of the legislative history, which plainly states, that the intent of the 2012 Charter amendment was to authorize **legislative action** on the decennial **County Council** redistricting plan by **resolution**.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This Reply Brief contains 5,899 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This Reply Brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Rajesh A. Kumar
Rajesh A. Kumar — 9806230294

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Tuesday, March 1, 2022, the foregoing **Reply Brief and Appendix** was filed and served electronically through the MDEC System and two paper copies by first-class mail, postage prepaid, upon Matthew G. Sawyer, The Law Offices of Matthew G. Sawyer, LLC, 30 Courthouse Square, Suite 100, Rockville, Maryland 20850 and Timothy F. Maloney, Samuel P. Morse, Esquires, Joseph Greenwald & Laake, P.A., 6404 Ivy Lane, Suite 400, Greenbelt, Maryland 20770.

/s/ Rajesh A. Kumar
Rajesh A. Kumar — 9806230294

CITATIONS AND VERBATIM TEXT OF PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES AND REGULATIONS

Section 317. Enactment of Legislation.

Every law of the County shall be styled: "Be it enacted by the County Council of Prince George's County, Maryland." The Council shall enact no law except by bill. The subject of every law shall be described in its title. Every law enacted by the Council, except the budget law and supplementary appropriation laws, shall embrace but one subject. No law or section of law shall be revived or amended by reference to its title only. A bill may be introduced by any member of the Council on any legislative session-day of the Council. On the introduction of any bill, a copy thereof and notice of the time and place of the public hearing on the bill shall be posted by the Clerk of the Council within ten days on an official bulletin board to be set up by the Council in a public place and by any other such methods as the Council shall dictate. Additional copies of the bill shall be made available to the public and to the press. Every copy of each bill shall bear the name of the member of the Council introducing it and the date it was introduced. Within ten days following the introduction of a bill the Clerk of the Council shall schedule and give public notice of a public hearing on the bill, which hearing shall not be less than fourteen days after its introduction. The Council may reject any bill on its introduction without a hearing by a majority vote of the members of the full Council. Such public notice shall be published in the County newspapers of record and in media for public notice as defined in Section 1008 of this Charter. The public hearing may, but need not be, held on a legislative session-day and may be adjourned from time to time. After the public hearing, a bill may be finally enacted on a legislative session-day with or without amendment, except, that if a bill is amended before enactment and the amendment constitutes a change of substance, the bill shall not be enacted until it is reprinted or reproduced as amended and a public hearing shall be set thereon and proceedings had, as in the case of a newly introduced bill. Any bill not enacted by the last day of November of each year shall be considered to have failed. To meet a public emergency affecting the public health, safety, or welfare, the County may enact emergency bills. Every emergency bill shall be plainly designated as such and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the claimed emergency in clear and specific terms. The term "emergency bill" shall not include any measure creating or abolishing any office; changing the compensation, term, or duty of any officer; granting any franchise or special privilege; or creating any vested right or interest. No bill shall be enacted except by the affirmative vote of a majority of the full Council. No emergency bill shall be enacted except by an affirmative vote of two-thirds of the members of the full Council. In the event of an emergency declared by the Governor pursuant to provisions of State law, which emergency affects any part or all of Prince George's County, the Council may provide, by law, for modification of voting, quorum, and publication requirements consistent with State law, for matters relating to and necessary to respond to the emergency.

(Amended, CB-92-1974, ratified Nov. 5, 1974; Amended, CB-70-2002, ratified Nov. 5, 2002; Amended, CB-59-2006, ratified Nov. 7, 2006; Amended, CB-50-2008, ratified Nov. 4, 2008; Amended, CB-52-2014, ratified Nov. 4, 2014)

Section 411. Executive Veto.

Upon the enactment of any bill by the Council, with the exception of such measures made expressly exempt from the executive veto by this Charter, it shall be presented to the County Executive within ten days for his approval or disapproval. Within ten days after such presentation, he shall return any such bill to the Council with his approval endorsed thereon or with a statement, in writing, of his reasons for not approving the same. Upon approval by the County Executive, any such bill shall become law. Upon veto by the County Executive, his veto message shall be entered in the Journal of the Council, and, not later than at its next legislative session-day, the Council may reconsider the bill. If, upon reconsideration, two-thirds of the members of the full Council vote in the affirmative, the bill shall become law. Whenever the County Executive shall fail to return any such bill within ten days after the date of its presentation to him, the Clerk of the Council shall forthwith record the fact of such failure in the Journal, and such bill shall thereupon become law. In the case of budget and appropriation bills, the County Executive may disapprove or reduce individual items in such bills, except where precluded by State law. Each item or items not disapproved or reduced in a budget and appropriation bill shall become law, and each item or items

disapproved or reduced in a budget and appropriation bill shall be subject to the same procedure as any other bill vetoed by the County Executive.

(Amended, CB-92-1974, ratified Nov. 5, 1974; Amended, CB-59-2006, ratified Nov. 7, 2006)

Section 1105. Charter Amendment.

Amendments to this Charter may be proposed by an act of the Council approved by not less than two-thirds of the members of the full Council, and such action shall be exempt from executive veto. Amendments may also be proposed by petition filed with the County Executive and signed by 10,000 registered voters of the County. When so proposed, whether by act of the Council or by petition, the question shall be submitted to the voters of the County at the next general election occurring after the passage of said act or the filing of said petition; and if at said election the majority of votes cast on the question shall be in favor of the proposed amendment, such amendment shall stand adopted from and after the thirtieth day following said election. Any amendments to this Charter, proposed in the manner aforesaid, shall be published by the County Executive in the County newspapers of record and in media for public notice as defined in Section 1008 of this Charter for five successive weeks prior to the election at which the question shall be considered by the voters of the County.

(Amended, CB-52-2014, ratified Nov. 4, 2014)

Editor's note(s)—CR-1-2001 established a Charter Review Commission to review the provisions of the Charter and recommend appropriate amendments to the County Executive and County Council.

Md. Rule 8-202

Rules current through February 1, 2022

MD - Maryland State & Federal Court Rules > Maryland Rules > Title 8. Appellate Review in the Court of Appeals and Court of Special Appeals > Chapter 200. Obtaining Review in Court of Special Appeals

Rule 8-202. Notice of appeal — Times for filing

(a) Generally. — Except as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken. In this Rule, "judgment" includes a verdict or decision of a circuit court to which issues have been sent from an Orphans' Court.

Cross references. — Code, *Courts Article, § 12-302 (c) (3)*.

(b) Criminal action — Motion for new trial. — In a criminal action, when a timely motion for a new trial is filed pursuant to Rule 4-331 (a), the notice of appeal shall be filed within 30 days after the later of (1) entry of the judgment or (2) entry of a notice withdrawing the motion or an order denying the motion.

(c) Civil action — Post judgment motions. — In a civil action, when a timely motion is filed pursuant to Rule 2-532, 2-533, 2-534, or 11-218, the notice of appeal shall be filed within 30 days after entry of (1) a notice withdrawing the motion or (2) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-532, 2-534, or 11-218. A notice of appeal filed before the withdrawal or disposition of any of these motions does not deprive the trial court of jurisdiction to dispose of the motion. If a notice of appeal is filed and thereafter a party files a timely motion pursuant to Rule 2-532, 2-533, 2-534, or 11-218, the notice of appeal shall be treated as filed on the same day as, but after, the entry of a notice withdrawing the motion or an order disposing of it.

Committee note. — A motion filed pursuant to Rule 2-535, if filed within ten days after entry of judgment, will have the same effect as a motion filed pursuant to Rule 2-534, for purposes of this *Rule. Unnamed Att'y v. Attorney Grievance Comm'n, 303 Md. 473, 494 A.2d 940 (1985)*; *Sieck v. Sieck, 66 Md. App. 37, 502 A.2d 528 (1986)*.

(d) When notice for in banc review filed. — A party who files a timely notice for in banc review pursuant to Rule 2-551 or 4-352 may file a notice of appeal provided that (1) the notice of appeal is filed within 30 days after entry of the judgment or order from which the appeal is taken and (2) the notice for in banc review has been withdrawn before the notice of appeal is filed and prior to any hearing before or decision by the in banc court. A notice of appeal by any other party shall be filed within 30 days after entry of a notice withdrawing the request for in banc review or an order disposing of it. Any earlier notice of appeal by that other party does not deprive the in banc court of jurisdiction to conduct the in banc review.

(e) Appeals by other party — Within ten days. — If one party files a timely notice of appeal, any other party may file a notice of appeal within ten days after the date on which the first notice of appeal was filed or within any longer time otherwise allowed by this Rule.

(f) Date of entry. — "Entry" as used in this Rule occurs on the day when the clerk of the lower court enters a record on the docket of the electronic case management system used by that court.

Md. Rule 8-302

Rules current through February 1, 2022

MD - Maryland State & Federal Court Rules > Maryland Rules > Title 8. Appellate Review in the Court of Appeals and Court of Special Appeals > Chapter 300. Obtaining Appellate Review in Court of Appeals

Rule 8-302. Petition for writ of certiorari — Times for filing

(a) From appeal to Court of Special Appeals. — If a notice of appeal to the Court of Special Appeals has been filed pursuant to Rule 8-201, a petition for a writ of certiorari may be filed either before or after the Court of Special Appeals has rendered a decision, but not later than the later of 15 days after the Court of Special Appeals issues its mandate or 30 days after the filing of that court's opinion.

(b) From appeal to circuit court. — If a writ of certiorari is sought pursuant to Code, *Courts Article, § 12-305*, a petition may be filed not later than 30 days after entry of the judgment of the circuit court, except as follows:

(1) In a criminal action, when a timely motion for a new trial is filed pursuant to Rule 4-331 (a), the petition for a writ of certiorari shall be filed within 30 days after the later of (A) entry of the judgment or (B) entry of a notice withdrawing the motion or an order denying the motion.

(2) In a civil action tried de novo in the circuit court, when a timely motion is filed pursuant to Rule 2-533 or 2-534, the petition for a writ of certiorari shall be filed within 30 days after entry of (A) a notice of withdrawing the motion or (B) an order denying a motion pursuant to Rule 2-533 or disposing of a motion pursuant to Rule 2-534. A petition for a writ of certiorari filed before the withdrawal or disposition of either of these motions has no effect, and a new petition must be filed within the time specified in this section.

(c) By other party — Within 15 days. — If a timely petition for a writ of certiorari is filed by a party, any other party may file a petition for a writ of certiorari within 15 days after the date on which the first timely petition was filed or within any applicable time otherwise prescribed by this Rule, whichever is later.

(d) Date of entry. — "Entry" as used in this Rule occurs on the day when the clerk of the lower court enters a record on the docket of the electronic case management system used by that court.

Md. Ann. Code Art. LG, § 9-205

Statutes current through all legislation of the 2021 Regular Session of the General Assembly. Some statutes have been further updated with legislation from the 2021 First Special Session of the General Assembly.

Michie's™ Annotated Code of Maryland > Local Government (Divs. I — V) > Division III. Counties. (Titles 9 — 15) > Title 9. General and Administrative Provisions. (Subts. 1 — 5) > Subtitle 2. Charter Counties. (§§ 9-201 — 9-207)

§ 9-205. Power of referendum.

(a)

(1) The voters of a charter county may reserve in the charter the power of referendum by which they may submit a local law enacted by the county council, by petition, to the voters for approval or rejection.

(2) The charter shall specify:

(i) what types of local laws may be petitioned to referendum; and

(ii) whether a part of a local law may be petitioned to referendum.

(b)

(1) Subject to paragraph (2) of this subsection, in implementing procedures that relate to the power of referendum, the charter or the local laws shall provide adequate details as to time, notice, and form.

(2) The initial notice of a referendum vote shall be given at least 30 days before the election.

Md. Ann. Code Art. LG, § 10-204

Statutes current through all legislation of the 2021 Regular Session of the General Assembly. Some statutes have been further updated with legislation from the 2021 First Special Session of the General Assembly.

Michie's™ Annotated Code of Maryland > Local Government (Divs. I — V) > Division III. Counties. (Titles 9 — 15) > Title 10. Express Powers Act. (Subts. 1 — 3) > Subtitle 2. Express Powers of Charter Counties. (§§ 10-201 — 10-206)

§ 10-204. Ordinances to facilitate charter amendments.

A county may pass any ordinance that facilitates the amendment of the county charter by referendum of the voters of the county in accordance with Article XI-A, § 5 of the Maryland Constitution.

Md. Ann. Code Art. LG, § 10-206

Statutes current through all legislation of the 2021 Regular Session of the General Assembly. Some statutes have been further updated with legislation from the 2021 First Special Session of the General Assembly.

Michie's™ Annotated Code of Maryland > Local Government (Divs. I — V) > Division III. Counties. (Titles 9 — 15) > Title 10. Express Powers Act. (Subts. 1 — 3) > Subtitle 2. Express Powers of Charter Counties. (§§ 10-201 — 10-206)

§ 10-206. Additional legislative powers.

(a) A county council may pass any ordinance, resolution, or bylaw not inconsistent with State law that:

(1) may aid in executing and enforcing any power in this title; or

(2) may aid in maintaining the peace, good government, health, and welfare of the county.

(b) A county may exercise the powers provided under this title only to the extent that the powers are not preempted by or in conflict with public general law.

(c) A county may not pass any law under this title regarding the licensing, regulating, prohibiting, or submitting to referendum the manufacture or sale of alcoholic beverages.

REPLY APPENDIX
TABLE OF CONTENTS

[REP. APP 1 — REP. APP 37]

THE REHNQUIST COURT'S CANONS OF STATUTORY CONSTRUCTION

This outline was derived from
the Appendix to "Foreword: Law As Equilibrium,"
William N. Eskridge, Jr., Philip P. Frickey,
108 Harv. L. Rev. 26, November, 1994.
Format modified by Judge Russell E. Carparelli,
Colorado Court of Appeals, Sep. 2005.

This Appendix collects the canons of statutory construction that have been used or developed by the Rehnquist Court, from the 1986 through the 1993 Terms of the Court (inclusive). The Appendix divides the canons into three conventional categories: the textual canons setting forth conventions of grammar and syntax, linguistic inferences, and textual integrity; extrinsic source canons, which direct the interpreter to authoritative sources of meaning; and substantive policy canons which embody public policies drawn from the Constitution, federal statutes, or the common law.

SUMMARY OF CONTENTS

I. TEXTUAL CANONS

- **Plain meaning rule:** follow the plain meaning of the statutory text, [FN1] except when text suggests an absurd result [FN2] or a scrivener's error. [FN3]

II. LINGUISTIC INFERENCES

- **Expressio unius:** expression of one thing suggests the exclusion of others. [FN4]
- **Noscitur a sociis:** interpret a general term to be similar to more specific terms in a series. [FN5]
- **Ejusdem generis:** interpret a general term to reflect the class of objects reflected in more specific terms accompanying it. [FN6]
- Follow **ordinary usage of terms**, unless Congress gives them a specified or technical meaning. [FN7]
- Follow **dictionary definitions of terms**, unless Congress has provided a specific definition. [FN8] Consider dictionaries of the era in which the statute was enacted. [FN9] Do not consider "idiosyncratic" dictionary definitions. [FN10]
- **"May"** is usually precatory, while **"shall"** is usually mandatory. [FN11]
- **"Or"** means in the alternative. [FN12]

III. GRAMMAR AND SYNTAX

- **Punctuation rule:** Congress is presumed to follow accepted punctuation standards, so that placements of commas and other punctuation are assumed to be meaningful. [FN13]
- Do not have to apply the **"rule of the last antecedent"** if not practical. [FN14]

IV. TEXTUAL INTEGRITY

- Each statutory provision should be read by **reference to the whole** act. [FN15] Statutory interpretation is a "holistic" endeavor. [FN16]

- **Avoid**

  - interpreting a provision in a way that would render other provisions of the Act **superfluous or unnecessary**. [FN17]

  - interpreting a provision in a way **inconsistent with the policy of another provision**. [FN18]

  - interpreting a provision in a way that is **inconsistent with a necessary assumption of another provision**. [FN19]

  - interpreting a provision in a way that is **inconsistent with the structure of the statute**. [FN20]

  - **broad readings** of statutory provisions **if** Congress has specifically provided for the broader policy in more specific language elsewhere. [FN21]

- Interpret the **same or similar terms in a statute the same way**. [FN22]

- **Specific provisions** targeting a particular issue apply instead of provisions more generally covering the issue. [FN23]

- Provisos and statutory **exceptions should be read narrowly**. [FN24]

- **Do not create exceptions** in addition to those specified by Congress. [FN25]

V. EXTRINSIC SOURCE CANONS

A. AGENCY INTERPRETATIONS

- Rule of **deference to agency interpretations**, unless contrary to plain meaning of statute or unreasonable. [FN26]
- Rule of **extreme deference** when there is **express delegation** of law-making duties to agency. [FN27]
- Presumption that **agency interpretation of its own regulations** is correct. [FN28]

B. CONTINUITY IN LAW

- **Rule of continuity:** assume that Congress does not create discontinuities in legal rights and obligations without some clear statement. [FN29]
- **Presumption** that Congress uses **same term consistently in different statutes**. [FN30]
- **Super-strong presumption of correctness** for statutory precedents. [FN31]
- **Presumption that international agreements do not displace federal law**. [FN32]
- **Borrowed statute rule:** when Congress borrows a statute, it adopts by implication interpretations placed on that statute, absent express statement to the contrary. [FN33]
- **Re-enactment rule:** when Congress re-enacts a statute, it incorporates settled interpretations of the re-enacted statute. [FN34] The rule is inapplicable when there is no settled standard Congress could have known. [FN35]
- **Acquiescence rule:** consider unbroken line of lower court decisions interpreting statute, [FN36] but do not give them decisive weight. [FN37]

C. EXTRINSIC LEGISLATIVE SOURCES

- Interpret provision **consistent with subsequent statutory amendments**, [FN38] but do not consider subsequent legislative discussions. [FN39]

- Consider legislative history if the statute is **ambiguous**. [FN40]

- **Committee reports** are authoritative legislative history, [FN41] but cannot trump a textual plain meaning, [FN42] and should not be relied on if they are "imprecise." [FN43]

- **Committee report language** that cannot be tied to a specific statutory provision cannot be credited. [FN44] House and Senate reports inconsistent with one another should be discounted. [FN45]

- **Presumption against interpretation considered and rejected** by floor vote of a chamber of Congress or committee. [FN46]

- **Floor statements** can be used to confirm apparent meaning. [FN47]

- **Contemporaneous and subsequent understandings** of a statutory scheme (including understandings by President and Department of Justice) may sometimes be admissible. [FN48]

- **The "dog didn't bark" canon:** presumption that prior legal rule should be retained if no one in legislative deliberations even mentioned the rule or discussed any changes in the rule. [FN49]

VI. CONSTITUTION-BASED CANONS

- **Avoid interpretations that would render a statute unconstitutional.** [FN50] Inapplicable if statute would survive constitutional attack, or if statutory text is clear. [FN51]

A. SEPARATION OF POWERS

- **Super-strong rule against congressional interference** with President's authority over foreign affairs and national security. [FN52]
- **Rules**
  - **against congressional invasion of the President's core executive powers**. [FN53]
  - **against review of President's core executive actions** for "abuse of discretion." [FN54]
  - **against congressional curtailment of the judiciary's "inherent powers"** [FN55] or its "equity" powers. [FN56]
  - **against congressional expansion of Article III** injury in fact to include intangible and procedural injuries. [FN57]
  - **against congressional abrogation of Indian treaty rights.** [FN61]
- **Presumptions**
  - that **Congress does not delegate authority** without sufficient guidelines. [FN58]
  - **against "implying" causes of action** into federal statutes. [FN59]
  - that **U.S. law conforms to U.S. international obligations.** [FN60]
  - **favoring severability of unconstitutional provisions.** [FN62]

B. FEDERALISM

- **Super-strong rules**
  - **against federal invasion of "core state functions."** [FN63]
  - **against federal abrogation of states' Eleventh Amendment immunity from lawsuits in federal courts.** [FN64]
- **Rules**
  - **against inferring enforceable conditions on federal grants to the states.** [FN65]
  - **against congressional expansion of federal court jurisdiction** that would siphon cases away from state courts. [FN66]
  - **against** reading a federal statute to authorize states to engage in activities that would **violate the dormant commerce clause.** [FN67]
  - **favoring concurrent state and federal court jurisdiction** over federal claims. [FN68]
  - **against federal pre-emption of traditional state functions,** [FN69] or against federal disruption of area of traditional state regulation. [FN70]
- **Presumptions**
  - against **federal pre-emption** of state-assured **family support** obligations. [FN71]
  - against federal regulation of **intergovernmental taxation** by the states. [FN72]
  - against **application of federal statutes to state and local political processes.** [FN73]
  - **states can tax activities within their borders**, including Indian tribal activities, [FN74] but also presumption that states cannot tax on Indian lands. [FN75]

- **against congressional derogation from state's land claims** based upon its entry into Union on an "equal footing" with all other states. [FN76]

- **against federal habeas review of state criminal convictions** supported by independent state ground. [FN77]

- **finality of state convictions for purposes of habeas review.** [FN78]

- **Congress borrows state statutes of limitations for federal statutory schemes,** unless otherwise provided. [FN80]

- Principle that **federal equitable remedies must consider interests of state and local authorities.** [FN79]

C. DUE PROCESS

- **Rule of lenity:** rule against applying punitive sanctions if there is ambiguity as to underlying criminal liability [FN81] or criminal penalty. [FN82] Rule of lenity applies to civil sanction that is punitive [FN83] or when underlying liability is criminal. [FN84]

- **Rules**

  - **against criminal penalties** imposed without showing of specific intent. [FN85]

  - **against interpreting statutes to be retroactive,** [FN86] even if statute is curative or restorative. [FN87]

  - **against interpreting statutes to deny a right to jury trial.** [FN88]

- **Presumptions**

  - **in favor of judicial review,** [FN89] especially for constitutional questions, [FN90] but not for agency decisions not to prosecute. [FN91]

  - **against pre-enforcement challenges to implementation.** [FN92]

- **against exhaustion of remedies requirement for lawsuit to enforce constitutional rights.** [FN93]
- **judgments will not be binding upon persons not party** to adjudication. [FN94]
- **against national service of process** unless authorized by Congress. [FN95]
- **against foreclosure of private enforcement of important federal rights.** [FN96]
- **preponderance of the evidence standard applies in civil cases.** [FN97]

VII. STATUTE-BASED CANONS

- **In pari materia:** similar statutes should be interpreted similarly, [FN98] unless legislative history or purpose suggests material differences. [FN99]
- Presumption **against repeals by implication.** [FN100]
- **Purpose rule:** interpret ambiguous statutes so as best to carry out their statutory purposes. [FN101]
- **Strong presumptions**
  - in favor of **enforcing labor arbitration agreements.** [FN113]
  - **federal grand juries operate within legitimate spheres of their authority.** [FN124]
- **Presumptions**
  - **against creating exemptions in a statute** that has none. [FN103]
  - **federal private right of action (express or implied) carries with it all traditional remedies.** [FN105]
  - **court will not supply a sanction for failure to follow a timing provision when the statute has no sanction.** [FN106]

- **against national "diminishment" of Indian lands.** [FN108]
- **against taxpayer claiming income tax deduction.** [FN110]
- **Bankruptcy Act of 1978 preserved prior bankruptcy doctrines.** [FN111]
- **statute creating agency** and authorizing it to "sue and be sued" **also creates federal subject matter jurisdiction** for lawsuits by and against the agency. [FN118]
- **against application of Sherman Act to activities authorized by states.** [FN122]

- **Narrow interpretation** of statutory **exemptions**. [FN102]
- Allow **de minimis exceptions to statutory rules,** so long as they do not undermine statutory policy. [FN104]
- **Rules**
  - against state taxation of **Indian tribes and reservation activities.** [FN107]
  - favoring **arbitration** of federal statutory claims. [FN114]
  - that Court of Claims is proper forum for **Tucker Act** claims against federal government. [FN116]
  - that **"sue and be sued"** clauses waive sovereign immunity and should be liberally construed. [FN117]
- Narrow interpretation of **exemptions from federal taxation.** [FN109]
- Federal court deference to **arbitral awards,** even where the Federal Arbitration Act is not by its terms applicable. [FN112]
- Strict construction of **statutes authorizing appeals.** [FN115]
- Construe **ambiguities in deportation statutes** in favor of aliens. [FN119]
- Principle that **veterans' benefits** statutes be construed liberally for their beneficiaries. [FN120]
- Liberal application of **antitrust policy.** [FN121]

- Principle that statutes should not be interpreted to create **anticompetitive effects.** [FN123]

VIII. COMMON LAW-BASED CANONS

- **Presumptions**
  - in favor of **following common law usage** where Congress has employed words or concepts with well settled common law traditions. [FN125] Follow evolving common law unless inconsistent with statutory purposes. [FN126]
  - **that jury finds facts, judge declares law.** [FN134]
  - **that public (government) interest not be prejudiced by negligence of federal officials.** [FN136]
  - that federal agencies launched into commercial world with power to **"sue and be sued"** are not entitled to sovereign immunity. [FN137]
  - favoring enforcement of **forum selection clauses.** [FN138]
  - against criminal jurisdiction by an **Indian tribe** over a nonmember. [FN139]
  - that party cannot invoke federal jurisdiction until she has exhausted her remedies in **Indian tribal courts.** [FN140]
  - that **federal judgment has preclusive effect** in state administrative proceedings. [FN141]
  - importing **common law immunities** into federal civil rights statutes. [FN142]
- **Rules**
  - against **extraterritorial application of U.S. law,** [FN127] except for antitrust laws. [FN128]
  - that **debts to the United States** shall bear interest. [FN130]

- presuming against **attorney fee-shifting in federal courts** and federal statutes, [FN132] and narrow construction of fee-shifting statutes to exclude unmentioned costs. [FN133]

- presuming that law takes effect on **date of enactment.** [FN135]

- **Super-strong rules**

  - **against waivers of United States sovereign immunity.** [FN129]

  - **against conveyance of U.S. public lands** to private parties. [FN131]

[FN1]. See Estate of Cowart v. Nicklos Drilling Co., 112 S. Ct. 2589, 2594 (1992); United States v. Providence Journal Co., 485 U.S. 693, 700-01 (1988). But see id. at 708, 710 (Stevens, J., dissenting) ("[The Court has] long held that in construing a statute, [it is] not bound to follow the literal language of the statute -- 'however clear the words may appear on superficial examination' -- when doing so leads to 'absurd,' or even 'unreasonable,' results." (quoting United States v. American Trucking Ass'ns., Inc., 310 U.S. 534, 543-44 (1940) (internal quotation marks omitted))).

[FN2]. See United States v. Wilson, 112 S. Ct. 1351, 1354 (1992); Holmes v. Securities Investor Protection Corp., 112 S. Ct. 1311, 1316-17 (1992); Green v. Bock Laundry Mach. Co., 490 U.S. 504, 510-11 (1989).

[FN3]. See United States Nat'l Bank of Oregon v. Independent Ins. Agents, 113 S. Ct. 2173, 2186 (1993).

[FN4]. See O'Melveny & Myers v. FDIC, 114 S. Ct. 2048, 2054 (1994); Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 730-31 (1989); Chan v. Korean Airlines, Ltd., 490 U.S. 122, 133-34 (1989). But see Burns v. United States, 501 U.S. 129, 136 (1991) ("[A]n inference drawn from Congressional silence certainly cannot be credited."); Sullivan v. Hudson, 490 U.S. 877, 891-92 (1989) (refusing to read an express provision in the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(3) (1982), which allows for the recovery of fee awards in adversarial administrative proceedings, to generate a "negative implication" that the court lacks power to award such fees in a nonadversarial proceeding)

[FN5]. See Beecham v. United States, 114 S. Ct. 1669, 1671 (1994); Dole v. United Steelworkers, 494 U.S. 26, 36 (1990); Massachusetts v. Morash, 490 U.S. 107, 114-15 (1989).

[FN6]. See Hughey v. United States, 495 U.S. 411, 419 (1990).

[FN7]. See Will v. Michigan Dep't of State Police, 491 U.S. 58, 64 (1989).

[FN8]. See Pittston Coal Group v. Sebben, 488 U.S. 105, 113 (1988).

[FN9]. See St. Francis College v. Al-Khazraji, 481 U.S. 604, 610-11 (1987).

[FN10]. See MCI Telecommunications Corp. v. AT&T Co., 114 S. Ct. 2223, 2229-30 (1994).

[FN11]. See Mallard v. United States Dist. Court, 490 U.S. 296, 302 (1989).

[FN12]. See Hawaiian Airlines, Inc. v. Norris, 114 S. Ct. 2239, 2244-45 (1994).

[FN13]. See United States v. Ron Pair Enter., Inc., 489 U.S. 235, 241-42 (1989); San Francisco Arts & Athletics, Inc. v. United States Olympic Comm., 483 U.S. 522, 528-29 (1987).

[FN14]. See Nobelman v. American Sav. Bank, 113 S. Ct. 2106, 2111 (1993).

[FN15]. See John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 114 S. Ct. 517, 523 (1993); Pavelic & Leflore v. Marvel Entertainment Group, 493 U.S. 120, 123-24 (1989); Massachusetts v. Morash, 490 U.S. 107, 114-15 (1989).

[FN16]. See Smith v. United States, 113 S. Ct. 2050, 2057 (1993); United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988).

[FN17]. See Ratzlaf v. United States, 114 S. Ct. 655, 659 (1994); Kungys v. United States, 485 U.S. 759, 778 (1988) (Scalia, J., plurality opinion); South Carolina v. Catawba Indian Tribe, Inc., 476 U.S. 498, 510 n.22 (1986). But see Landgraf v. USI Film Prods., 114

S. Ct. 1483, 1493-95 (1994) (acknowledging that petitioner's textual argument, based upon "the canon that a court should give effect to every provision of a statute," "has some force" but refusing to accept the averred meaning, because it was "unlikely that Congress intended the [disputed clause] to carry the critically important meaning pertitioner assigns it").

[FN18]. See United Sav. Ass'n v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 371 (1988).

[FN19]. See Gade v. National Solid Wastes Management Ass'n, 112 S. Ct. 2374, 2384 (1992).

[FN20]. See Eli Lilly & Co. v. Medtronic, Inc., 496 U.S. 661, 668-69 (1990); Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., 484 U.S. 49, 59 (1987).

[FN21]. See Custis v. United States, 114 S. Ct. 1732, 1736 (1994); John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 114 S. Ct. 517, 524 (1993); West Virginia Univ. Hosp., Inc. v. Casey, 449 U.S. 83, 92 (1991).

[FN22]. See Sullivan v. Stroop, 496 U.S. 478, 484-85 (1990); United Sav. Ass'n v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 371 (1988).

[FN23]. See Green v. Bock Laundry Mach. Co., 490 U.S. 504, 524-26 (1989); Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 444-45 (1987).

[FN24]. See Commissioner v. Clark, 489 U.S. 726, 739 (1989).

[FN25]. See United States v. Smith, 499 U.S. 160, 166-67 (1991).

[FN26]. See Sullivan v. Everhart, 494 U.S. 83, 88-89 (1990); NLRB v. Curtin Matheson Scientific, Inc., 494 U.S. 775, 786-87 (1990); id. at 797 (Rehnquist, C.J., concurring); K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291-92 (1988).

[FN27]. See ABF Freight Sys., Inc. v. NLRB, 114 S. Ct. 835, 839-40 (1994).

[FN28]. See Thomas Jefferson Univ. v. Shalala, 114 S. Ct. 2381, 2386-87 (1994); Mullins Coal Co. v. Director, Office of Workers'

Compensation Programs, 484 U.S. 135, 159 (1987).

[FN29]. See Green v. Bock Laundry Mach. Co., 490 U.S. 504, 521-22 (1989); Finley v. United States, 490 U.S. 545, 554 (1989).

[FN30]. See Hawaiian Airlines, Inc. v. Norris, 114 S. Ct. 2239, 2244-45 (1994); Smith v. United States, 113 S. Ct. 2050, 2056-57 (1993).

[FN31]. See California v. FERC, 495 U.S. 490, 498-99 (1990); Maislin Indus., Inc. v. Primary Steel, Inc., 497 U.S. 116, 130-33 (1990).

[FN32]. See Société Nationale Industrielle Aérospatiale v. United States Dist. Court, 482 U.S. 522, 538-39 (1987).

[FN33]. See Molzof v. United States, 112 S. Ct. 711, 716 (1992); Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 65-66 (1987). But see Shannon v. United States, 114 S. Ct. 2419, 2425 (1994) (declining to construe the Insanity Defense Reform Act of 1984, 18 U.S.C., §§ 17, 4241- 4247 (1988), in accord with prior judicial interpretations of the District of Columbia statute upon which the Act was based by finding the applicable canon to be "merely a 'presumption of legislative intention' to be invoked only 'under suitable conditions"' (quoting Carolene Products Co. v. United States, 323 U.S. 18, 26 (1944))).

[FN34]. See Davis v. United States, 495 U.S. 472, 482 (1990); Pierce v. Underwood, 487 U.S. 552, 566-68 (1988).

[FN35]. See Fogerty v. Fantasy, Inc., 114 S. Ct. 1023, 1030-33 (1994).

[FN36]. See Ankenbrandt v. Richards, 112 S. Ct. 2206, 2213 (1992); Monessen S.W. Ry. v. Morgan, 486 U.S. 330, 338-39 (1988).

[FN37]. See Central Bank v. First Interstate Bank, 114 S. Ct. 1439, 1452- 53 (1994).

[FN38]. See Bowen v. Yuckert, 482 U.S. 137, 149-51 (1987).

[FN39]. See Sullivan v. Finkelstein, 496 U.S. 617, 628 n.8 (1990); id. at 631-32 (Scalia, J., concurring in part). But see Musick, Peeler & Garrett v. Employers Ins. of Wausau, 113 S. Ct. 2085, 2089 (1993) (inferring congressional approval of judicial regulation of the implied 10b-5 cause of action from subsequent congressional legislation acknowledging such a cause of action "without any further expression

of legislative intent to define it"); cf. Hagen v. Utah, 114 S. Ct. 958, 969 (1994) (considering history of legislative amendment to subsequent act as evidence that the later act incorporated the provisions of an earlier act, even though the amendment was ultimately rejected).

[FN40]. See Wisconsin Pub. Intervenor v. Mortier, 501 U.S. 597, 610 n.4 (1991).

[FN41]. See Johnson v. De Grandy, 114 S. Ct. 2647, 2656 n.9 (1994); Dewsnup v. Timm, 112 S. Ct. 773, 779 (1992); Southwest Marine, Inc. v. Gizoni, 112 S. Ct. 486, 492 (1991).

[FN42]. See City of Chicago v. Environmental Defense Fund, 114 S. Ct. 1588, 1593 (1994); Republic of Arg. v. Weltover, Inc., 112 S. Ct. 2160, 2168 (1992); American Hosp. Ass'n v. NLRB, 499 U.S. 606, 613 (1991).

[FN43]. See Director, Office of Workers' Compensation Programs v. Greenwich Collieries, 114 S. Ct. 2251, 2258-59 (1994).

[FN44]. See Shannon v. United States, 114 S. Ct. 2419, 2426 (1994).

[FN45]. See Moreau v. Klevenhagen, 113 S. Ct. 1905, 1908 (1993).

[FN46]. See Campbell v. Acuff-Rose Music, Inc., 114 S. Ct. 1164, 1174 (1994).

[FN47]. See Department of Revenue v. ACF Indus., Inc., 114 S. Ct. 843, 851 (1994).

[FN48]. See Hagen v. Utah, 114 S. Ct. 958, 969 (1994); Darby v. Cisneros, 113 S. Ct. 2539, 2545-47 (1993).

[FN49]. See Chisom v. Roemer, 501 U.S. 380, 396 & n.23 (1991).

[FN50]. See Public Citizen v. United States Dep't of Justice, 491 U.S. 440, 465-66 (1989); Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988).

[FN51]. See Peretz v. United States, 501 U.S. 923, 932 (1991); Rust v. Sullivan, 500 U.S. 173, 182 (1991).

[FN52]. See Department of Navy v. Egan, 484 U.S. 518, 527 (1988);

United States v. Johnson, 481 U.S. 681, 690-91 (1987); see also United States v. Stanley, 483 U.S. 669, 679 (1987) (concerning LSD experiments by the military).

[FN53]. See Morrison v. Olson, 487 U.S. 654, 682-683 (1988); see also Carlucci v. Doe, 488 U.S. 93, 99 (1988) (noting the "general proposition" that the executive branch's power to remove officials from office is incident to the original congressional grant of authority to appoint that official).

[FN54]. See Franklin v. Massachusetts, 112 S. Ct. 2767, 2775 (1992).

[FN55]. See Chambers v. NASCO, Inc., 501 U.S. 32, 43-44 (1991).

[FN56]. See California v. American Stores Co., 495 U.S. 271, 295 (1990).

[FN57]. See Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2135-37 (1992); id. at 2146 (Kennedy, J., concurring in part and concurring in the judgment).

[FN58]. See Mistretta v. United States, 488 U.S. 361, 373 n.7 (1989).

[FN59]. See Virginia Bankshares, Inc. v. Sandberg, 501 U.S. 1083, 1102- 05 (1991); Thompson v. Thompson, 484 U.S. 174, 179 (1988).

[FN60]. See Sale v. Haitian Ctrs. Council, Inc., 113 S. Ct. 2549, 2560 (1993).

[FN61]. See South Dakota v. Bourland, 113 S. Ct. 2309, 2315 (1993).

[FN62]. See Alaska Airlines, Inc. v. Brock, 480 U.S. 678, 684 (1987).

[FN63]. See BFP v. Resolution Trust Corp., 114 S. Ct. 1757, 1764-65 (1994); Gregory v. Ashcroft, 501 U.S. 452, 461-64 (1991); cf. Holder v. Hall, 114 S. Ct. 2581, 2586 (1994) (plurality opinion) (refusing to accept "benchmark" size of government in evaluating challenge under the Voting Rights Act, 42 U.S.C. § 1973 (1988), that departed from county's chosen use of single-commissioner form of government).

[FN64]. See Blatchford v. Native Village of Noatak, 501 U.S. 775, 779 (1991); Hoffman v. Connecticut Dep't of Income Maintenance, 492 U.S. 96, 101 (1989); Dellmuth v. Muth, 491 U.S. 223, 227-28 (1989); Pennsylvania v. Union Gas, 491 U.S. 1, 7 (1989) (finding abrogation);

see also Atascadero State Hosp. v. Scanlon, 473 U.S. 234, 241 (1985) ("The test for determining whether a State has waived its immunity from federal-court jurisdiction is a stringent one.").

[FN65]. See Suter v. Artist M, 112 S. Ct. 1360, 1366 (1992).

[FN66]. See Kokkonen v. Guardian Life Ins. Co. of Am., 114 S. Ct. 1673, 1675 (1994); Finley v. United States, 490 U.S. 545, 552-54 (1989).

[FN67]. See Wyoming v. Oklahoma, 112 S. Ct. 789, 802 (1992).

[FN68]. See Tafflin v. Levitt, 493 U.S. 455, 458 (1990); Yellow Freight Sys., Inc. v. Donnelly, 494 U.S. 820, 823 (1990).

[FN69]. See Hawaiian Airlines, Inc. v. Norris, 114 S. Ct. 2239, 2243 (1994); Cipollone v. Liggett Group, Inc., 112 S. Ct. 2608, 2617 (1992); California v. ARC Am. Corp., 490 U.S. 93, 100-01 (1989).

[FN70]. See BFP v. Resolution Trust Corp., 114 S. Ct. 1757, 1764 (1994).

[FN71]. See Rose v. Rose, 481 U.S. 619, 635-36 (1987) (O'Connor, J., concurring in part and concurring in the judgment).

[FN72]. See Davis v. Michigan Dep't of Treasury, 489 U.S. 803, 810 (1989).

[FN73]. See City of Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365, 373 (1991) (Sherman Act); McCormick v. United States, 500 U.S. 257, 269 n.6 (1988) (Hobbs Act); McNally v. United States, 483 U.S. 350, 361 (1987) (mail fraud statute). But see Evans v. United States, 112 S. Ct. 1881, 1891 (1992) (applying the Hobbs Act).

[FN74]. See Cotton Petroleum Corp. v. New Mexico, 490 U.S. 163, 174 (1989).

[FN75]. See Oklahoma Tax Comm'n v. Sac and Fox Indians, 113 S. Ct. 1985 (1993); County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation, 112 S. Ct. 683, 688, 693-94 (1992).

[FN76]. See Utah Div. of State Lands v. United States, 482 U.S. 193, 196 (1987).

[FN77]. See Wright v. West, 112 S. Ct. 2482, 2488-89 (1992); Coleman v. Thompson, 501 U.S. 722, 729 (1991).

[FN78]. See Brecht v. Abrahamson, 113 S. Ct. 1710, 1720-22 (1993).

[FN79]. See Spallone v. United States, 493 U.S. 265, 276 (1990).

[FN80]. See Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 501 U.S. 350, 355-56 (1991).

[FN81]. See United States v. Granderson, 114 S. Ct. 1259, 1263 (1994); United States v. Kozminski, 487 U.S. 931, 939 (1988).

[FN82]. See United States v. R.L.C., 112 S. Ct. 1329, 1337 (1992). But see Chapman v. United States, 500 U.S. 453, 463-64 (1991) (arguing that the rule of lenity is not applicable when sentence is clearly stated).

[FN83]. See NOW v. Scheidler, 114 S. Ct. 798, 805 (1994).

[FN84]. See Crandon v. United States, 494 U.S. 152, 158 (1990).

[FN85]. See Staples v. United States, 114 S. Ct. 1793, 1797 (1994).

[FN86]. See Landgraf v. USI Film Prods., 114 S. Ct. 1483, 1501 (1994); Bowen v. Georgetown Univ. Hosp., 488 U.S. 204, 208 (1988).

[FN87]. See Rivers v. Roadway Express, Inc., 114 S. Ct. 1510, 1518 (1994).

[FN88]. See Gomez v. United States, 490 U.S. 858, 863 (1989).

[FN89]. See McNary v. Haitian Refugee Ctr., Inc., 498 U.S. 479, 498-99 (1991).

[FN90]. See Webster v. Doe, 486 U.S. 592, 603 (1988).

[FN91]. See Lincoln v. Vigil, 113 S. Ct. 2024, 2027 (1993).

[FN92]. See Thunder Basin Coal Co. v. Reich, 114 S. Ct. 771, 777 (1994).

[FN93]. See McCarthy v. Madigan, 112 S. Ct. 1081, 1087 (1992).

[FN94]. See Martin v. Wilks, 490 U.S. 755, 761-62 (1989).

[FN95]. See Omni Capital Int'l v. Rudolf Wolff & Co., 484 U.S. 97, 107-08 (1987).

[FN96]. This presumption is very probably not a viable canon today. See Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 520-21 (1990)

[FN97]. See Grogan v. Garner, 498 U.S. 279, 286 (1991).

[FN98]. See John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 114 S. Ct. 517, 527-29 (1993); Morales v. TWA, Inc., 112 S. Ct. 2031, 2039 (1992); TWA, Inc. v. Independent Fed'n of Flight Attendants, 489 U.S. 426, 432-33 (1989); Communications Workers v. Beck, 487 U.S. 735, 750-52 (1988); Wimberly v. Labor & Indus. Relations Comm'n, 479 U.S. 511, 517 (1987).

[FN99]. See Fogerty v. Fantasy, Inc., 114 S. Ct. 1023, 1027-28 (1994).

[FN100]. See Pittsburgh & Lake Erie R.R. v. Railway Labor Executives' Ass'n, 491 U.S. 490, 509 (1989); Traynor v. Turnage, 485 U.S. 535, 547-48 (1988); Atchison, Topeka & Santa Fe Ry. v. Buell, 480 U.S. 557, 564-67 (1987).

[FN101]. See Reves v. Ernst & Young, 494 U.S. 56, 60-61 (1990).

[FN102]. See John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, 114 S. Ct. 517, 524-25 (1993) (ERISA); U.S. Dep't of Justice v. Landano, 113 S. Ct. 2014, 2024 (1993) (FOIA); Citicorp Indus. Credit, Inc. v. Brock, 483 U.S. 27, 33-35 (1987) (FLSA).

[FN103]. See City of Chicago v. Environmental Defense Fund, 114 S. Ct. 1588, 1593 (1994).

[FN104]. See Wisconsin Dep't of Revenue v. William Wrigley, Jr., Co., 112 S. Ct. 2447, 2457-58 (1992).

[FN105]. See Franklin v. Gwinnett County Pub. Sch., 112 S. Ct. 1028, 1033 (1992).

[FN106]. See United States v. James Daniel Good Real Property, 114 S. Ct. 492, 506 (1993).

[FN107]. Rule against state taxation may no longer be prevailing canon in Indian cases. See California v. Cabazon Band of Mission Indians, 480 U.S. 202, 208 (1987).

[FN108]. See Hagen v. Utah, 114 S. Ct. 958, 965-66 (1994).

[FN109]. See United States v. Burke, 112 S. Ct. 1867, 1877 (1992) (Souter, J., concurring in the judgment); United States v. Wells Fargo Bank, 485 U.S. 351, 357 (1988).

[FN110]. See Indopco, Inc. v. Commissioner, 112 S. Ct. 1039, 1043 (1992).

[FN111]. See Dewsnup v. Timm, 112 S. Ct. 773, 779 (1992).

[FN112]. See United Paperworkers Int'l Union v. Misco, Inc., 484 U.S. 29, 36-37 (1987).

[FN113]. See Groves v. Ring Screw Works, Ferndale Fastener Div., 498 U.S. 168, 173 (1990).

[FN114]. See Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20, 26 (1991); Shearson/American Express, Inc. v. McMahon, 482 U.S. 220, 226-27 (1987).

[FN115]. See California Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 579 (1987).

[FN116]. See Preseault v. ICC, 494 U.S. 1, 11-12 (1990).

[FN117]. See FDIC v. Meyer, 114 S. Ct. 996, 1003 (1994).

[FN118]. See American Nat'l Red Cross v. S.G., 112 S. Ct. 2465, 2472 (1992).

[FN119]. Cf. INS v. Cardoza-Fonseca, 480 U.S. 421, 449 (1987) (recognizing, but finding it unnecessary to rely upon, the "longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien" to affirm Court of Appeals's reversal of immigration judge's decision to deny alien's asylum request). The relatively lenient standards announced in Cardoza-Fonseca, see id., are of possibly questionable validity today. See INS v. Elias-Zacarias, 112 S. Ct. 812, 816 (1992) (interpreting statutory requirements of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42) (1988), to

bar an alien's claim for political asylum).

[FN120]. See King v. St. Vincent's Hosp., 112 S. Ct. 570, 573-74 & n.9 (1991).

[FN121]. See Brook Group Ltd. v. Brown & Williamson Tobacco Corp., 113 S. Ct. 2578, 2586 (1993).

[FN122]. See City of Columbia v. Omni Outdoor Advertising, Inc., 499 U.S. 365, 370 (1991).

[FN123]. See Two Pesos, Inc. v. Taco Cabana, Inc., 112 S. Ct. 2753, 2761 (1992).

[FN124]. See United States v. R. Enters., Inc., 498 U.S. 292, 300-01 (1991).

[FN125]. See Nationwide Mut. Ins. Co. v. Darden, 112 S. Ct. 1344, 1348 (1992) (common law definition of employee); Kamen v. Kemper Fin. Servs., Inc., 500 U.S. 90, 98-99 (1991) (state corporation law); Community for Creative Non-Violence v. Reid, 490 U.S. 730, 739-40 (1989) (common law of agency); Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30, 47- 48 (1989) (domicile). But see Taylor v. United States, 495 U.S. 575, 593-95 (1990) (refusing to follow common law meaning inconsistent with statutory purpose).

[FN126]. See Consolidated Rail v. Gottshall, 114 S. Ct. 2396, 2404 (1994).

[FN127]. See Sale v. Haitian Ctrs. Council, Inc., 113 S. Ct. 2549, 2560 (1993); EEOC v. Arabian Am. Oil Co., 499 U.S. 244, 248 (1991); Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 440 (1989).

[FN128]. See Hartford Fire Ins. Co. v. California, 113 S. Ct. 2891, 2908- 09 (1993).

[FN129]. See United States v. Nordic Village, Inc., 112 S. Ct. 1011, 1014-15 (1992); United States Dep't of Energy v. Ohio, 112 S. Ct. 1627, 1633 (1992); Ardestani v. INS, 112 S. Ct. 515, 520 (1991); United States v. Dalm, 494 U.S. 596, 608 (1990). But see Irwin v. Department of Veterans Affairs, 498 U.S. 89, 94-96 (1990) (demonstrating that once sovereign immunity is waived, equitable doctrines can be applied).

[FN130]. See United States v. Texas, 113 S. Ct. 1631, 1634 (1993).

[FN131]. See Utah Div. of State Lands v. United States, 482 U.S. 193, 197-98 (1987).

[FN132]. See Key Tronic Corp. v. United States, 114 S. Ct. 1960, 1965 (1994).

[FN133]. See West Virginia Univ. Hosps., Inc. v. Casey, 499 U.S. 83, 86- 87 (1991).

[FN134]. See Shannon v. United States, 114 S. Ct. 2419, 2424 (1994).

[FN135]. See Gozlon-Peretz v. United States, 498 U.S. 395, 404 (1991).

[FN136]. See United States v. Montalvo-Murillo, 495 U.S. 711, 717-18 (1990).

[FN137]. See Loeffler v. Frank, 486 U.S. 549, 554-55 (1988).

[FN138]. See Carnival Cruise Lines v. Shute, 499 U.S. 585, 589 (1991); Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 33 (1988) (Kennedy, J., concurring).

[FN139]. See Duro v. Reina, 495 U.S. 676, 693-94 (1990).

[FN140]. See Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9, 15-17 (1987).

[FN141]. See Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 108 (1991).

[FN142]. See Burns v. Reed, 500 U.S. 478, 484-85 (1991); Spallone v. United States, 493 U.S. 265, 278-80 (1990); Forrester v. White, 484 U.S. 219, 225-26 (1988).
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COUNTY COUNCIL MEETING PORTION REGARDING CB-055-2012 (CHARTER AMENDMENT)- AN ACT CONCERNING AMENDMENT OF SECTION 305, CHARTER OF PRINCE GEORGE'S COUNTY

Tuesday, June 19, 2012

Job: 432999

Pages: 1-4

Transcribed by: Erin King

P R O C E E D I N G S

UNIDENTIFIED MALE SPEAKER: CB-055-2012 and CB-57-2012. Both are charter amendments being proposed. CB-055-2012 is an act concerning -- amending section 305. The committee as a whole voted favorable recommendation, by a vote of 7-0. CB-057-2012, this charter amendment would amend section 819 of the charter. Again, the committee as a whole voted favorable, by a vote of 7-0. That concludes my report, Madam Chair.

THE CHAIRWOMAN: Thank you. For CB-055-2012, charter amendment and act concerning amendment of section 305, charter of Prince George's county, for the purpose of proposing an amendment to section 305 of the Charter of Prince George's county to authorize legislative action for the decennial County Council redistricting plan, by resolution upon notice of public hearing. We've just had the committee report. This is being introduced by Councilmember Harrison. Do we have any additional sponsors.

UNIDENTIFIED FEMALE SPEAKER: No additional

sponsors. Ms. Turner, thank you.

MS. TURNER: And Ms. -- and she's --

UNIDENTIFIED FEMALE SPEAKER: Ms. Harrison, yes.

THE CHAIRWOMAN: All right, thank you. CB-055-2012 stands introduced. CB-057-2012 --

(The recording was concluded.)

CERTIFICATE OF TRANSCRIBER

I, Erin King, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by and of the parties to this case and have no interest, financial or otherwise, in its outcome.

ERIN KING

Transcript of PG County Council Meeting Portion

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COUNTY COUNCIL MEETING PORTION REGARDING CB-055-2012 (CHARTER AMENDMENT)- AN ACT CONCERNING AMENDMENT OF SECTION 305, CHARTER OF PRINCE GEORGE'S COUNTY

Tuesday, July 24, 2012

Job: 432999

Pages: 1-4

Transcribed by: Erin King

P R O C E E D I N G S

THE CHAIRWOMAN: Thank you. CB-055-2012 is a charter amendment and act concerning amendment of section 305, Charter of Prince George's County, for the purpose of proposing an amendment to section 305 of the Charter of Prince George's County, to authorize legislative action on the decennial County Council redistricting plan, by resolution upon notice in public hearing. This is introduced by Councilmembers Harrison and Turner on 6/10/2012 and favorably reported out of COW on 6/19/2012.

Do we have any speakers?

UNIDENTIFIED FEMALE SPEAKER: Chair, no speakers.

THE CHAIRWOMAN: Thank you. Well then, this public hearing has been held. It is concluded. May I have a motion to enact?

VOICES: So moved.

THE CHAIRWOMAN: Motion by Ms. Turner and a second by Mr. Davis. Is there any discussion? Madam Clerk, please call the roll.

CLERK: Madam Chair?

THE CHAIRWOMAN: Aye.
CLERK: Mr. Campos?
MR. CAMPOS: Aye.
CLERK: Mr. Davis?
MR. DAVIS: Aye.
CLERK: Mr. Franklin?
MR. FRANKLIN: Aye.
CLERK: Ms. Layman (phonetic)?
MS. LAYMAN: Aye.
CLERK: Mr. Ellison?
MR. ELLISON: Aye.
CLERK: Mr. Patterson?
MR. PATTERSON: Aye.
CLERK: Ms. Turner?
MS. TURNER: I vote aye.
CLERK: Motion carries, 8-0.
(The recording was concluded.)

CERTIFICATE OF TRANSCRIBER

I, Erin King, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by and of the parties to this case and have no interest, financial or otherwise, in its outcome.

ERIN KING