THE REHNQUIST COURT'S CANONS OF STATUTORY CONSTRUCTION

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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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