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IN FOCUS

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Canons of Construction: A Brief Overview

The "canons of construction" are a set of judicial presumptions about statutory meaning. The canons are one of the traditional tools judges use to interpret statutes, along with the text's ordinary meaning, context, legislative history, and implementation. Courts may assume that Congress is aware of the canons and legislates in line with these understandings. Nonetheless, jurists disagree on the validity and content of certain canons and whether they should apply. Thus, while Congress can draft statutes that override the canons' default presumptions, these disputes can make it difficult for Congress to know when a canon might be triggered or how to avoid the presumption.

This In Focus briefly describes the canons of construction and debates over their use, providing examples from Supreme Court cases to illustrate some of the canons. For more information on the tools of statutory interpretation and an appendix compiling a longer list of the canons of construction, see CRS Report R45153, *Statutory Interpretation: Theories, Tools, and Trends*, by Valerie C. Brannon (2023).

What Are the Canons of Construction?

The canons of construction provide courts interpreting statutes with default assumptions about how Congress expresses meaning. Generally, legal scholars divide the canons into two groups: semantic and substantive canons.

Semantic Canons

Semantic canons, also known as linguistic canons, are presumptions about ordinary language use. Some reflect standard rules of grammar. Some have historic Latin names. For instance, *noscitur a sociis*, "it is known by its associates," counsels that a word is given meaning by surrounding, associated words. The Supreme Court has applied this canon to interpret statutes listing prohibited activities, concluding that although one of the activities in the list could be read broadly standing alone, the term has a more limited scope when connected to other verbs suggesting a specific type of prohibited activity.

Some semantic canons more specifically reflect assumptions about how Congress writes statutes. One example is the presumption of consistent usage and material variation. As described by the Supreme Court, this principle instructs that "[i]n a given statute, the same term usually has the same meaning and different terms usually have different meanings." This canon assumes that Congress intentionally uses consistent phrasing across an act, and that any inconsistency is also intentional.

Substantive Canons

Substantive canons are presumptions for or against certain outcomes. Some substantive canons are clear statement rules, putting a thumb on the scale for a specific outcome unless the statute makes a "clear statement" requiring a different outcome. These canons call for Congress to draft especially clearly when legislating in certain areas.

One historic substantive canon is the rule of lenity, saying ambiguity in a criminal statute should be resolved in the defendant's favor. This canon requires Congress to use clear language that gives fair warning to defendants, protecting the constitutional value of due process.

Other substantive canons are grounded in general legal presumptions, rather than constitutional values. For example, the reference canon states that a law referring to a specific statutory provision "in effect cuts and pastes the referenced statute as it existed when the referring statute was enacted, without any subsequent amendments." In contrast, a statute that refers to a general body of law evolves, incorporating the law on that subject as it exists when the statutory dispute arises.

When Does an Interpretive Presumption Become a Canon?

Courts frequently use interpretive principles without describing them as canons. The canons of construction overlap with other tools used to interpret statutes. Courts frequently start a statutory analysis by looking to the text's ordinary meaning, referring to dictionaries or a word's everyday usage. While the Supreme Court has only rarely described this inquiry as applying a "canon," scholars have identified this practice as an "ordinary meaning canon." As another example, the Supreme Court has sometimes described a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme"—but more frequently, the Court has looked to statutory context without describing the analysis as a canon.

Canons of construction may evolve. One possible example of this is the canon *expressio unius est exclusio alterius*: the expression of one thing implies the exclusion of others. This canon may suggest, for instance, that where Congress identified specific grounds for liability, the statute does not also impose liability on another, unmentioned basis. Courts have articulated other principles said to be related to this canon. For instance, the Supreme Court sometimes rejects a construction of a statute when it believes "Congress knew how" to write a statute with that meaning, and in the case before it, did not write that statute. In such cases, the Court has pointed to another statute that more clearly expresses the asserted meaning, implying that Congress knew how to convey that meaning and chose not to. In addition, some lower courts have recognized a so-called *Russello* canon that "Congress acts intentionally" if it "includes particular language in one section of a statute but omits it in another section of the same Act." These principles all suggest courts will not read extra language into a statute and will compare

language across related statutes. Courts might apply these principles in different circumstances, though.

Courts create new canons. An example is the major questions doctrine, which the Supreme Court recognized by name in 2022. It requires an agency to cite clear statutory authorization to regulate on an issue of great "economic and political significance." The doctrine is arguably related to the presumption that Congress does not "hide elephants in mouseholes"—that is, that Congress does not use vague terms to make large changes. The first Supreme Court mention of elephants hiding in mouseholes came in 2001. Older cases make similar presumptions, but the major questions doctrine itself is still relatively new, particularly in comparison to a canon like the rule of lenity that has roots in English common law. Supreme Court Justices are still debating when and how the major questions doctrine applies. Uncertainty surrounding this new canon may make it difficult for Congress to know when a statute is sufficiently clear to authorize agency action.

When Does a Court Apply a Canon?

The canons are presumptions, not invariable rules. Courts use the other tools of statutory interpretation to decide in any given case whether a canon's rule of thumb applies. The text and context of a statute may rebut the presumption.

Canons may clash with other canons. A classic example comes from two semantic canons that tell courts how to interpret words modifying lists. First, the series qualifier canon says if a list of similar nouns or verbs is followed by a modifier, the modifier should apply to the whole series. The Supreme Court applied this canon to a statute defining an "autodialer" as equipment that can "store or produce . . . numbers to be called, using a . . . number generator." In the Court's view, "number generator" modified both "store" and "produce." Second, in contrast, the rule of the last antecedent says a limiting clause only modifies the noun or phrase that it immediately follows. The Supreme Court applied this canon to a law imposing heightened penalties if a person has a prior conviction "relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor." The Court said the modifier "involving a minor" applied only to the last offense: "abusive sexual conduct." Which of these two canons applies depends on context, including factors such as punctuation, statutory structure, and whether the listed items are similar.

Some canons, such as the rule of lenity, apply only after a court has employed other interpretive tools and deemed the statute ambiguous. Judges may dispute whether a statute is sufficiently ambiguous to trigger a canon's application. In addition, in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), the Supreme Court said that the meaning of a statute is "fixed at the time of enactment," and the traditional tools of statutory construction seek that fixed meaning. *Loper Bright* also cast doubt on presumptions that impose "policy preferences" not encoded in the statute and not justified by congressional practice. *Loper Bright* thus implicated existing debates (described in the next section) about the validity of substantive canons that may impose outside values on statutory text.

For many judges, a statute's text is the most important factor to determine its meaning. The canons are largely applied if they support a textual analysis or in the rare circumstance that the text is deemed ambiguous. However, while many canons help judges choose among plausible interpretations, clear statement rules may limit a judge's ability to choose the most plausible textual reading. A judge might think that although a statute is not entirely clear, the tools point to one particular reading. If that reading is contrary to a clear statement rule, though, the court might choose a second-best reading of the statutory text that aligns with the clear statement rule. For instance, the major questions doctrine has arguably been applied to limit statutory text that might otherwise be read to grant broad authority to agencies. Congress can theoretically legislate around clear statement rules by writing a statute that is sufficiently direct—if it can anticipate the dispute.

How Are the Canons Justified?

Jurists have justified the canons on a few grounds. Some canons are said to reflect shared understandings, providing accurate descriptions of how Congress drafts and ordinary people understand language. Alternatively, some jurists cite normative grounds. The canons can provide stable and predictable background principles shared between Congress, courts, and regulated entities. The canons may also protect important constitutional values. Finally, judges may cite the historical pedigree of the canons.

Others have questioned, for instance, whether the semantic canons reflect actual language use. Scholars have conducted empirical studies testing whether the canons are used in everyday speech or in legislative drafting. Such studies may have influenced courts' use of the rule against surplusage. This canon tells courts to give effect to every clause and word of a statute so that none is rendered superfluous. Although the Supreme Court continues to follow this presumption, it has also recognized that "redundancies are common in statutory drafting." Thus, while the rule against surplusage might suggest that Congress should not use overlapping words or take a "belt and suspenders" approach, the Supreme Court has ruled that a statute's best reading might sometimes contain redundancy.

As mentioned, jurists have also asked whether courts should use the substantive canons to impose outside value choices on statutory text. Substantive canons that prefer specific outcomes have raised particular concern as a possible tool for judicial policymaking. Some have argued that it is appropriate for a judge to use canons that protect constitutional values, in line with the general exercise of judicial review. Judges may disagree, however, about whether a canon enforces constitutional values, and some scholars disagree that it is appropriate to use canons to enforce a vague notion of constitutional values beyond what the Constitution itself requires. If a canon is treated as constitutionally required, courts may be more reluctant to conclude that Congress legislated clearly enough to override that constitutional value.

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