T – Enact (NSDA Novice Packet)

Neg

1NC – Topicality – Enact = Congress

Interpretation:

"Enact" must be Congress—Clear intent to define and exclude

Berman 94 – Judge on the Superior Court of New Jersey, citing to prior precedent and dictionaries

Opinion by Glenn J. Berman, Superior Court of New Jersey, Law Division, Civil, Middlesex County, South Brunswick Associates v. Township Council of Tp. of Monroe, 285 N.J. Super. 377, Decided 17 May 1994, Lexis

Miller's conduct would be permissible under N.J.S.A. 40A:9-22.5i if the representation were regarding the "**enactment** of any ordinance, resolution or other matter required to be voted upon or which is subject to executive approval or veto." Id. (emphasis added). However, **this language suggests legislative, not** quasi-**judicial action.2** If the Legislature intended to allow public officials [*381] to represent others in quasi-judicial proceedings, it could have stated that public officials may participate in any proceeding which would not result in material or monetary gain to them. Cf. N.J.S.A. 40A:9-22.5i

[FN 2]

"Enactment" is defined as the act or **action of enacting: passing of a bill by the legislature**; something that has been enacted as a law, bill, or **statute**. Webster's Third New International Dictionary 745 (3d ed. 1986). **"Enact" is defined** as to enter into public records; to establish by legal and authoritative act, **make into law, especially** to **perform the last act of legislation** that gives the validity of law. Ibid.

[End FN]

Specifically excludes the Courts—Most precise and predictable: they 'adopt' but do NOT 'enact'. That word was chosen deliberately—Must read it in a way that gives it meaning

McMurdie 20 – Judge on the Arizona Court of Appeals

Paul J. McMurdie, delivering the opinion of the Court, Netherlands v. Md Helicopters, 1 CA-CV 19-0019 (Ariz. Ct. App. 2020), https://www.courtlistener.com/opinion/4737531/netherlands-v-md-helicopters/

MD Helicopters' **argument regarding the meaning of the terms "enact"** and "adopt" is similarly **unpersuasive** on the **question of whether** A.R.S. § 12-3252(B)(2) **refers only to acts of a** foreign country's **legislative body, and not of its courts as well**. The **common usage of the term "enact" does not generally include the actions of a court.** See, e.g., 2015 Ariz. Sess. Laws, ch. 170, § 1 (1st Reg. Sess.) ("Be it enacted by the Legislature of the State of Arizona . . . ." (emphasis added)); Cronin v. Sheldon, 195 Ariz. 531, 537 (1999) ("[T]he **legislature** has the authority to **enact** laws."). But **the term "adopt" is not nearly so limited. Courts make law through the adoption of rules or common-law principles**. See, e.g., Carrow Co. v. Lusby, 167 Ariz. 18, 24 (1990) ("We adopt the modern common law view that an owner of livestock owes a duty of ordinary care to motorists traveling on a public highway in open range." (emphasis added)); Judson C. Ball Revocable Tr. v. Phoenix Orchard Grp. I, L.P., 235 Ariz. 519, 523–24, ¶¶ 11, 16 (App. 2018) (Finding Delaware courts' decision to

"**adopt**" rule of standing for shareholder suits "as a matter of common law" persuasive and deciding to "adopt" that rule as well). **Executive agencies** are **also** frequently empowered by the legislature to "**adopt**" rules and regulations. See, e.g., A.R.S. § 23-361 (Industrial Commission "may adopt such rules and regulations as necessary" to administer and enforce statutes governing the payment of wages (emphasis added)). And the use of both **the terms "enact" and "adopt" must** be read to **contemplate different things**, or one term will be **rendered superfluous**. See Cont'l Bank, 131 Ariz. at 8.

B. Violation – The plan does not enact sentencing reform. Rather, the affirmative abolishes the death penalty, which encourages adoption of sentencing reform.

C. Vote negative for predictable limits – a stable agent is the backbone of negative prep because it clarifies the link to DAs and competition for counterplans. Otherwise, there are tons of tiny rulings on obscure issues that make being neg impossible and remove the only redress they have through generics that compete off enact.

A2: Other Branches Can Enact

Enact means Congress, not the courts of executive

Ayers 18 - Assistant Professor of Law and Director of the Government Law Center, Albany Law School (Ava, "Federalism and the Right to Decide Who Decides," *63 Vill. L. Rev. 567*, Lexis)//BB

Is it safe to assume that the phrase "enact a State law" and its variants refer to legislative action, as opposed to executive, judicial, or administrative actions? Dictionaries confirm that the verb "**enact**" generally refers to legislative action, rather than executive, judicial or administrative actions.62

start footnote 62

62. For example, the Oxford English Dictionary defines "enact" as "[o]f a **legislative** authority: To make into an act." Enact, Oxford English Dictionary, http://www.oed.com/view/Entry/61514?rskey=8kxjq3&result=3&isAdvanced=false#eid [Permalink unavailable] (last visited Apr. 10, 2018).

end footnote 62

And when Congress wants to allow non-statutory state action, it does so explicitly, by using language like this: Nothing herein shall be construed as interfering with such rights as the States now have either to the waters within their borders or to adopt such policies and enact such laws as they may deem necessary with respect to the appropriation, control, and use of waters within their borders, except as modified by the Colorado River compact or other interstate agreement.63 When Congress wishes to do so, it is quite capable of using language that includes non-legislative actions. For example, when the federal Real Estate Settlement Procedures Act preempts inconsistent "State law," it takes care to define "law" broadly: "'Law' as used in this section includes regulations **and** any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State."64 Another statute likewise provides that "[n]o State or political subdivision thereof may enact, prescribe, issue, continue in effect, or enforce any law (including any regulation, standard, or other provision having the force and effect of law)" that transgresses on the relevant areas.65 Similarly, the Airline Deregulation Act preempts "a law, regulation, or other provision having the force and effect of law" that applies to the relevant subject matter.66 Another example of congressional tolerance for non-legislative state action is the federal E-Sign Act, under which e-signatures cannot be denied legal effect in any transaction affecting interstate commerce.67 That Act preempts any "State statute, regulation, or other rule of law"—note the care to include non-legislative action.68 It then exempts from preemption not only state "enactments," but any state action that "constitutes an enactment or adoption of the Uniform Electronic Transactions Act."69 Even though this statute is anticipating the possibility of states adopting model statutes, it uses the phrase "enactment or adoption," taking care to allow for state action other than legislation. In other words, the law allows states to adopt a model statute through non-legislative means. At times, then, Congress is remarkably protective of states' non-legislative lawmaking. Against this backdrop of congressional care in using the word "enactment," it seems reasonable to assume that statutes referring to the "**enactment**" of a state "law" **do indeed refer to action by the legislature**. The question is an important one, because (as noted above) there are many such statutes.

Enact means law by statute

Keene, McGuckian and Jaffe **2k** (Robert, Rachel and Erik, all JD, writing a brief of appellees for Anchor Inn Seafood in the case, MONTGOMERY COUNTY MARYLAND, et al., Appellants, v. ANCHOR INN SEAFOOD RESTAURANT, et al., Appellees., http://www.esjpc.com/_pdf/MontgomeryCounty_v_AnchorInn.pdf)//BB

Fifth, the use of the word "enact" in the savings clause corroborates that only legislative actions are saved from preemption. It is common usage that laws are "enacted" whereas regulations are "adopted" or "promulgated." See Black's Law Dictionary, at 546 (defining "enact" as "1. To make into law by authoritative act; to pass <the statute was enacted shortly before the announced deadline>. 2. (**Of** a **statute**) to provide <the statute of frauds enacts that no action may be brought on certain types of contracts unless a plaintiff has a signed writing to prove the agreement>.").9 The General Assembly can be presumed to have understood that common usage of the word "enact" when it selected it to describe conduct by a "county" or "municipal corporation" creating a law or an ordinance. By contrast, administrative entities are said to "adopt" regulations, and nobody is heard to say that the SEC or the FCC or the EPA "**enacted** a law today."

begin footnote 10

The Board's federal cases discussing the phrase "an enactment of Congress," Board Br. 22-23, do not use the verb "enact" in reference to regulations, but rather deal with the specialized language and context of the Assimilated Crimes Act, 18 U.S.C. § 13(a), and seem to recognize that their construction is contrary to normal usage. See, e.g., United States v. Brotzman, 708 F. Supp. 713, 715 (D. Md. 189). The California case of Posey v. State, 225 Cal. Rptr. 830, 838 (Cal. App. 1st Dist. 1986) likewise relies on an uncommon definition in a specialized statute, and then proceeds to contextually distinguish laws from regulations "that are promulgated." Finally, in Montgomery County v. Revere Nat'l Corp., 341 Md. 366, 384 (1996) the zoning enactments were so named because the statutory language began by requiring ordinances and only later was language added to the statute allowing district councils to proceed by resolution. See infra at 17.

end footnote 10

Only Congress has the power to enact legislation

The White House, ND (The White House, No Date, accessed on 6-25-2020, The White House, "The Legislative Branch | The White House", https://www.whitehouse.gov/about-the-white-house/the-legislative-branch/)

Established by Article I of the Constitution, the Legislative Branch consists of the House of Representatives and the Senate, which together form the United States Congress. **The Constitution grants Congress the sole authority to enact legislation** and declare war, the right to confirm or reject many Presidential appointments, and substantial investigative powers.

The House of Representatives is made up of 435 elected members, divided among the 50 states in proportion to their total population. In addition, there are 6 non-voting members, representing the District of Columbia, the Commonwealth of Puerto Rico, and four other territories of the United States. The presiding officer of the chamber is the Speaker of the House, elected by the Representatives. He or she is third in the line of succession to the Presidency.

Members of the House are elected every two years and must be 25 years of age, a U.S. citizen for at least seven years, and a resident of the state (but not necessarily the district) they represent.

The House has several powers assigned exclusively to it, including the power to initiate revenue bills, impeach federal officials, and elect the President in the case of an electoral college tie.

The Senate is composed of 100 Senators, 2 for each state. Until the ratification of the 17th Amendment in 1913, Senators were chosen by state legislatures, not by popular vote. Since then, they have been elected to six-year terms by the people of each state. Senator's terms are staggered so that about one-third of the Senate is up for reelection every two years. Senators must be 30 years of age, U.S. citizens for at least nine years, and residents of the state they represent.

The Vice President of the United States serves as President of the Senate and may cast the decisive vote in the event of a tie in the Senate.

The Senate has the sole power to confirm those of the President's appointments that require consent, and to ratify treaties. There are, however, two exceptions to this rule: the House must also approve appointments to the Vice Presidency and any treaty that involves foreign trade. The Senate also tries impeachment cases for federal officials referred to it by the House.

In order to pass legislation and send it to the President for his signature, both the House and the Senate must pass the same bill by majority vote. If the President vetoes a bill, they may override his veto by passing the bill again in each chamber with at least two-thirds of each body voting in favor.

The Legislative Process

The first step in the legislative process is the introduction of a bill to Congress. Anyone can write it, but only members of Congress can introduce legislation. Some important bills are traditionally introduced at the request of the President, such as the annual federal budget. During the legislative process, however, the initial bill can undergo drastic changes.

After being introduced, a bill is referred to the appropriate committee for review. There are 17 Senate committees, with 70 subcommittees, and 23 House committees, with 104 subcommittees. The committees are not set in stone, but change in number and form with each new Congress as required for the efficient consideration of legislation. Each committee oversees a specific policy area, and the subcommittees take on more specialized policy areas. For example, the House Committee on Ways and Means includes subcommittees on Social Security and Trade.

A bill is first considered in a subcommittee, where it may be accepted, amended, or rejected entirely. If the members of the subcommittee agree to move a bill forward, it is reported to the full committee, where the process is repeated again. Throughout this stage of the process, the committees and subcommittees call hearings to investigate the merits and flaws of the bill. They invite experts, advocates, and opponents to appear before the committee and provide testimony, and can compel people to appear using subpoena power if necessary.

If the full committee votes to approve the bill, it is reported to the floor of the House or Senate, and the majority party leadership decides when to place the bill on the calendar for consideration. If a bill is particularly pressing, it may be considered right away. Others may wait for months or never be scheduled at all.

When the bill comes up for consideration, the House has a very structured debate process. Each member who wishes to speak only has a few minutes, and the number and kind of amendments are usually limited. In the Senate, debate on most bills is unlimited — Senators may speak to issues other than the bill under consideration during their speeches, and any amendment can be introduced. Senators can use this to filibuster bills under consideration, a procedure by which a Senator delays a vote on a bill — and by extension its passage — by refusing to stand down. A supermajority of 60 Senators can break a filibuster by invoking cloture, or the cession of debate on the bill, and forcing a vote. Once debate is over, the votes of a simple majority passes the bill.

A bill must pass both houses of Congress before it goes to the President for consideration. Though the Constitution requires that the two bills have the exact same wording, this rarely happens in practice. To bring the bills into alignment, a Conference Committee is convened, consisting of members from both chambers. The members of the committee produce a conference report, intended as the final version of the bill. Each chamber then votes again to approve the conference report. Depending on where the bill originated, the final text is then enrolled by either the Clerk of the House or the Secretary of the Senate, and presented to the Speaker of the House and the President of the Senate for their signatures. The bill is then sent to the President.

When receiving a bill from Congress, the President has several options. If the President agrees substantially with the bill, he or she may sign it into law, and the bill is then printed in the Statutes at Large. If the President believes the law to be bad policy, he may veto it and send it back to Congress. Congress may override the veto with a two-thirds vote of each chamber, at which point the bill becomes law and is printed.

There are two other options that the President may exercise. If Congress is in session and the President takes no action within 10 days, the bill becomes law. If Congress adjourns before 10 days are up and the President takes no action, then the bill dies and Congress may not vote to override. This is called a pocket veto, and if Congress still wants to pass the legislation, they must begin the entire process anew.

Powers of Congress

Congress, as one of the three coequal branches of government, is ascribed significant powers by the Constitution. All legislative power in the government is vested in Congress, meaning that it is the only part of the government that can make new laws or change existing laws. Executive Branch agencies issue regulations with the full force of law, but these are only under the authority of laws enacted by Congress. The President may veto bills Congress passes, but Congress may also override a veto by a two-thirds vote in both the Senate and the House of Representatives.

Article I of the Constitution enumerates the powers of Congress and the specific areas in which it may legislate. Congress is also empowered to enact laws deemed “necessary and proper” for the execution of the powers given to any part of the government under the Constitution.

A2: Abolish = DOJ Sentencing Guidelines Reform

Excludes the President/Executive Agency

Supreme Court Reporter 1915- Supreme Court Reporter: U.S. Reports. Cases Argued and Determined in the Supreme Court of the United States, October term 1914; December 1914-August 1915; Volume 35, West publishing Company, 1915

'The constitutional authority of the President of the United States (art. 2, §§ 1, 3) Includes the executive power of the nation and the duty to see that the laws are faithfully executed. "The President 'shall take care that the laws be faithfully executed" Under this clause his duty is not limited to the enforcement of acts of Congress according to their express terms. It includes 'the rights and obligations growing out of the Constitution itself, our inter- national relations, and all the protection implied by the nature of the government under the Constitution. " Cooley, Const. Law, p. 121; Re Neagle, 135 U. 8. 1, 34 L. ed. 55, 10 Sup. Ct. Rep. 058. **The Constitution does not confer upon him any power to enact laws** or to suspend or repeal such as the Congress enacts, Kendall v. United States, 12 Pet. 524, 613, 9 L. ed. 1181, 1216, 'The President's powers are defined by the Constitution of the United States, and the government does not contend that he has 'any general authority in the disposition of the public and which the Constitution has 'committed to Congress, and freely concedes the general proposition as to the lack of authority in the President to deal with the laws otherwise than to see that they are faithfully executed.

Administrative implementation is a distinct process from 'enact'

Paul **Clement, 7** - Solicitor General of the United States (Amicus Brief, BOB RILEY, GOVERNOR OF ALABAMA, APPELLANT v. YVONNE KENNEDY, ET AL., https://www.justice.gov/osg/brief/riley-v-kennedy-amicus-merits

The use of the disjunctive-"enact" or "seek to administer"-implies that those terms have different mea nings in the statute. See Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 229 (1993). And in ordinary usage, "administer" has a meaning that is different from and broader than "enact." The word "enact" ordinarily refers to the process by which a legislative body votes a bill into law. See Black's Law Dictio nary 567 (8th ed. 2004) (Black's) ("[t]o make into law by authoritative act; to pass"); Webster's Third New Inter national Dictionary of the English Language 745 (1986) (Webster's) ("to establish by legal and authoritative act: make into a law; esp: to perform the last act of legislation upon (a bill) that gives the validity of law"); see also Branch, 538 U.S. at 264. The word "administer," by contrast, more commonly refers to the implementation of an established legal requirement. See Webster's 27 ("to direct or superintend the execution, use, or conduct of"); Black's 46 (defining "administration" as "[t]he manage ment or performance of the executive duties of a govern ment"). In other words, it "encompasses nondiscretion ary acts" by officials "endeavoring to comply with the superior law of the State." Lopez v. Monterey County, 525 U.S. 266, 279 (1999).

When a state official attempts to implement a practice affecting voting that is different from a practice previously administered in that jurisdiction, the official "seek[s] to administer" a change affecting voting, and he or she must submit it for preclearance. Section 5 makes no distinction among the numerous potential sources of such a change-

whether an agency makes the change on its own motion or because of an intervening state court decision. Accordingly, the statute explicitly requires preclearance before a state official may implement a voting change ordered by a state court.

Ext – Enact = Legislation

"Enact" means a bill or legislation

Lexico, ND, Lexico is powered by Oxford's free English and Spanish dictionaries and features multi-language dictionary, thesaurus, and translation content. (Lexico.com, "Definition of enact in English". Accessed 2/26/20. https://www.lexico.com/en/definition/enact)

Enact Pronunciation /en'akt/ /ɛn'ækt/ /in'akt/ /ɪn'ækt/ TRANSITIVE VERB [WITH OBJECT]

1Make (a bill or other proposal) law. 'legislation was enacted in 1987 to attract international companies'

"Enact" means to pass a law – which only Congress can do

Oxford Learner's Dictionary, ND, (Oxford Learner's Dictionary. "enact", Accessed 2/26/20. https://www.oxfordlearnersdictionaries.com/us/definition/english/enact)

enact verb [often passive] (law) to pass a law

(be) enacted (by somebody/something) legislation enacted by parliament

"Enact" means legislative

US Legal, ND, (US Legal Inc., "Enacted Law and Legal Definition". Accessed 2/26/20. https://definitions.uslegal.com/e/enacted/)

Enact or enacted means to make into law by authoritative act. For example, the statute was enacted in the year 1945. It primarily means to perform the legislative act with reference to a bill which gives it the validity of law. In short, a bill is enacted when it becomes a law that is when the Governor signs it and makes it effective.

"Enact" means to make a law or bill

Merriam-Webster, ND, (Merriam Webster. "Enact". Accessed 2/26/20. https://www.merriam-webster.com/dictionary/enact#legalDictionary)

Legal Definition of enact

: to establish by legal and authoritative act : make into law

enact a bill

Ext – Sentencing Reform Requires Congress

Sentencing reform requires legislative action

Simons 5 [Michael Simmons, Dean of the School of Law and teaches Criminal Justice and evidence, St. John's University, 2005,"SENSE AND SENTENCING: OUR IMPRISONMENT EPIDEMIC", https://www.stjohns.edu/sites/default/files/uploads/simonsm-sense-sentencing.pdf, accessed 6-26-2020]

44 See U.S. SENTENCING GUIDELINES MANUAL app. C, supp., at amend. 716 (noting that "[a]ny comprehensive solution to the 100-to-I drug quantity ratio requires appropriate legislative action by Congress"); THE SENTENCING PROJECT, FEDERAL CRACK COCAINE SENTENCING 1, 6-8 (2009), available at http://sentencingproject.org/detail publication.cfm?publication-id=153 (discussing recent developments in federal crack cocaine sentencing and concluding that the "likelihood of legislative reform in the 111th Congress is the strongest it has ever been"). It is also worth noting that any changes to federal sentencing practices would not significantly reduce incarceration rates since most prisoners are incarcerated by the states, not by the federal government. See Bureau of Justice Statistics, Total Correctional Population, http://bjs.ojp.usdoj.gov/index.cfn?ty-tp &tid=1 1 (last visited April 29, 2010) (stating the number of prisoners under state jurisdiction was 1,409,166, while the number of those under federal jurisdiction was 201,280 as of midyear 2008).

Congress has the power to enact sentencing statutes

Stevens 4 [John Stevens, an American lawyer and jurist who served as an Associate Justice of the United States Supreme Court

, Supreme Court of the United States, 10-4-04,"United States v. Booker", https://scholar.google.com/scholar_case?case=11853896925646326770&q=%22court+enacts%22&hl=en&as_sdt=2006#[3], accessed 6-27-2020]

Fourth, plea bargaining would not significantly diminish the consequences of the Court's constitutional holding for the operation of the Guidelines. Compare *post,* at 273-274 (STEVENS, J., dissenting in part). Rather, plea bargaining would make matters worse. Congress enacted the sentencing statutes in major part to achieve greater uniformity in sentencing, *i. e.,* to increase the likelihood that offenders who engage in similar real conduct would receive similar sentences. The statutes reasonably assume that their efforts to move the trial-based sentencing process in the direction of greater sentencing uniformity would have a similar positive impact upon plea-bargained sentences, for plea bargaining takes place *in the shadow of* (*i. e.,* with an eye towards the hypothetical result of) a potential trial.

Aff

2AC – Enact = Legal Act

Enact means to establish by legal act

Adam **Wright, 13** - University of Michigan Law School, J.D. candidate, May 2014. Adam Wright is the Executive Notes Editor for the Michigan Journal of Race & Law, Volume 19 ("Federal Constraints on States' Ability to License an Undocumented Immigrant to Practice Law" 19 MICH. J. RACE & L. 177 (2013). Available at: https://repository.law.umich.edu/mjrl/vol19/iss1/5 //DH

The text of the savings clause does not limit "enactments of State law" to legislative enactments.85 Opponents, nevertheless, argue that only a legislature may enact a law.86 However, plain meaning and popular use of the word "enact" is not so limited. The Merriam-Webster Dictionary does not define "enact" as an action exclusive to legislatures; it is merely defined as "to establish by legal and authoritative act," or "to make into law. . . ."87 "Enact" is not defined, nor is it generally thought of, as an action unique to legislatures.

Further, **courts commonly refer to court-enacted rules**. For example, the California Supreme Court has discussed the "rules of court enacted in response to [a] constitutional amendment . . . .",88 the Delaware Supreme Court has referenced a "statute or rule of court enacted under authority of law",89 and many other state supreme courts and federal appellate courts often have pointed to court-enacted rules.90 These cases refer to court-enacted rules that deal with bearing the cost of printing a transcript record,91 rules setting the requirements for appeal in state court proceedings,92 and rules prescribing class action requirements.93 The plethora of these examples indicates that courts have not restricted the ability to "enact" a law to the legislature.

The fact that these cases refer to court-enacted "rules" rather than "laws" is of little significance. Similar to legislative enactments of law, court rules have "the force of law" and are in this important way **indistinguishable** from legislative laws.94 The U.S. Court of Appeals for the Second Circuit has stated that "[l]ocal rules have the force of law, as long as they do not conflict with a rule prescribed by the Supreme Court, Congress, or the Constitution."95 The Committee, citing Black's Law Dictionary, notes, "'[L]aw means more than statutes and includes legislation, judicial precedents, rules, and legal principles . . ."96 Thus, it follows that a state court may enact a law sufficient to activate § 1621's savings clause.

2AC – Courts = Enact

Enact applies to judge-made law

J R N **Wall, 7** - A dissertation submitted in partial fulfilment of the degree of Bachelor of Laws (Honours) at the University of Otago ("PROSPECTIVE OVERRULING – IT'S ABOUT TIME" https://www.otago.ac.nz/law/research/journals/otago036272.pdf //DH

The purpose of this dissertation is two-fold: to identify a problem in the common law and propose a possible solution. I shall argue in Part A that when a court overturns a prior precedent the court enacts2 retrospective law. In Part B I shall assess the cogency of 'prospective overruling' as a solution to this problem. My primary question is whether prospective overruling solves the problem of providing both certainty and fairness in common law adjudication.

(footnote 2)

2 I recognise that the use of the term enact in reference to judge-made law is unorthodox since the term is usually reserved for legislation. However, as will be discussed in Chapter 3, I contend that the courts fulfil a quasi-legislative function, and hence I contend that it is appropriate to use the term enact when describing judge-made law.

Enact without a direct object of 'law' means 'declare' – includes adjudication

Alex **Kocourek, 1921** – Editor in Chief of the Illinois Law Review (Illinois Law Revew, Comments on Recent Cases, v15, p. 109, google books, //DH **italics in original**

For example, let us consider the definition of legislative power found in People v. Roth (249 111. 532 (535))—

"Legislative power is the power to enact laws or declare what the law shall be. It is the power to enact new rules for the regulation of future conduct, rights, and controversies."

The term *enact* does not here appear to have a technical meaning, since it is used, as it would seem, as a synonym for *declare*. If the definition had said that legislation is enacted law (technical sense), an entirely different question would be presented, since in that case the test of what is legislation would be determined by the *official character* of the agency of the sovereign from which the rule proceeds.

Two objections may be quickly instanced as the definition stands. First, what of retrospective laws ?l Even Austin had diffi- culty with this particular category, since if law is the command of a political superior to an inferior, it is illogical to suppose that a command can govern the will of a person concerning his past con- duct. Austin's escape from the dilemma was to regard retro- spective laws as commands not to private persons, but to officers of the state. In the field of penal law, where acts which were law- ful when done became unlawful by ex post facto declaration, this is the only exit. But in the field of remedial law, no such exit is nec- essary. Where the effect of past conduct is changed (constitutional objections apart), as where, for example, a harm done to another is without remedy, and later a remedy is given, the definition may be squared with the legal fact; for here future conduct is regulated and new rights are created. Thus, there may be specific enforce- ment of that which, on the facts before legislative declaration, could not be enforced, or a remedy of reparation may be given for what theretofore was remediless.

The second objection is that not only do legislatures "declare what the law shall be," but the **courts also do this**. It is a com- monplace to remark that if the courts had not created rules of law we would not today have a Common Law. It is true, of course, that the rules of law declared by courts do not operate in general only prospectively—they extend to past situations of fact equally with future situations of fact. But this dual operation of precedent is not one of the essentials, but only an accidental quality, of prece- dent. Precedent could be limited to prospective operation, and it would still be the declaration of a rule of law. There might be a vested interest in overruled cases. (See Va. Law Rev., IV, 103, 104, notes.) The retrospective operation of precedent is historically connected with the declaratory theory which prevails in Anglo- America, according to which, precedent does not make law, but only declares what the law is; or, as otherwise stated, precedent is only evidence of what the law is.3 If a case is overruled, in legal theory it never was law.8 It amounts to no more than adjudication of a particular controversy. Other concrete, unadjusted and contem- poraneous legal conflicts are unaffected by the overruled case, but will, in general, be governed by the overruling case. The over- ruling case may itself, as sometimes happens, be swept away by another overruling case, and the process might be repeated, theoret- ically, ad infinitum.

It thus appears that Anglo-American law, according to the dominant theory, has a certain mysterious, if not a metaphysical, character. We can never reach the thing itself, and we can never attain apodictic certainty of the evidence.

This theory is wholly unsatisfactory. In this realistic age the whole theory of precedent should be overhauled. A new theory should be constructed which conforms to the facts. The premises of this reconstruction involve: (1) Official and theoretical recognition of what **every person in the world knows**, that courts must and do make, alter, and abrogate rules for human conduct within the scope of litigation; (2) recognition for certain purposes of vested interests in judicial declarations of law, and (3) limitations on the obstructive function of stare decisis.

1AR – A2: Courts Don't Enact CJR

Courts have enacted legislative remedies in criminal justice before

JEFFREY M. **GAMSO, 6** - COUNSEL FOR AMICUS CURIAE AMERICAN CIVIL LIBERTIES UNION OF OHIO FOUNDATION, INC. (BRIEF OF AMICUS CURIAE, AMERICAN CIVIL LIBERTIES OF OHIO∂ FOUNDATION, INC., IN SUPPORT OF MOTION FOR RECONSIDERATION OF∂ APPELLANT, ANDREW FOSTER, https://sentencing.typepad.com/sentencing_law_and_policy/files/aclu_foster_blakelybooker_recon_amicus.pdf //DH

That decision was correct. Unfortunately, having resolved the question before it, whether portions of Ohio's felony sentencing scheme were unconstitutional, the Court went on to enact a remedy. Amicus chooses the word "enact" with some care. The "remedy" adopted by the Court,2 Foster, Section V is absolutely legislative. Indeed, the very idea of adopting a remedy is legislative. This Court's job, as it reminds us even in Foster, is not "to reconfigure the sentencing code." Id. ¶ Para. 102. Rather, the Court's job was to resolve the question before it: Do provisions of Ohio's felony sentencing scheme violate the Sixth Amendment right to trial by jury? Having answered that, it was done except for actually ordering remand for sentencing in accordance with that determination.

Because the Court did not stop at that point, appellant Foster asks this Court to reconsider the "remedy" it enacted in order to determine whether it "implicates ex post facto and due process concerns."3 Briefs by Appellant and amicus curiae Cuyahoga County Public Defender address those matters and related concerns of retroactivity. The American Civil Liberties Union of Ohio Foundation, Inc. (ACLU), which was amicus on Mr. Foster's behalf in the underlying decision, endorses all of their arguments as they properly address those important issues. The ACLU files this supporting brief as amicus to address another concern, that the Court's opinion in Foster4 violates the separation of powers by usurping the legislative function specifically and exclusively allocated to the General Assembly. Section 1, Article II, Ohio Constitution.

Courts can enact – true in the criminal justice context

RYAN THOMAS **TRUSKOSKI,** ESQ, **16** – lawyer, (Juvenile Court Rules Committee, IN RE: AMENDMENTS TO FLORIDA RULES OF JUVENILE PROCEDURE AND FLORIDA RULE OF APPELLATE PROCEDURE 9.146., https://lsg.floridabar.org/dasset/cmdocs/cm225.nsf/c5aca7f8c251a58d85257236004a107f/20189a51c7db51e885257f3900545656/$FILE/Agenda%20-%20June%202016.002.pdf/Agenda%20-%20June%202016.pdf //DH

17. "[A]lthough jurisdiction rests in an appellate court upon the filing of a notice of appeal the court has the discretion, in the interest of justice, to temporarily relinquish jurisdiction for certain specified purposes." Lelekis v. Liles, 240 So.2d 478, 479 (Fla. 1970). See also C.A. v. Department of Children & Families, 16 So.3d 888, 890 (Fla. 4th DCA 2009) (relinquishing jurisdiction to trial court to consider a matter concerning the best interests of the child "in the first instance").

18. This Court should enact a procedure using the general framework of a motion to correct sentencing error under Fla. R. Crim. P. 3.800(b)(2). Without this back-up procedure, J.B.'s mandate will ring hollow.

Ext – Broad Interpretations of Enact

Enact means any action from a governing body to pass a policy

Pacheco 14 [Paul Pacheco, an American politician and a Republican member of the New Mexico House of Representatives representing District 23, "51st Legislature – State of New Mexico – Second Session," HB0221, 2014, https://www.nmlegis.gov/Sessions/14%20Regular/bills/house/HB0211.pdf, accessed 6-25-2020]

F. "enact" means the action by **a governing body** to pass a resolution or otherwise legally approve a policy or procedure for a department and, through such action by the governing body, obligates the department; G. "governing body" means a body authorized to enact policies and procedures on behalf of the state, a county or a municipality and includes a city council or city commission of a city, the board of trustees of a town or village, the council of an incorporated county and the board of county commissioners of an H class county

Enact means to establish an authoritative act

Gibbons 01 [Julia Gibbons, United States District Judge, "Coleman v. Shoney's," Lexis, 3-12-01, http://www.allensummers.com/sites/396/uploaded/files/Coleman_v_Shoneys.pdf, accessed 6-26-2020]

Robinson v. Shell Oil Co., 519 U.S. 337, 340, 136 L. Ed. 2d 808, 117 S. Ct. 843 (1997) (quoting United States v. Ron Pair Enters., 489 U.S. 235, 240, 103 L. Ed. 2d 290, 109 S. Ct. 1026 (1989). Dictionary definitions for the word, "arise," pertinent to section 1658 are "to originate from a specified source," and "to come into being." Webster's Third New International Dictionary 117 (1981). The word, "enact," means "to establish by legal and authoritative act," or "to perform the last act of legislation upon [**10] (a bill) that gives the validity of law." Id. at 745. Therefore, section 1658 is only applicable, when an action originates from a right established by Congress after 1990.

Enact means to make into law by an authoritative action

Kennelly 02 [Matthew F. Kennelly, a United States District Judge of the United States District Court for the Northern District of Illinois, "Jones v. Donnelly ," United States District Court for the Northern District of Illinois, 4-04-02, http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2002/D09-16/C:01-3271:J:_:aut:T:op:N:0:S:0

, accessed 6-26-2020]

"Enact" means "to make into law by authoritative act," Black's Law Dictionary 546 (7th ed. 1999); thus every Act of Congress, whether it reflects a never-before considered subject or amends a previously existing statute, is "enacted." To the extent there could ever be any doubt about whether the Civil Rights Act of 1991 was "an Act of Congress" or whether it was "enacted," the language of the law itself should set the record straight.

Enact is governmental action to make into a law

Hunter 20 [Mike Hunter, Attorney General of Oklahoma, Office of Attorney State General State of Oklahoma, 2-24-20, "Attorney General Opinion", http://www.oag.ok.gov/Websites/oag/images/AG%20Opinion%202020-1%20(V-15b).pdf, accessed 6-26-2020]

Under Oklahoma law, "[w]ords used in any statute are to be understood in their ordinary sense, except when a contrary definition plainly appears[.J" 25 O.S.2011, § 1. "Enact" is ordinarily understood to mean to "make into a law; esp: to perform the last act of legislation upon (a bill) that gives the validity of law," while "enactment" is simply "the act or action of enacting." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 745 (3d ed. 2002) (emphasis added).3 The focus of this definition is the governmental action to pass a bill into law: the date of enactment is generally the date on which the "last act" necessary to pass legislation is taken.

Enact means to make a law

Lexico ND [Lexico, English and Spanish Dictionary, Oxford, No Date, "Enact," https://www.lexico.com/en/definition/enact, 6-27-20]

Enact 1. Make (a bill or other proposal) law.

Enact means to make law by authoritative act

Black's Law Dictionary, 9 'enact', p. 606 //DH

enact, vb. (15c) l. To make into law by authoritative act; to pass <the statute was enacted shortly before the announced deadline>. 2. (Of a statute) to provide <the statute of frauds enacts that no action may be brought on certain types of contracts unless the plaintiff has a signed writing to prove the agreement>. - enactor, n.