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**Recent Developments in Statutory Interpretation
Appeals**

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RECENT DEVELOPMENTS IN STATUTORY INTERPRETATION APPEALS

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As we all know, many cases not only present issues of statutory interpretation, but also involve the selection of which rules of statutory construction should be employed by the court. The meta-question of which rule of construction is to be used will often decide the case (that is, if the selection of the appropriate rule is truly made *before* the outcome is decided). If the "polestar" of statutory construction is the intent of the legislature, there are many conflicting maps to this star's home. What makes a statute clear and unambiguous? When may legislative history material be relied upon (or excluded)? When may a brief or article by members of the legislature be consulted to divine the legislature's intent?

The purpose of this paper is to try and give the practitioner a map to the various approaches that appear in the recent statutory interpretation cases in the recent literature and before the Texas appellate courts. Once charted, the advocate can select the approach and cases that most advance the client's position in any given case.

Recent appellate cases, including many from the Texas Supreme Court, give heightened analysis to these types of issues and reflect a larger trend to revisit the rules of statutory construction. There have been many scholarly articles devoted to discussing this phenomenon, many advancing or debunking one brand of interpretation theory. Here is just a smattering of the recent scholarship devoted to statutory construction:

- F. Cross, *THE THEORY AND PRACTICE OF STATUTORY INTERPRETATION* (Stanford: 2009)
- James J. Brudney, *Distrust and Clarify: Appreciating Congressional Overrides*, 90 Tex. L. Rev. 205 (2012)
- James J. Brudney, *Canon Shortfalls and the Virtues of Political Branch Interpretive Assets*, 98 Cal. L. Rev. 1199 (2010)
- Cheryl Boudreau, et al., *What Statutes Mean: Interpretive Lessons from Positive Theories of Communication and Legislation*, 44 San Diego L. Rev. 957 (2007)
- John F. Manning, *What Divides Textualists from Purposivists?*, 106 Colum. L. Rev. 70 (2006)
- James J. Brudney & Corey Ditslear, *Canons of Construction and the Elusive Quest for Neutral Reasoning*, 58 Vand. L. Rev. 1 (2005)
- M. Ross, *A Framework for Handling the Statutory Interpretation Appeal*, For The Defense, p.32 (Nov. 2000).
- J. Scott Morris, *The Texas Supreme Court and Strict Construction*, 11 Tex. Bar Jnl., 1042 (Dec. 2000).

- J. Crespi, *The Influence of a Decade of Statutory Interpretation Scholarship on Judicial Rulings: An Empirical Analysis*, 53 S.M.U. L. Rev. 9 (2000).
- A. Scalia, *A Matter of Interpretation: Federal Courts and the Law* (1997).
- B. Karkkainen, *Plain Meaning: Justice Scalia's Jurisprudence of Strict Statutory Construction*, 17 Harv. J.L. & Pub. Policy 401 (1994).
- F. Easterbrook, *Text, History, and Structure in Statutory Interpretation* 17 Harv. J. L. Pub. Poly 61 (1993).
- S. Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. Cal. L. Rev. 845 (1992).
- C. Sunstein, *Law and Administration After Chevron*, 90 Colum. L. Rev. 1175 (1989).
- A. Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989).

RECENT TEXAS SUPREME COURT CASES

Paxton v. City of Dallas
509 S.W.3d 247 (Tex. 2017)
Opinion: Guzman, J.
Dissent: Boyd and Johnson, J.J.

Background. The city of Dallas received a written Public Information Act request that sought information protected by the attorney-client privilege. Under the Act, the city was entitled to request an opinion from the attorney general about whether the privileged information must be disclosed. The city did make that request, but the request was untimely.

The Act provides that an untimely request for an opinion from the attorney general triggers a statutory presumption that the information must be disclosed, “unless there is a compelling reason to withhold the information.” Tex. Gov’t Code § 552.302. The dispute in this case centered around whether the attorney-client privilege itself—with nothing more—was a sufficiently compelling reason to withhold the information.

Purpose of the Act. The Court began by citing Tex. Gov’t Code § 552.001, the Legislature’s statement about the policy and construction of the Act, as a starting point for determining the Act’s purpose: to impose a broad obligation on the government to promptly disclose public information. Other provisions in the Act were cited to support this expansive reading of the statute.

After acknowledging the breadth of the statute’s coverage, the Court turned to the Act’s more restrictive provisions. The Court pointed out that the Act includes more than sixty exceptions to the public disclosure requirement. It also cited one of its own opinions, which described how the Act “embrace[s] the understanding that the public’s right to know is tempered by the individual and other interests at stake in disclosing that information.” *Id.* at 251.

Defining “compelling reason.” Because the Act does not define “compelling reason,” the Court stated that it would look to the words’ common, ordinary meaning, “unless a different or more precise definition is apparent from the statutory context or the plain meaning yields an absurd result.” *Id.* at 256.

The Court found that the phrase’s plain meaning was clear and unambiguous. It looked to “dictionaries, treatises, and judicial constructions of similar language” to help interpret the plain

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