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Statutory Construction

Connie H. Pfeiffer

Connie H. Pfeiffer
Beck Redden LLP
Houston, Texas

cpfeiffer@beckredden.com
713-951-3700

Constance H. Pfeiffer

Partner Beck Redden L.L.P.

713.951.6227 <cpfeiffer@beckredden.com



Connie specializes in appeals, representing both plaintiffs and defendants in state and federal courts. Connie often serves as an appellate member of trial teams and handles the full array of traditional appellate services once the case reaches an appeal.

Connie frequently writes and speaks on appellate topics. She has spoken most frequently on error preservation and the jury charge. She has also spoken at the Advanced Civil Appellate Conference on statutory interpretation and has guest lectured at The University of Texas School of Law on preparing for oral argument.

Professional History

- 2004 **Beck Redden L.L.P.**
- 2004 **Third Court of Appeals, Austin**
Intern for the Honorable Mack Kidd
- 2001 **Texas Senate, 97th Legislative Session**
Office of Senator Tom Haywood

Education and Honors

The University of Texas School of Law
J.D., with honors, 2004

“Outstanding Appellate Advocate”
Highest appellate advocacy honor

The University of Tennessee
B.A., *summa cum laude*, 1999

College Scholar
Self-directed Honors degree; defended honors thesis in the areas of Business, Spanish and Communications

Professional Honors & Service

Best Lawyers in America

Appellate Practice, 2015

Texas Monthly Magazine “Super Lawyer”

Appellate Law, 2014

Named “Rising Star” 2007-2009, 2012-2014

“Outstanding Young Lawyer of Houston”

Woodrow B. Seals Award, 2013

Federal Judicial Evaluation Committee

Board Certified—Civil Appellate Law

Texas Board of Legal Specialization

2013 **Director, Federal Bar Association**
Southern District of Texas Chapter

Council, HBA Appellate Practice Section

Editor in Chief, *The Appellate Lawyer*

2009 **President’s Award of Merit**
Texas Young Lawyers Association
Director, 2006-2010

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Statutory construction nearly always begins with a familiar proposition: A court's primary objective when construing a statute is to ascertain and give effect to the legislature's intent. But how does one governmental branch ascertain the intent of another branch? And once a court decides on an answer to this question, is its answer binding in the next case? Is a court's statutory interpretation methodology fixed or flexible?

Whether a court is weakly or strongly committed to any one theoretical path, perhaps to the point of giving an approach stare decisis effect, depends entirely on the court. The United States Supreme Court, for example, is not committed to a single interpretive methodology. *See* Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L. J. 1750, 1765 (2010). An interpretive rule used in one case is not "law" for the next case, and the Justices appear to believe that they cannot bind each other and future Justices to certain methodological choices. *Id.*

Scholars who divide on whether this way of approaching statutory interpretation is problematic nevertheless all agree on two things about the U.S. Supreme Court's approach: "that a single controlling approach does not currently exist and that prior methodological statements do not carry into future cases with the force of precedent." *Id.* at 1765-66; *see also* Nicholas Quinn Rosenkranz, *Federal Rules of Statutory Interpretation*, 115 HARV. L. REV. 2085, 2144 (2002).

In stark contrast, many states have reached different methodological choices. Gluck, *supra*, at 1756. Every state legislature has enacted into law statutory canons of construction. *Id.* at 1754. Yet some state courts have flouted the statutory rules in favor of their own interpretive preferences. *Id.*

With two high courts and a vibrant legal system, Texas makes for a fascinating study. The Texas Legislature's canons of construction endorse a wide array of interpretive tools, yet the highest courts are much more committed to particular interpretive methods. The Texas Court of Criminal Appeals has explicitly committed itself to textualism. And the Texas Supreme Court employs different approaches but nevertheless seems to have achieved "some methodological agreement." *See Ojo v. Farmers Group, Inc.*, 356 S.W.3d 421, 435 (Tex. 2011) (Jefferson, C.J. concurring).

This paper explores the different approaches on display in the Texas Legislature, the Court of Criminal Appeals and the Texas Supreme Court.

I. The Different Approaches to Statutory Interpretation

The competing methodological approaches break naturally into three categories that can be generally described as textualist, purposivist, or dynamic. The basic difference between the different approaches to statutory interpretation is the scope of materials that are legitimately included when seeking the Legislature's intent and the relative weight to place on them.

All three approaches embrace "canons" of construction, although they differ on which ones to use. Black's Law Dictionary defines canons of construction as "the system of fundamental rules and maxims which are recognized as governing the construction or interpretation of written instruments." BLACK'S LAW DICTIONARY 207 (6th ed. 1990). These "rules" legitimize certain methods of legal reasoning and act to constrain and guide a court's approach to interpretation. They are not generally treated as binding in the strict sense afforded to other statutes or common law holdings. The canons might be best thought of as rules of thumb, evidencing accepted premises to interpretation and weakly binding the courts to an accepted analytical path. *See* Jacob Scott, *Codified Canons and the Common Law of Interpretation*, 98 GEORGETOWN L. J. 341, 345-47 (2010).

A. Textualists

If the textualist theory had a face, it might look like Justice Antonin Scalia or Justice Don Willett. *See generally* ANTONIN SCALIA, A MATTER OF INTERPRETATION (1997).

Textualists embrace the most restrained approach, placing emphasis solely on the statutory text. They look only to the words of the statute because it is only these words that were voted on by both houses and signed into law by the Executive. The collection of legislative materials like committee reports, bill analyses and testimony at committee hearings are deemed unreliable evidence of legislative intent because they were not voted on by the entire legislative body. In addition, these materials are not as accessible to the general public, raising concerns about whether a statute interpreted by these guides gives fair notice of what is permissible and what is prohibited.

Some textualists will consider the statutory text in context, looking to other provisions of the same statute or code; they might examine the interpretations of borrowed statutes; and they might consult dictionary definitions of words (although likely from a dictionary in existence *before* the statute was

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