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## Statutory Interpretation - Teacher - Teacher - The Court is Using Extracurricular Interpretations; Luhm v. Board of Trustees of Hot Springs County School District No. 1, 206 P.3d 1290 (Wyo. 2009)

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## CASE NOTE

### **STATUTORY INTERPRETATION—Teacher! Teacher! The Court Is Using Extracurricular Interpretations! *Luhm v. Board of Trustees of Hot Springs County School District No. 1*, 206 P.3d 1290 (Wyo. 2009)**

*William J. Vietti\**

#### INTRODUCTION

In *Luhm v. Board of Trustees of Hot Springs County School District No. 1*, the Wyoming Supreme Court’s interpretation of the term “teacher” resulted in the denial of tenure rights to a school counselor.<sup>1</sup> Hot Springs County School District No. 1 (Hot Springs) did not consider school counselor Rebecca Luhm (Luhm) a teacher under the Wyoming Teacher Employment Law (WTEL).<sup>2</sup> In order to meet the WTEL’s definition of “teacher,” an individual must be employed by a school district and possess a valid professional certification.<sup>3</sup> Luhm proposed a simple interpretation contending she met the definition of Wyoming Statutes section 21-7-102(vii) because she was a certified employee.<sup>4</sup> On appeal, the Wyoming Supreme Court used a textualist interpretation of the statute, holding the statute did not apply to Luhm.<sup>5</sup> The court held that tenure rights only apply to employees “commonly understood” as teachers and specifically only to those who teach an academic subject.<sup>6</sup>

This case note argues the Wyoming Supreme Court misapplied statutory interpretation fundamentals when discerning the meaning of “teacher.”<sup>7</sup> The *Luhm* court split the statutory analysis into two distinct parts: (1) an acceptable

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<sup>1</sup> 206 P.3d 1290, 1297 (Wyo. 2009).

<sup>2</sup> *Id.* at 1295 (“Luhm requested a hearing [after dismissal], and the School District denied that request on the basis that she had no contractual or statutory right to a hearing.”). The court refers to the Wyoming Education Code of 1969 as the Wyoming Teacher Employment Law (WTEL). WYO. STAT. ANN. § 21-1-101 (2010).

<sup>3</sup> WYO. STAT. ANN. § 21-7-102(vii) (defining “teacher” as “[a]ny person employed under contract by the board of trustees of a school district as a certified professional employee”).

<sup>4</sup> *See Luhm*, 206 P.3d at 1295 (“Luhm is certificated by the Professional Teaching Standards Board (PTSB). She argues she therefore qualifies as a ‘certified professional employee,’ making her a de jure teacher.”); Brief of Appellant at 8, *Luhm*, 206 P.3d 1290 (No. S-07-0227) [hereinafter Brief of Appellant].

<sup>5</sup> *Luhm*, 206 P.3d at 1297 (“[Luhm] is not a teacher within the meaning of the WTEL and is therefore not entitled to its protections.”).

<sup>6</sup> *Id.*

<sup>7</sup> *See infra* notes 130–81 and accompanying text.

*in pari materia* section and (2) an impermissible injection of the court's views on teachers.<sup>8</sup> This case note begins with an overview of statutory interpretation methodologies the Wyoming Supreme Court has used over the last half century.<sup>9</sup> This note asserts the court blindly followed precedent without recognizing factual differences between *Luhm* and an earlier case, *Seyfang v. Board of Trustees of Washakie County School District No. 1*.<sup>10</sup> This note also contends the *Luhm* court switched from originalism to textualism when analyzing the same issue discussed in *Seyfang*.<sup>11</sup> This note argues the court expands Wyoming Statutes section 21-7-102(vii) in violation of the *in pari materia* canon and other court-established principles of statutory construction.<sup>12</sup> Last, this note proposes the *Luhm* opinion undermines the policy considerations of the statute and makes the Wyoming Supreme Court's statutory interpretation process less predictable for courts and practitioners.<sup>13</sup>

## BACKGROUND

### *Statutory Interpretation*

Courts must undertake the complicated task of interpreting statutes.<sup>14</sup> Over time courts have applied many different concepts and tools to help analyze statutes and attribute meaning to statutory language.<sup>15</sup> Since 1980, proposed statutory interpretation theories have expanded.<sup>16</sup> The debate between these theories often occurs in cases where the result depends on what particular method of statutory interpretation the court followed.<sup>17</sup> While there are many different proposed theories of statutory interpretation, there is consensus regarding two general classifications: originalism (including intentionalism and purposivism)

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<sup>8</sup> See *infra* notes 112–81 and accompanying text.

<sup>9</sup> See *infra* notes 14–72 and accompanying text.

<sup>10</sup> See *infra* notes 136–43 and accompanying text.

<sup>11</sup> See *infra* notes 167–81 and accompanying text (deciding when an employee is a teacher).

<sup>12</sup> See *infra* notes 130–60 and accompanying text (explaining the court unnecessarily follows precedent).

<sup>13</sup> See *infra* notes 161–81 and accompanying text.

<sup>14</sup> John M. Walker, Jr., *Judicial Tendencies in Statutory Construction: Differing Views on the Role of the Judge*, 58 N.Y.U. ANN. SURV. AM. L. 203, 237 (2001) (“Today, judges are frequently faced with very complicated, detailed, and reticulated statutes . . .”).

<sup>15</sup> See Morrell E. Mullins, Sr., *Tools, Not Rules: The Heuristics Nature of Statutory Interpretation*, 30 J. LEGIS. 1, 15 (2003) (describing the tools courts use for statutory interpretation).

<sup>16</sup> See *id.* at 16–17 (detailing the expanding array of different methods used for statutory interpretation).

<sup>17</sup> See William S. Blatt, *Interpretive Communities: The Missing Element in Statutory Interpretation*, 95 NW. U. L. REV. 629, 634–35 (2001) (providing an example where the approach to statutory interpretation controlled the issue).

and textualism.<sup>18</sup> Each of these schools of interpretation takes a different stance on the use of extrinsic sources to aid interpretation.<sup>19</sup> For instance, most textualists reject the use of legislative history to aid in interpretation, while many originalists believe legislative history is crucial to interpreting a statute.<sup>20</sup> Therefore, the outcome of a case may depend upon which interpretation method a court uses.<sup>21</sup>

The originalism approach to statutory interpretation focuses on using a wide range of materials to determine the enacting legislature's "intent."<sup>22</sup> An originalist judge interprets a statute based on how the judge envisions a reasonable legislator would interpret the passage in question.<sup>23</sup> Originalists suggest the legislative branch affixed a particular meaning to the statutory language and the court's role is to discover that intent by using any available source.<sup>24</sup> The theory of originalism purports that although a passage of text may seem clear at first glance, it could possess an alternative meaning based on other indications of legislative intent.<sup>25</sup>

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<sup>18</sup> See Karen M. Gebbia-Penetti, *Statutory Interpretation, Democratic Legitimacy, and Legal-System Values*, 21 SETON HALL LEGIS. J. 233, 267 (1997) (grouping intentionalism and purposivism into a single "originalism" classification); Bradford C. Mank, *Textualism's Selective Canons of Statutory Construction: Reinvigorating Individual Liberties, Legislative Authority, and Deference to Executive Agencies*, 86 KY. L.J. 527, 528–30 (1998) (describing the differences and similarities between intentionalism and purposivism); Mullins, *supra* note 15, at 17–18 (listing many different approaches to statutory interpretation). This note uses "originalism" as it encompasses intentionalism and purposivism. See Mank, *supra*. In addition, there is a third approach gaining support called the dynamic-pragmatic approach, which uses a combination of textualist and originalist elements to interpret statutes. See Maureen B. Cavanaugh, *Order in Multiplicity: Aristotle on Text, Context, and the Rule of Law*, 79 N.C. L. REV. 577, 584 (2001) ("The leading theories can be described as textualism, purposivism (intentionalism), and dynamic interpretation (practical reasoning).").

<sup>19</sup> See Blatt, *supra* note 17, at 633–34 (explaining specific kinds of extrinsic evidence used under each approach).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 634–35 (explaining how different interpretation methods require different application of tools).

<sup>22</sup> See Cavanaugh, *supra* note 18, at 588 (stating originalism encourages "courts to determine the 'intent' of the enacting legislature").

<sup>23</sup> See Mullins, *supra* note 15, at 25–26. This is a brief description of the originalism theory because in practice there are many variations to the theory. *Id.*

<sup>24</sup> Michael B. Slade, *Democracy in the Details: A Plea for Substance over Form in Statutory Interpretation*, 37 HARV. J. ON LEGIS. 187, 188–89 (2000) (arguing that courts should use all tools available to discover the legislative intent to avoid the threat of counter-majoritarianism). The counter-majoritarian difficulty is the threat that unelected judges will create substantive law by overruling legislation created by elected officials and therefore invalidate the will of the people. *Id.*

<sup>25</sup> See Mullins, *supra* note 15, at 27 ("'[I]ntentionalism' merely reflects a willingness to recognize that, even if statutory text seems very clear, there may be other indications (often loosely called 'legislative intent') that a non-obvious meaning should be attributed to that text.").

For example, the United States Supreme Court held the term “employee” meant only specific types of employees, rather than *any* employee after examining the original proposed bill of a statute.<sup>26</sup>

An originalist looks at the problem the legislature sought to solve by passing the statute and searches for a meaning that would best fix the problem.<sup>27</sup> The policy underlying a statute is important to originalists, and if necessary, that policy will overcome semantic evidence of a meaning within the statute.<sup>28</sup> This view favors the concept that legislatures act for the public good rather than for a narrow interest group.<sup>29</sup> An originalist looks to the subjective intent of the enacting legislature rather than exclusively to the plain language of the statute.<sup>30</sup> In doing so, an originalist court augments the meaning of a statute by using general public knowledge about the problem the legislature attempted to overcome.<sup>31</sup>

In contrast, textualism focuses almost exclusively on the text of the statute and is generally regarded as the antithesis to originalism.<sup>32</sup> Textualists generally discount the use of legislative history for interpretation and, instead, focus primarily on the plain meaning of the provision at issue.<sup>33</sup> Current United States Supreme Court Justice Antonin Scalia proposes a contemporary view on textual interpretation commonly known as new textualism.<sup>34</sup> Justice Scalia has stated, “It

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<sup>26</sup> See *United States v. Am. Trucking Ass'ns*, 310 U.S. 534, 543–44 (1940) (demonstrating when a court may look beyond a common meaning of a term and find another definition better in line with the policy of a statute). The Court in *American Trucking Associations* found the policy behind a statute was to promote safety and therefore held the statute only applied to employees whose activities affected safety, not all employees—regardless of the statute’s text. *Id.* at 553.

<sup>27</sup> See John F. Manning, *What Divides Textualists from Purposivists?*, 106 COLUM. L. REV. 70, 78 (2006) (“[T]he objective question . . . [is] how a hypothetical ‘reasonable legislator’ . . . would have resolved the problem addressed by the statute.”).

<sup>28</sup> See *id.* at 76 (“[S]ufficiently pressing policy cues . . . overcome such semantic evidence.”).

<sup>29</sup> See Mank, *supra* note 18, at 530 (describing how a purposivist interprets a statute).

<sup>30</sup> See Manning, *supra* note 27, at 90 (“[F]ollowing the spirit rather than the letter of the law will more likely capture the *subjective* intent of the legislature.”).

<sup>31</sup> See *id.* (describing when a court will use general public knowledge about the mischief that inspired legislative action).

<sup>32</sup> Cavanaugh, *supra* note 18, at 582 (explaining textualism’s “exclusive focus on the statutory text can be seen as intentionalism’s opposite”); James D. Fry, *Legitimacy Push: Towards a Gramscian Approach to International Law*, 13 UCLA J. INT’L L. & FOREIGN AFF. 307, 329–30 (2008) (describing how an interpretation focusing on policy considerations is viewed as the opposite of a textual approach).

<sup>33</sup> See Cavanaugh, *supra* note 18, at 595–96; R. Randall Kelso, *Statutory Interpretation Doctrine on the Modern Supreme Court and Four Doctrinal Approaches to Judicial Decision-Making*, 25 PEPP. L. REV. 37, 38–39 (1997) [hereinafter *Four Doctrinal Approaches*] (describing Justice Scalia’s “Modern Textualism” approach).

<sup>34</sup> William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 623 (1990) (“These opinions, together with [Justice Scalia’s] opinions for the Court and a speech he gave in 1985, have developed the outlines of what I call ‘the new textualism.’”).

is the *law* that governs, not the intent of the lawgiver . . . . A government of laws, not of men. Men may intend what they will; but it is only the laws that they enact which bind us.”<sup>35</sup> This new textualist approach provides more leniency than strict textualism—new textualists will read other statutes *in pari materia* in an analysis.<sup>36</sup> *In pari materia* is a canon of statutory interpretation where “statutes relating to the same subject or having the same general purpose must be considered and construed harmoniously.”<sup>37</sup> By allowing this device, new textualists contrast with strict textualists, who do not approve the use of any extrinsic evidence to augment the meaning of a statute.<sup>38</sup> Regardless of which type of textualism a judge follows, a textualist judge interprets a statute based on how the judge thinks an “ordinary reader” would interpret the statute at the time of its enactment.<sup>39</sup>

Accordingly, textualism focuses less on the policy considerations that the legislature took into account at the time of enactment and instead contends a correct analysis of statutory language concentrates on the text of the statute.<sup>40</sup> Textualists avoid finding ambiguity in a statute by giving deference to the text of a statute, and where ambiguity exists, a textualist prefers using only objective canons of construction.<sup>41</sup> Common examples of objective canons are *expressio unius*, where the expression of one thing excludes another, and *ejusdem generis*, where context may narrow a term’s definition.<sup>42</sup> This is not to say a modern textualist will *only* look at text—many approve the use of some tools of construction to aid in interpretation, but such aids should only support the “ordinary” meaning of the text.<sup>43</sup>

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<sup>35</sup> ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 17 (2006).

<sup>36</sup> See *Four Doctrinal Approaches*, *supra* note 33, at 38–39, 51–52 (describing narrow views of formalism: a textualist concept); Manning, *supra* note 27, at 79 (explaining modern textualists will go beyond the “four corners” of a statute).

<sup>37</sup> *Luhm v. Bd. of Trs. of Hot Springs Cnty. Sch. Dist. No. 1*, 206 P.3d 1290, 1294 (Wyo. 2009).

<sup>38</sup> See *Four Doctrinal Approaches*, *supra* note 33, at 38–39, 51–52.

<sup>39</sup> See Thomas W. Merrill, *Textualism and the Future of the Chevron Doctrine*, 72 WASH. U. L.Q. 351, 352 (1994) (asserting the textualism theory turns on the assumption that statutory interpretation should be objective and not subjective).

<sup>40</sup> See Mank, *supra* note 18, at 537 (“Textualists are usually less policy-oriented than most proponents of purposivism, modified intentionalism, or dynamic statutory interpretation . . . .”); Manning, *supra* note 27, at 90 (describing how textualists emphasize semantic context rather than policy considerations).

<sup>41</sup> See Robert J. Gregory, *Overcoming Text in an Age of Textualism: A Practitioner’s Guide to Arguing Cases of Statutory Interpretation*, 35 AKRON L. REV. 451, 460 (2002) (“Ambiguities in the text should not be lightly inferred. Where they do exist, they should be resolved, if at all possible, by applying the objective canons of construction . . . .”).

<sup>42</sup> Gregory E. Maggs, *Reconciling Textualism and the Chevron Doctrine: In Defense of Justice Scalia*, 28 CONN. L. REV. 393, 396 n.15 (1996) (providing two examples of common textualist canons).

<sup>43</sup> See Mank, *supra* note 18, at 539 (“Textualists use external sources to find the meaning most consistent with the ‘ordinary’ usage of language . . . .”); Manning, *supra* note 27, at 79–85 (describing in detail the extent, materials, and views a textualist uses beyond the text of a statute to interpret a statute).

Both textualists and originalists use the *in pari materia* canon of statutory interpretation.<sup>44</sup> The canon allows judges to read statutes addressing the same subject as if they were “one law.”<sup>45</sup> *In pari materia* recognizes that a legislative body gives the same word in different statutes a consistent meaning when the statutes address similar subjects.<sup>46</sup> Even when statutes are insufficiently related, courts will sometimes read them together if the statutes contain the same language.<sup>47</sup> Some courts infer that *in pari materia* includes a presumption against superfluous language—statutes are read to eliminate superfluous and redundant language.<sup>48</sup>

The current Wyoming Supreme Court generally adheres to a textualist approach.<sup>49</sup> When analyzing statutes in the year before and the year after *Luhm*, the court either found no ambiguity in the statute or used an objective canon to resolve any ambiguity.<sup>50</sup> However, the Wyoming Supreme Court occasionally adopts an originalist view when analyzing statutes.<sup>51</sup> One of the primary characteristics of an originalist analysis is the use of legislative history to aid interpretation, but Wyoming legislative history is often unavailable.<sup>52</sup> Consequently, when the Wyoming Supreme Court undertakes an originalist analysis it typically uses the following phrase:

<sup>44</sup> Christopher J. Borgen, *Resolving Treaty Conflicts*, 37 GEO. WASH. INT'L L. REV. 573, 632 (2005) (describing how a purposivist's method of interpretation includes the *in pari materia* canon); see Mullins, *supra* note 15, at 75 (explaining textualists approve of the *in pari materia* canon because of its simplicity).

<sup>45</sup> *Wachovia Bank v. Schmidt*, 546 U.S. 303, 315–16 (2006) (quoting *Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972)).

<sup>46</sup> *Erlenbaugh*, 409 U.S. at 243–44.

<sup>47</sup> LISA S. BRESSMAN ET AL., *THE REGULATORY STATE* 235 (2010).

<sup>48</sup> *Schafer v. State*, 197 P.3d 1247, 1249 (Wyo. 2008) (citing *Howard v. State*, 42 P.3d 483, 492 (Wyo. 2002)).

<sup>49</sup> See *infra* note 50 and accompanying text (outlining the approach taken by the Wyoming Supreme Court). The current Wyoming Supreme Court has served together since 2005. *Justices of the Wyoming Supreme Court*, WYOMING JUDICIAL BRANCH (June 22, 2010), <http://www.courts.state.wy.us/JusticeBios.aspx>.

<sup>50</sup> See, e.g., *Fuller v. State*, 230 P.3d 309, 311 (Wyo. 2010) (avoiding ambiguity by holding the plain meaning of a term controlled); *Horse Creek Conservation Dist. v. State*, 221 P.3d 306, 313–15 (Wyo. 2009) (using the textual context of “or” to aid in statutory construction); *Johnson v. City of Laramie*, 187 P.3d 355, 358 (Wyo. 2008) (describing that where a term is unambiguous the court will not go beyond the plain meaning). A textualist refrains from finding ambiguity, and when one exists a textualist will put emphasis on the textual context of the language. See *supra* notes 41–43 and accompanying text (describing the objectivity of textualism).

<sup>51</sup> See *Baker v. State*, 223 P.3d 542, 553–54 (Wyo. 2010) (establishing the modern court may use legislative history to aid in statutory construction); *Exxon Mobil Corp. v. Dep't of Revenue*, 219 P.3d 128, 142–44 (Wyo. 2009) (indicating situations where the Wyoming Supreme Court may use the purpose of a statute to augment the meaning of a statute).

<sup>52</sup> See Debora A. Person, *Legislative Histories and the Practice of Statutory Interpretation in Wyoming*, 10 WYO. L. REV. 559, 568 (2010) (“Legislative history ‘is nearly totally unavailable for



[T]he court must look to the mischief the statute was intended to cure, the historical setting surrounding its enactment, the public policy of the state, the conclusions of law, and other prior and contemporaneous facts and circumstances, making use of the accepted rules of construction to ascertain a legislative intent that is reasonable and consistent.<sup>53</sup>

This statement represents an apt description of the originalist method of interpretation and indicates the court will often analyze the purpose of a statute to aid construction.<sup>54</sup> When the court uses such language, it may deem legislative history appropriate (when available) to determine legislative intent and will almost certainly use other maxims of statutory interpretation.<sup>55</sup>

### *Previous Definitions of “Teacher”*

The primary Wyoming case addressing the WTEL’s definition of “teacher” is *Seyfang*, where the school district denied a school superintendent tenure benefits.<sup>56</sup> The *Seyfang* decision is typical for its time because the Wyoming Supreme

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understanding the action of the Wyoming State Legislature.” (quoting *Parker Land & Cattle Co. v. Wyo. Game & Fish Comm’n*, 845 P.2d 1040, 1044 (Wyo. 1993)); *supra* note 24 and accompanying text (describing the importance of legislative history to originalists).

<sup>53</sup> *Stewart Title Guar. Co. v. Tilden*, 110 P.3d 865, 872–73 (Wyo. 2005) (Golden, J., quoting *State ex rel. Motor Vehicle Div. v. Holtz*, 674 P.2d 732, 736 (Wyo. 1983)). Every current Wyoming Supreme Court justice has used this same or similar language when undertaking an originalist analysis. *Baker*, 223 P.3d at 553 (Hill, J., quoting *Carter v. Thompson Realty Co.*, 131 P.2d 297, 299 (Wyo. 1942)); *Exxon Mobil Corp.*, 219 P.3d at 142–43 (Burke, J., quoting *Quest Corp. v. State ex rel. Wyo. Dep’t of Revenue*, 130 P.3d 507, 511 (Wyo. 2006)); *Cantrell v. Sweetwater Cnty. Sch. Dist. No. 2*, 133 P.3d 983, 985 (Wyo. 2006) (Voigt, J.); *JA v. State*, 176 P.3d 633, 637 (Wyo. 2005) (Kite, J., citing *Dir. of the Office of State Lands & Invs. v. Merbanco, Inc.*, 70 P.3d 241, 253 (Wyo. 2003)).

<sup>54</sup> *Heydon’s Case*, (1584) 76 Eng. Rep. 637 (1584) (“[S]uch construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief . . . and to add force and life to the cure and remedy, according to the true intent of the makers of the Act . . . .”); see J. Clark Kelso & Charles D. Kelso, *Statutory Interpretation: Four Theories in Disarray*, 53 SMU L. REV. 81, 88 (2000) (describing the goal of natural law as determining the intent of the legislature, the same as originalism).

<sup>55</sup> See *Baker*, 223 P.3d at 553 (illustrating the court’s use of legislative materials after using certain language); *Four Doctrinal Approaches*, *supra* note 33, at 38–39 (describing a narrow approach that limits legislative history for interpretive purposes and a broader, more recent approach that permits legislative history as well as the natural approach in general that allows traditional maxims of statutory construction).

<sup>56</sup> 563 P.2d 1376, 1382 (Wyo. 1977).



Court used an originalist approach to interpret the statute.<sup>57</sup> The *Seyfang* court started by looking at the text of the statute but concluded by focusing on the statute's policy.<sup>58</sup> The court analyzed the purpose of the statute from the enacting legislature's perspective rather than from the perspective of an ordinary person.<sup>59</sup> *Seyfang*, therefore, represents a classic originalist analysis.<sup>60</sup>

The *Seyfang* court provided an in-depth analysis of the Wyoming statute because it found other states inconsistently applied tenure to non-teaching employees.<sup>61</sup> In the first part of the analysis, the court scrutinized the purpose and objective of the statute and then held the main function was to protect teachers' constitutional interests.<sup>62</sup> To ascertain this purpose, the court reviewed the legislative history; however, it noted that in Wyoming the history of tenure is limited, and the wording of the statute remains unchanged since enactment.<sup>63</sup> The court held the applicable tenure law did not apply to superintendents because the purpose of the statute—protecting those who teach—did not encompass non-teaching positions in schools, such as superintendents.<sup>64</sup> Next, the *Seyfang* court read the tenure statute with other Wyoming statutes to see if any provided a specific definition of “teacher.”<sup>65</sup> One Wyoming statute implied the definition of “teacher” should only include the “common meaning.”<sup>66</sup> The court held the common meaning of teacher only included individuals pursuing the teaching

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<sup>57</sup> See, e.g., *Frank v. Cody*, 572 P.2d 1106, 1116–17 (Wyo. 1977) (demonstrating the court's use of legislative history and the purpose of the statute to aid in statutory interpretation); *Voss v. Ralston*, 550 P.2d 481, 485–86 (Wyo. 1976) (providing an example of an originalist method of interpretation where the purpose of the statute and the intent of the enacting legislators affected the interpretation of a statute); *supra* notes 22–31 and accompanying text (providing an overview of originalism). The court applied similar analytical techniques in a two-year window surrounding the *Seyfang* decision.

<sup>58</sup> *Seyfang*, 563 P.2d at 1381; see Manning, *supra* note 27, at 87 (noting how originalism starts interpretation with semantic context, similar to textualism).

<sup>59</sup> *Seyfang*, 563 P.2d at 1378, 1381 (discussing how the legislature enacted the statute and the purposes the legislature tried to achieve).

<sup>60</sup> Manning, *supra* note 27, at 87–90 (“[T]he first impulse of even the strongest purposivist is to try to read the statute in light of the accepted semantic import of the text.”).

<sup>61</sup> *Seyfang*, 563 P.2d at 1380.

<sup>62</sup> *Id.* at 1381.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* (holding supervisors are not teachers under the WTEL). The court found the non-inclusion of “teacher” did not limit a superintendent's other constitutional rights. See *id.*

<sup>65</sup> *Id.* at 1380–81. The Wyoming statute in question employed the same language as the modern Wyoming Statutes section 21-7-102(vii) addressed in *Luhm. Id.*

<sup>66</sup> *Id.* at 1380 (holding the operative word, “taught,” in the relevant statute includes an implied “normally-conceived” function).

profession.<sup>67</sup> The different functions and qualifications among employees supported the court's separation of teachers from supervisors.<sup>68</sup> Last, without clear legislative direction, the majority refused to expand the statute's meaning to include superintendents.<sup>69</sup>

Other states have addressed whether a school district's non-teaching employees are eligible for tenure.<sup>70</sup> However, those courts have not reached a consensus because tenure rights depend on the specific wording of a state's statute.<sup>71</sup> The definition of "teacher" varies widely among states; accordingly, the majority of cases interpreting the meaning of their respective statute are largely fact-based investigations determining whether an employee meets specific requirements of the statute.<sup>72</sup>

#### PRINCIPAL CASE

In a letter dated February 11, 2003, the Superintendent of Schools for Hot Springs County District No. 1 informed Rebecca Luhm that, due to financial reasons, Hot Springs would not renew her contract for the 2003–2004 school year.<sup>73</sup> After Luhm received this notice, she made a formal request for a hearing

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<sup>67</sup> *Id.* at 1381. The court held:

[I]f we were to find that superintendents were teachers . . . we would find ourselves placed in the incongruous position of saying that upon notice and hearing a school board can remove a superintendent from a classroom where the headquarters of his activities are not presently located and from which he is not pursuing, and perhaps never has pursued, the teaching profession.

*Id.*

<sup>68</sup> *Id.* ("This separation of functions is emphasized by the certification provisions . . . which clearly distinguish the qualifications for teaching and administrating . . .").

<sup>69</sup> *Id.* ("We are hesitant to extend this protection without a clear legislative direction to do so.").

<sup>70</sup> See, e.g., *McNely v. Bd. of Educ.*, 137 N.E.2d 63, 66–67 (Ill. 1956) (holding superintendents are teachers for tenure purposes); *Irish v. Collins*, 107 A.2d 455, 459 (R.I. 1954) (holding the express inclusion of an employee in the statute fatal to a tenure claim).

<sup>71</sup> *Seyfang*, 563 P.2d at 1380. The wording a legislature chooses to include in a tenure provision varies among states, and courts follow the wording of their state's statute, which may lead to inconsistent holdings on the same issue. *Id.*

<sup>72</sup> Dale A. Linden, Annotation, *Who is "Teacher" for Purposes of Tenure Statute*, 94 A.L.R.3d 141, § 2[a] (2009); see, e.g., *In re Spano*, 267 A.2d 848, 850–51 (Pa. 1970) (holding curriculum development and other similar tasks performed by an employee met the statutory requirement that a teacher's work is fifty percent related to "teaching or other direct educational activities"); *Lyons v. Rasar*, 872 S.W.2d 895, 897 (Tenn. 1994) (holding a lunch supervisor did not meet the statutory certification requirement of "teachers"). Other factors courts have used include: any statutory enumeration of classes of employees; an individual's certification; statutorily recognized differences between teachers and administrators; and the amount of time an employee has devoted to teaching. See Linden, *supra*, § 6 (providing examples for both including and excluding counselors as teachers).

<sup>73</sup> *Luhm v. Bd. of Trs. of Hot Springs Cnty. Sch. Dist. No. 1*, 206 P.3d 1290, 1294 (Wyo. 2009).

on her termination, which the superintendent subsequently denied.<sup>74</sup> The denial letter stated Luhm would not receive a hearing because Hot Springs did not consider her a teacher under the WTEL.<sup>75</sup> Luhm filed a complaint in the Fifth Judicial District of Wyoming.<sup>76</sup> Both Hot Springs and Luhm filed motions for summary judgment, and the district court granted Hot Springs's motion and denied Luhm's.<sup>77</sup> Luhm appealed the decision to the Wyoming Supreme Court, which affirmed the district court's ruling.<sup>78</sup>

### *Wyoming Supreme Court: Majority Opinion*

The Wyoming Supreme Court agreed 3–2 with the district court.<sup>79</sup> Justice Golden authored the majority opinion, joined by Chief Justice Voigt and Justice Burke.<sup>80</sup> The court began by holding Luhm failed to establish she was a teacher by contract.<sup>81</sup> The court then analyzed whether Luhm could qualify as a teacher under the WTEL.<sup>82</sup> Luhm contended she met the statutory qualifications of a “certified professional employee” and therefore should be classified as a teacher under the WTEL.<sup>83</sup> The court found the definition of teacher more complex than Luhm's simple plain language interpretation and read the defining statute *in pari materia* with other WTEL provisions.<sup>84</sup>

The court utilized the *in pari materia* canon, opining that it must read similar statutes relating to the same subject in harmony and give the same meaning to words used in multiple provisions.<sup>85</sup> It found several instances where Luhm's

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<sup>74</sup> Brief of Appellant, *supra* note 4, at 6 (stating the denial letter was sent to Luhm on March 24, 2003).

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 2. Luhm's three claims were: (1) a claim for the Board's failure to comply with state law and its own policies in terminating Luhm; (2) a claim under 42 U.S.C. § 1983 for denial of Luhm's due process rights; and (3) a claim for declaratory judgment to declare Luhm a continuing contract teacher. *Id.*

<sup>77</sup> *Id.* at 2–3.

<sup>78</sup> *Luhm*, 206 P.3d at 1297.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 1292, 1297.

<sup>81</sup> *Id.* at 1294. Luhm's contractual arguments are beyond the scope of this note.

<sup>82</sup> *Id.* at 1295–96.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 1294–95, 1297. See generally WYO. STAT. ANN. §§ 21-2-102 to -114 (2010). The court disagreed with Luhm's contention that it should limit the definition of teacher to the express definition provided by the statute. See *Luhm*, 206 P.3d at 1297. Luhm's interpretation of the statute required only certification as a professional to qualify as a teacher. *Id.*

<sup>85</sup> *Luhm*, 206 P.3d at 1294–95; see BRESSMAN ET AL., *supra* note 47, at 92 (explaining an *in pari materia* analysis requires the court to read statutes addressing the same subject as if they were “one law”).

proposed definition would prevent a harmonious reading of the WTEL.<sup>86</sup> For example, the court found the legislature distinguished between employee types by placing them in separate classes.<sup>87</sup> One Wyoming statute even suggests a guidance counselor is not a teacher but a certified professional employee not assigned to a classroom.<sup>88</sup> The court found that an interpretation conflicting with other WTEL provisions and defining guidance counselors as “teachers” would nullify distinctions made throughout the act.<sup>89</sup>

The court also opined the term “teacher” possessed inherent limitations.<sup>90</sup> The main limitation the court discussed was that to qualify as a teacher, an employee had to teach a recognized academic subject.<sup>91</sup> The court found Seyfang and Luhm both presented very similar arguments and ultimately held Luhm did not qualify as a teacher under the statute.<sup>92</sup> In support of its holding, the court followed *Seyfang* by investigating whether the WTEL distinguishes teachers and other certified professional employees the same way it distinguishes supervisors and teachers.<sup>93</sup> The court held that *Seyfang*’s reasoning was applicable to Luhm’s case and discussed whether Luhm “engaged in the teaching profession” or “was actively involved in teaching as commonly understood.”<sup>94</sup> The court’s discussion hinged on Luhm’s day-to-day activities, and it ultimately found she was not “engaged” in teaching because she did not teach an academic subject.<sup>95</sup>

The court also noted teaching students a recognized academic subject such as English or world history is quite different from guidance counseling or social work.<sup>96</sup> Luhm argued she performed some of the same duties required of teachers

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<sup>86</sup> *Luhm*, 206 P.3d at 1295.

<sup>87</sup> *E.g.*, WYO. STAT. ANN. § 21-2-111(a)(vi) (describing the power held by the school board to hire a school superintendent, principals, teachers and other certified employees, and other personnel); *id.* § 21-2-802(a)(i) (describing rules and regulations “[f]or the certification of school administrators, teachers and other personnel”). Generally, the examples demonstrated two classifications: one designating “teachers” and another for “other professional employees.” *See Luhm*, 206 P.3d at 1295.

<sup>88</sup> *See* WYO. STAT. ANN. § 21-2-801(a)(i) (describing the composition of the Professional Teaching Standards Board (PTSB), where teachers and guidance counselors are expressly different classes of employee).

<sup>89</sup> *Luhm*, 206 P.3d at 1296.

<sup>90</sup> *Id.* (“Instead, it must not be forgotten that the definition is for the term ‘teacher,’ which imposes some inherent limitations.”).

<sup>91</sup> *Id.* at 1296–97.

<sup>92</sup> *Id.* at 1296.

<sup>93</sup> *Id.*; *Seyfang v. Bd. of Trs. of Washakie Cnty. Sch. Dist. No. 1*, 563 P.2d 1376, 1382 (Wyo. 1977). The *Seyfang* court found a statute that expressly differentiated between teaching and supervising. *Id.*

<sup>94</sup> *Luhm*, 206 P.3d at 1296.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

and Hot Springs paid her on the same scale as teachers; the court, however, found Luhm's daily activities distinguishable from those of a teacher based on the "inherent limitations" of teaching.<sup>97</sup> The Wyoming Supreme Court concluded by classifying Luhm and other guidance counselors as certified professional employees, rather than as teachers.<sup>98</sup> Further, the court held the continuing contract clause in the WTEL did not apply to Luhm; thus, no issue of material fact existed.<sup>99</sup>

### *Dissent*

Justice Hill authored the dissent, and Justice Kite joined.<sup>100</sup> The dissent disagreed with the majority opinion on three points and argued to remand the case.<sup>101</sup> First, the dissent contended Luhm was a teacher because the terms in her contract may have been a "conclusion about" and not a "description of" the work anticipated by the contract.<sup>102</sup> Second, the dissent found the other statutes, read *in pari materia*, not persuasive.<sup>103</sup> The dissent argued the statutes could survive independently of Wyoming Statutes section 21-7-102(vii) and, therefore, found Luhm's interpretation reasonable.<sup>104</sup> Third, the dissent disagreed with the majority's opinion that teaching requires a "specific academic subject" because "academic" and "teacher" should be independent of each other.<sup>105</sup>

### ANALYSIS

In *Luhm*, the Wyoming Supreme Court split the interpretation of Wyoming Statutes section 21-7-102(vii) into two segments.<sup>106</sup> The first segment correctly followed the modern trend of statutory construction in Wyoming by taking a

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 1297.

<sup>99</sup> *Id.* The court also held other issues presented by Luhm were moot after disqualifying Luhm as a teacher. *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* (Hill, J., dissenting).

<sup>102</sup> *Id.* In the alternative, even though the contract language did not contemplate it, the dissent argued Luhm may have actually been a teacher. *Id.* If Luhm actually taught after signing a contradicting contract, it would essentially be a waiver of rights under the WTEL and disfavored by the court. *Id.*

<sup>103</sup> *Id.* For instance, the dissent contended a school district may assign a certified employee to serve as a teacher in a classroom setting and therefore certified employee status does not preclude an employee from being a teacher. *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 1298 ("[A]cademic' . . . should not, play a role in further describing the meaning of 'teacher' . . .").

<sup>106</sup> See *id.* at 1295–97 (majority opinion) (showing the two sections of the statutory analysis used by the court).

textualist approach.<sup>107</sup> However, in the second section of interpretation, the court departed from a standard textualist approach by injecting its own views of who qualifies as a teacher into its interpretation of the statute.<sup>108</sup> The second part of the court's opinion more closely resembles an originalist interpretation but it failed to analyze the statute's purpose.<sup>109</sup> The court's decision adds limitations not supported by its chosen method of interpretation, frustrating legislative power and violating Wyoming common law rules about expanding a statute.<sup>110</sup> The court should have done one of two things: either followed a textualist interpretation method and stopped after the *in pari materia* analysis, or analyzed the policy of the statute to see if Luhm's job required protection.<sup>111</sup>

### *Textual Analysis*

In the first section of interpretation, the Wyoming Supreme Court correctly used textualist tools to decide that the WTEL's definition of "teacher" is unambiguous.<sup>112</sup> The starting point, as noted by the court, is the text of the statute.<sup>113</sup> Furthermore, reading the statute in harmony with other Wyoming statutes may provide a basis for a definition.<sup>114</sup> Courts in Wyoming often use this *in pari materia* analysis, and it is a common textualist tool.<sup>115</sup> The court read Wyoming Statutes section 21-7-102(vii) *in pari materia* with the rest of the WTEL and found several provisions where "teacher" and "other certified professional

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<sup>107</sup> See *supra* notes 32–50; *infra* notes 112–29 and accompanying text.

<sup>108</sup> See *infra* notes 130–81 and accompanying text.

<sup>109</sup> See *infra* notes 151–69 and accompanying text.

<sup>110</sup> See *infra* notes 136–50 and accompanying text.

<sup>111</sup> See *infra* notes 170–81 and accompanying text.

<sup>112</sup> See *Stewart Title Guar. Co. v. Tilden*, 181 P.3d 94, 102 (2008) (holding the court will not go beyond the language of a statute if a term is unambiguous).

<sup>113</sup> *Solis v. State*, 245 P.3d 323, 325 (citing *Parker Land & Cattle Co. v. Wyo. Game & Fish Comm'n*, 845 P.2d 1040, 1042 (Wyo. 1993)) ("We begin by making an 'inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection.'").

<sup>114</sup> See, e.g., *Williams Prod. RMT Co. v. State*, 107 P.3d 179, 209 (Wyo. 2005) (finding the definition of "processing" by reading multiple provisions of a statute *in pari materia*); *Bd. of Cnty. Comm'rs v. Dunnegan*, 884 P.2d 35, 40 (Wyo. 1994) (holding a county could not regulate items unless the items fit the definition of "fireworks," after reading multiple statutes *in pari materia*).

<sup>115</sup> E.g., *Anderson v. State*, 245 P.3d 263, 267 (Wyo. 2010) (demonstrating the court's use of *in pari materia*); *King v. Bd. of Cnty. Comm'rs*, 244 P.3d 473, 485 (Wyo. 2010); *Crain v. State*, 218 P.3d 934, 938 (Wyo. 2009) (showing the Wyoming Supreme Court's use of *in pari materia* in 2009); Robert P. Young, Jr., Justice, Mich. Supreme Court, *A Judicial Traditionalist Confronts Justice Brennan's School of Judicial Philosophy*, William J. Brennan, Jr., Lecture on State Constitutional Law and Government at Oklahoma City University School of Law (Oct. 18, 2007), in 33 OKLA. CITY U. L. REV. 263, 280–81 (2008) ("A textualist looks to the statute itself for clues about meaning, to look at its structure, to examine related passages of the same statute or statutes that may be *in pari materia*, etc., before resorting to nontextual sources.").

employees” exist simultaneously.<sup>116</sup> The use of different classes demonstrated the legislature’s intent to separate employees by function.<sup>117</sup> The Wyoming Supreme Court pointed to statutes where employees performing different functions did not belong in the same class.<sup>118</sup> For example, the WTEL describes the procedure a school district’s board must follow when determining the salaries of employees.<sup>119</sup> The statute lists categories of employees including one for “teachers” and another for “other certified professional employees.”<sup>120</sup> Under Luhm’s interpretation, she would fit under the definition of both teacher and other certified professional employee.<sup>121</sup> Following this interpretation of the WTEL, many other professional employees not hired under a teaching contract would qualify as teachers.<sup>122</sup> For example, under Luhm’s interpretation, if a school board hires a state certified librarian using a non-teaching contract, the WTEL defines the librarian as a teacher.<sup>123</sup>

As a result, categories for other employees would be redundant because many classifications would overlap, and an employee may satisfy the requirements of multiple classes.<sup>124</sup> Any overlapping classifications would cause ambiguity throughout the statutes, but the *Luhm* court used a textualist interpretation to avoid ambiguity.<sup>125</sup> The court found the legislature intended all teachers to be certified but not all certified employees are teachers.<sup>126</sup> The court’s analysis of other statutes in the WTEL established the semantic context of “teacher” by showing

<sup>116</sup> *E.g.*, WYO. STAT. ANN. § 21-3-111(a)(vi) (2010) (describing the school board’s power to hire “a school superintendent, principals, teachers, other certified employees and other personnel”); *id.* § 21-2-802(a)(i) (explaining the certification of “school administrators, teachers and other personnel”).

<sup>117</sup> *Id.* § 21-2-802(a)(i).

<sup>118</sup> *Id.* § 21-3-111(a)(vi); *see* *Luhm v. Bd. of Trs. of Hot Springs Cnty. Sch. Dist. No. 1*, 206 P.3d 1290, 1296 (Wyo. 2009) (“[T]hese provisions make clear that there are more certified professional employees of a school district than just teachers.”).

<sup>119</sup> WYO. STAT. ANN. § 21-3-111(a)(vi).

<sup>120</sup> *Id.* § 21-3-111(a)(vi)(c)–(d). Other categories include superintendents, principals, and other personnel. *Id.*; *see* *Luhm*, 206 P.3d at 1296.

<sup>121</sup> *See* WYO. STAT. ANN. § 21-3-111(a)(vi); *Luhm*, 209 P.3d at 1295.

<sup>122</sup> *See* *Luhm*, 206 P.3d at 1296.

<sup>123</sup> WYO. STAT. ANN. § 21-2-801(a)(i) (“[Including] a certified professional employee not assigned to classroom teaching but providing auxiliary professional services such as librarian . . .”).

<sup>124</sup> *Schafer v. State*, 197 P.3d 1247, 1249 (Wyo. 2008) (citing *Howard v. State*, 42 P.3d 483, 492 (Wyo. 2002)) (explaining the Wyoming Supreme Court will read statutes *in pari materia* to eliminate redundancies); *see* *Luhm*, 206 P.3d at 1295.

<sup>125</sup> *See* *Bd. of Cnty. Comm’rs of Cnty. of Laramie v. Laramie Cnty. Sch. Dist. No. 1*, 884 P.2d 946, 955–60 (1994) (using an interpretation to reduce ambiguity between multiple statutes); *Gregory*, *supra* note 41, at 460 (describing how textualists strive for interpretations that avoid ambiguity).

<sup>126</sup> *See* *Luhm*, 206 P.3d at 1295.



other statutes would be ineffective if the court adopted Luhm's interpretation.<sup>127</sup> Luhm's interpretation cannot prevail because her interpretation disrupts an *in pari materia* reading of all the provisions in the WTEL.<sup>128</sup> The textualist approach followed in *Luhm* investigates the semantic context of a term and is consistent with the current Wyoming Supreme Court's standard method of interpretation.<sup>129</sup>

### *Injection of "Inherent Limitations"*

After the *in pari materia* analysis in *Luhm*, the court should have stopped its analysis.<sup>130</sup> Textualists argue that when the language is unambiguous, the court should end its inquiry without looking to any other explanation of the meaning.<sup>131</sup> The *Luhm* court diverged from this analysis and continued searching for meaning.<sup>132</sup> The court should not have included other case analysis or discussed commonly understood limits.<sup>133</sup> The additional discussion violates Wyoming Supreme Court statutory interpretation conventions.<sup>134</sup> The violation occurred when the court misused the textual interpretation approach, and in doing so, the court injected its own views into the definition of teacher.<sup>135</sup>

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<sup>127</sup> See Manning, *supra* note 27, at 91; *supra* note 115 (demonstrating how a textualist will utilize other statutes to help resolve meaning).

<sup>128</sup> BRESSMAN ET AL., *supra* note 47, at 232–34 (noting an *in pari materia* reading requires provisions of a statute relating to the same subject must be read as “one law”).

<sup>129</sup> See Manning, *supra* note 27, at 91; see also *supra* notes 37–38 and accompanying text (demonstrating the current method most often used by the Wyoming Supreme Court is textualism).

<sup>130</sup> *Rubin v. United States*, 449 U.S. 424, 430 (1981) (“When we find the terms of a statute unambiguous, judicial inquiry is complete.”); see also Jonathan T. Molot, *The Rise and Fall of Textualism*, 106 COLUM. L. REV. 1, 45 (2006) (“But where textualist tools yield a clear meaning . . . textualists argue that judges should end the inquiry there.”).

<sup>131</sup> See *Rubin*, 449 U.S. at 430 (explaining that only under rare circumstances should statutory interpretation proceed if the text is unambiguous); Earl M. Maltz, *Rhetoric and Reality in the Theory of Statutory Interpretation: Underenforcement, Overenforcement, and the Problem of Legislative Supremacy*, 71 B.U. L. REV. 767, 771 (1991) (“[T]extualists argue that where the import of the language is clear on its face, the courts should end their analysis without considering extrinsic explanations of meaning.”); Molot, *supra* note 130, at 45 (describing how textualists will only go beyond the text of a statute as a last resort).

<sup>132</sup> See Maltz, *supra* note 131, at 771 (noting that textualists will stop when the wording of a statute is unambiguous).

<sup>133</sup> See Andrew S. Gold, *Absurd Results, Scrivener's Errors, and Statutory Interpretation*, 75 U. CIN. L. REV. 25, 26 (2006) (“The court's determination of the objective meaning of the statute ends the inquiry.”).

<sup>134</sup> See *Ball v. State*, 239 P.3d 621, 629–30 (Wyo. 2010) (explaining the court will not expand a statute beyond expressed provisions); *SLB v. JEO*, 136 P.3d 797, 799 (Wyo. 2006) (reiterating the court should not blindly follow stare decisis).

<sup>135</sup> See Maltz, *supra* note 131, at 771 (arguing any extrinsic explanations of meaning go beyond a textual analysis).

To comply with Wyoming interpretation conventions, the court should not have blindly followed *Seyfang* because in *Luhm*, the court could not rely on the same statute for clarification.<sup>136</sup> The Wyoming Supreme Court can look to other cases sharing similar facts for guidance but should not mechanically follow precedent that is distinguishable from the case at bar.<sup>137</sup> Stare decisis is not rigidly applied in Wyoming with the result that where the court recognizes a better method of analysis, it will follow that method.<sup>138</sup> The *Luhm* court borrowed *Seyfang*'s function argument, where differing functions separate teachers from non-teachers.<sup>139</sup> However, the argument in *Seyfang* points to a specific provision of a statute separating teaching and supervising.<sup>140</sup> The *Luhm* court, in contrast, found a similar difference between the functions of a guidance counselor and a teacher but, unlike the *Seyfang* court, it could not point to a specific statutory provision where the legislature clearly expressed the differences.<sup>141</sup> The *Seyfang* court included this argument within the *in pari materia* analysis, but since the *Luhm* court could not rely on a similar statute, it was forced to argue it as an "inherent limitation," suggesting the cases are not analogous and that the incorporation of the argument was unjustified.<sup>142</sup> The *Luhm* court announced it was following *Seyfang*'s *in pari materia* analysis, but notably a large part of *Seyfang*'s argument was not directly applicable in *Luhm*.<sup>143</sup>

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<sup>136</sup> See *Motley v. Platte Cnty.*, 220 P.3d 518, 520 (Wyo. 2009) (Burke, J., dissenting) (explaining stare decisis is not a mandatory command and the court should not "mechanically" apply reasoning to a current case merely because a former case was similar).

<sup>137</sup> *Id.* ("This court . . . has also always recognized that stare decisis should not be applied blindly and rigidly."); *Fisher v. State*, 189 P.3d 866, 868–70 (Wyo. 2009) (holding a case with parallel elements to the one at bar should not be followed when the cases are distinguishable).

<sup>138</sup> *Cook v. State*, 841 P.2d 1345, 1353 (1992) ("Wisdom does not come to us often. When it does, we should embrace—not slavishly reject it because of a questionable application of legal doctrine.").

<sup>139</sup> See *Luhm*, 206 P.3d at 1296 ("The [*Seyfang*] holding's logic applies equally here."); *Seyfang v. Bd. of Trs. of Washakie Cnty. Sch. Dist. No. 1*, 563 P.2d 1376, 1381 (Wyo. 1977) ("[T]he normally-conceived function of *teaching*, as opposed to *supervising*, is unmistakable." (emphasis added)). The *Seyfang* court associated the act of supervising with superintendent, and the act of teaching with teacher. See *Seyfang*, 563 P.2d at 1381.

<sup>140</sup> See *Seyfang*, 563 P.2d at 1380 ("[N]o person shall 'teach or supervise' in a public school in this state and receive compensation therefor unless he is certified." (citing WYO. STAT. ANN. § 21-1-174 (1975))). There is not a similar statute in the WTEL that differentiates between teachers and counselors the same way the *Seyfang* court found a statute differentiating between supervisors and teachers. *Id.*

<sup>141</sup> See *Luhm*, 206 P.3d at 1296.

<sup>142</sup> See *id.*; *Seyfang*, 563 P.2d at 1381; *infra* notes 144–48 and accompanying text (arguing the court used its own views on the statute to define "teacher").

<sup>143</sup> See *supra* notes 136–41 and accompanying text; see also Brief for Respondent at 32, *Texas v. Johnson*, 491 U.S. 397 (1989) (No. 88-155) (explaining the legitimacy of arguments with *in pari materia* relationships).

In addition, the *Luhm* court departed from established statutory interpretation fundamentals by expanding the definition in the WTEL to include the additional requirement of teaching a recognized academic subject.<sup>144</sup> Adding substance not found within the text of the statute violates a well-established Wyoming Supreme Court convention: the court will not add or enlarge a statute to matters not expressly stated because it would risk substituting the court's own views for the views of the legislature.<sup>145</sup> The statute does not recognize any limitation when defining teacher; therefore, this appears to be the court's own view on what "teacher" means.<sup>146</sup> Further, the Wyoming Supreme Court has held that the legislature's omission of words in a statute is an intentional act that the courts should not disturb.<sup>147</sup> A court must recognize and respect the legislature's power to make laws.<sup>148</sup> By inserting separate "inherent limitations" into the statute, the *Luhm* court essentially usurped the legislature's law-making powers.<sup>149</sup> Instead of the text written by the legislature, the statute now effectively reads: "Teacher—Person *who teaches an academic subject* and is employed under contract by the board of trustees of a school district as a certified professional employee."<sup>150</sup>

The first misapplication of textualism occurred when the court attempted to recognize the common and traditional meaning of "teacher" but failed to realize

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<sup>144</sup> See Brief for Respondent, *supra* note 143, at 32; *Allied-Signal v. Wyo. State Bd. of Equalization*, 813 P.2d. 214, 219 (Wyo. 1991) ("Any additional construction can be resorted to only if the wording is ambiguous or unclear to the point of demonstrating obscurity with respect to the legislative purpose or mandate.").

<sup>145</sup> See *Morris v. CMS Oil & Gas Co.*, 227 P.3d 325, 333 (Wyo. 2010) ("[A] court risks an impermissible substitution of its own views, or those of others, for the intent of the legislature if any effort is made to interpret or construe statutes on any basis other than the language invoked by the legislature."); *Luhm*, 206 P.3d at 1295 ("Moreover, we will not enlarge, stretch, expand, or extend a statute to matters that do not fall within its express provisions."); *Allied-Signal*, 813 P.2d. at 219; *Molot*, *supra* note 130, at 53 (describing how a textualist may manipulate the meaning of a statute based on "his own idiosyncratic reading of the statutory text").

<sup>146</sup> See WYO. STAT. ANN. § 21-7-102(vii) (2010) ("Teacher—Any person employed under contract by the board of trustees of a school district as a certified professional employee."); *Luhm*, 206 P.3d at 1295; Edward O. Correia, *A Legislative Conception of Legislative Supremacy*, 42 CASE W. RES. L. REV. 1129, 1198 (1992) ("If judges move too quickly to incorporate extra-legislative values, they violate legislative supremacy by unnecessarily exercising their own policymaking authority at the expense of the legislature's.").

<sup>147</sup> *Wyo. Med. Ctr. v. Wyo. Ins. Guar. Ass'n*, 225 P.3d 1061, 1069 (Wyo. 2010) ("[T]he omission of words from a statute is considered to be an intentional act by the legislature and we will not read words into a statute when the legislature has chosen not to include them.").

<sup>148</sup> See *Maltz*, *supra* note 131, at 769 ("[T]he legislature has legitimate authority to make laws, and the judiciary must respect that authority in making its decisions . . .").

<sup>149</sup> *Id.*

<sup>150</sup> See *Luhm*, 206 P.3d at 1295. The original text reads, "Any person employed under contract by the board of trustees of a school district as a certified professional employee." WYO. STAT. ANN. § 21-7-102(vii).

the definition is not settled.<sup>151</sup> During the discussion of “inherent limitations,” the court focused solely on the first part of the definition: the word “teacher” in isolation from the rest of the text defining it.<sup>152</sup> Focusing on the independent meaning of a statutorily defined word is a textualist interpretation tool.<sup>153</sup> The *Luhm* court tried to explain that the common meaning of “teacher,” independent from the statute, includes a requirement of teaching a recognized academic subject.<sup>154</sup> The court used this supposed requirement of teaching an academic subject to demonstrate the term “teacher” includes a widely understood nuance not found in a dictionary.<sup>155</sup> However teaching an academic subject is *not* commonly understood as a requirement of teachers—many jurisdictions recognize personnel who do not teach academic subjects as teachers.<sup>156</sup> By inserting the new requirement in the statute, the court asserts “teacher” has a settled common meaning; in reality, the term’s definition varies widely within the United States.<sup>157</sup>

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<sup>151</sup> See David Delaney, *Semantic Ecology and Lexical Violence: Nature at the Limits of Law*, 5 LAW TEXT CULTURE, no. 2, 2001 at 103 (demonstrating how a textualist will use various sources, from multiple dictionaries to commentaries on law, to establish a settled common meaning of a term).

<sup>152</sup> See *Luhm*, 206 P.3d at 1296 (“Instead, it must not be forgotten that the definition is for the term ‘teacher,’ which imposes some inherent limitations.”); Lisa G. Jones, Note, *Statutory Construction*, 35 U. LOUISVILLE J. FAM. L. 208, 210 (1997) (reiterating the presumption that every word of a statute has some meaning and an interpretation should not render any part of the statute meaningless). The court separated the statute into two parts. See *Luhm*, 206 P.3d at 1296. The first part is the term to be defined, teacher; the second part of the statute is the text of the definition. See *id.*

<sup>153</sup> *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687, 719 (1995) (explaining that once a term is defined by statute, it does not lose meaning independent from the statute’s definition).

<sup>154</sup> *Luhm*, 206 P.3d at 1296.

<sup>155</sup> Manning, *supra* note 27, at 92 (“This inquiry . . . [includes] nuances that may be widely understood but that are unrecorded in standard dictionaries.”); Caleb Nelson, *What is Textualism?*, 91 VA. L. REV. 347, 383 (2005) (“Some [textualist] canons simply reflect broader conventions of language use, common in society at large at the time the statute was enacted.”).

<sup>156</sup> See, e.g., *Hillhouse v. Rice Sch. Dist. No. 20*, 727 P.2d 843 (Ariz. Ct. App. 1986) (holding a counselor is a teacher under a tenure statute); *McNely v. Bd. of Educ. of Cmty. Unit Sch. Dist. No. 1*, 137 N.E.2d 63 (Ill. 1956) (holding a nonteaching superintendent is a teacher under the tenure statute); *Sweeny v. Special Sch. Dist. No. 1*, 368 N.W.2d 288 (Minn. Ct. App. 1985) (holding principals and assistant principals are teachers under a tenure statute); *In re Spano*, 267 A.2d 848 (Pa. 1970) (holding a “Curriculum Coordinator” is a teacher under a tenure statute).

<sup>157</sup> See Ellen P. Aprill, *The Law of the Word: Dictionary Shopping in the Supreme Court*, 30 ARIZ. ST. L.J. 275, 280 (1998) (“[Some] textualists . . . avoid textualism itself or particular textualist tools if their application to statutory language would result in either a broad assertion of governmental powers, or an ambiguity requiring deference to governmental power.”); Daniel A. Farber & Brett H. McDonnell, *New Perspective on Statutory Interpretation: “Is There a Text in This Class?” The Conflict Between Textualism and Antitrust*, 14 J. COMTEMP. LEGAL ISSUES 619, 637 (2005) (“[T]extualists normally do not regard [a lack of a static view] as an invitation to impose their own policy preferences. Rather, they stick close to the common law as it has evolved in the states.”); *supra* note 156 and accompanying text (describing the varying definitions of “teacher” throughout different states).

The court snuck this new requirement of teaching an academic subject in under the veil of textualism and used the new requirement to assert its own interpretation of the meaning of “teacher.”<sup>158</sup> The court likely did not intend to undermine its textualist analysis by including additional requirements but instead attempted to use a textualist’s tool to bolster its position.<sup>159</sup> Rather than attempting to use one of the few subjective analytical textualist tools, the court should have stopped its interpretation after finding the term “teacher” unambiguous in its *in pari materia* analysis.<sup>160</sup>

The *Luhm* court attempted to walk a fine line between textualism and originalism, never fully committing to either.<sup>161</sup> When choosing which theory to undertake for interpreting a statute, the court is not bound to follow one over the other, but the two methods may conflict within the same opinion.<sup>162</sup> For example while the court’s “inherent limitations” analysis closely resembles an originalist approach, the court never engaged in a discussion of the purpose of the statute, which is a key component of originalism.<sup>163</sup> Originalists are more concerned with the policy of the statute and the mischief the legislature attempted to resolve.<sup>164</sup> The court could have easily explained the limitations by answering the originalist question: how would a reasonable legislator solve the problem the statute was drafted to resolve?<sup>165</sup> However, the court never examined *Luhm*’s position regarding

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<sup>158</sup> See Manning, *supra* note 27, at 78 (describing how textualists look for commonly understood meanings of terms in a statute); Michael S. Paulsen, *How to Interpret the Constitution (and How Not To)*, 115 YALE L.J. 2037, 2056 (2006) (“[A]ny argument for anachronistic interpretations of the text—that is, for substituting a personally idiosyncratic, nonstandard, or time-changed meaning in preference to the one that would have been understood at the time . . . ends up substituting some other words for the words chosen . . .”).

<sup>159</sup> See *Luhm*, 206 P.3d at 1296–97; Frank H. Easterbrook, *What Does Legislative History Tell Us?*, 66 CHI.-KENT. L. REV. 441, 443 (1990) (“Textualists . . . want to know its context, including assumptions shared by speakers and the intended audience.”); Manning, *supra* note 27, at 81–83 (describing how textualists use extrinsic evidence such as “assumptions shared by the speakers and the intended audience” and “customary usage and habits of speech,” to help establish semantic context).

<sup>160</sup> See Manning, *supra* note 27, at 92 (explaining the commonly understood meaning used by textualists); Molot, *supra* note 130, at 45 (arguing a textualist’s analysis is complete after a word is found unambiguous).

<sup>161</sup> See *supra* notes 111–21, 131–59 and accompanying text (arguing the court included elements of both textualism and originalism).

<sup>162</sup> See *Baker v. State*, 223 P.3d 542, 553–54 (Wyo. 2010) (exemplifying a case where the court used an originalist approach); *Fuller v. State*, 230 P.3d 309, 311 (Wyo. 2010) (demonstrating a case where the Wyoming Supreme Court used a textualist approach).

<sup>163</sup> See Manning, *supra* note 27, at 78 (describing the differences between a textualist and originalist analysis).

<sup>164</sup> Louise Weinberg, *The Power of Congress over Courts in Nonfederal Cases*, 1995 BYU L. REV. 731, 770 n.131 (1995) (“[Purposivists seek] an understanding of the mischiefs a rule is meant to control, and an evaluation of the rule’s current policy . . .”).

<sup>165</sup> See Mullins, *supra* note 15, at 26 (explaining how originalists review statutes from the legislators’ perspective). For example, the purpose of tenure, protecting teachers and offering

the purpose of the statute; rather, the court inspected her position only to give semantic context to the statute.<sup>166</sup> Previous Wyoming cases establish the purpose of tenure—it provides teachers “security in their positions and guarantees [the] freedom to teach by protecting them from removal on unfounded charges . . . .”<sup>167</sup> The court could easily have applied the purpose of the statute to Luhm’s position by determining whether her position needs protection from unfounded charges; the court, however, did not address any policy considerations in its analysis.<sup>168</sup> Because the court never addressed the purpose of the statute, the limitations it found could only be a misplaced argument adding unjustified content to a textualist analysis, not an originalist’s tool of interpretation.<sup>169</sup>

Before *Luhm*, the Wyoming Supreme Court explored the possibility of expanding the definition of “teacher” to include a broader range of employees, but in *Luhm*, the court instead decided to narrow the scope of the term.<sup>170</sup> The *Seyfang* court interpreted the statute by looking at whether an employee should

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guaranteed freedom to teach, may require the protected person to teach a recognized academic subject, and a reasonable legislator would know such limitations when enacting the statute. *Id.*; see also *Powell v. Bd. Trs. Crook Cnty. Sch. Dist. No. 1*, 550 P.2d 1112, 1116 (Wyo. 1976) (recognizing teaching tenure rights as a constitutionally protected interest).

<sup>166</sup> See *Luhm v. Bd. of Trs. of Hot Springs Cnty. Sch. Dist. No. 1*, 206 P.3d 1290, 1295–97 (Wyo. 2009); *supra* notes 108–15 (arguing the court only used Luhm’s position to develop semantic context and separate her from other employees throughout the WTEL; the court explained under her interpretation she would fit in more than one category and the statute would textually be redundant).

<sup>167</sup> *Seyfang v. Bd. of Trs. of Washakie Cnty. Sch. Dist. No. 1*, 563 P.2d 1376, 1381 (Wyo. 1977) (citing *Endicott v. Van Patten*, 330 F. Supp. 878, 882 (D. Kan. 1971)); see also *Powell*, 550 P.2d at 1116 (citing *Endicott*, 330 F. Supp. at 883) (“The very purpose of tenure and continuing contract laws is to give recognition to a constitutionally protectable interest. This type of statute gives teachers a certain degree of security in their positions and guarantees freedom to teach by protecting them from removal on unfounded charges.”).

<sup>168</sup> See generally *Bd. of Trs., Laramie Cnty. Sch. Dist. No. 1 v. Spiegel*, 549 P.2d 1161 (Wyo. 1976) (providing a model application of the purpose of tenure pertaining to an individual). A sufficient policy analysis would require an investigation of constitutional due process rights and is therefore beyond the scope of this note. See, e.g., *Endicott*, 330 F. Supp. at 882–84 (explaining the unfound charges include constitutional due process rights); *Spiegel*, 549 P.2d at 1166–72 (holding a school board’s removal of a teacher without sufficient notification of the charges violated the teacher’s constitutional due process rights).

<sup>169</sup> See *Cavanaugh*, *supra* note 18, at 588 (describing the various tools used by originalists to arrive at the legislature’s “intent”). The court found the term “teacher” clear through the textualist *in pari materia* analysis and did not analyze the purpose of the statute because the textualist approach most often used by the Wyoming Supreme Court does not support it. See, e.g., *Fuller v. State*, 230 P.3d 309, 311 (Wyo. 2010) (holding only one possible interpretation equates to a clear and unambiguous definition of a term in a statute); *Horse Creek Conservation Dist. v. State*, 221 P.3d 306, 313–15 (Wyo. 2009) (demonstrating that after an *in pari materia* analysis, the court is not obligated to look for further definitions); *Johnson v. City of Laramie*, 187 P.3d 355, 358 (Wyo. 2008) (stating where a term is unambiguous the court will not go beyond the plain meaning).

<sup>170</sup> See *Seyfang*, 563 P.2d at 1381. The *Seyfang* court addressed whether to expand “teacher” based on policy. *Id.*; see John F. Manning, *Federalism and the Generality Problem in Constitutional*



be afforded similar protection, not whether an employee taught a recognized academic subject.<sup>171</sup> If the court correctly used an originalist approach, it would have been more willing to go beyond the conventional social meaning attributed to “teacher.”<sup>172</sup> Several other jurisdictions investigated a wider, policy-based interpretation of similar statutes.<sup>173</sup> Those courts looked at the purpose of the statute and determined whether the tenure protection afforded to teachers extends to other employees.<sup>174</sup> By undertaking a textualist approach to interpreting the term “teacher,” the court ignored how policy may augment the term and possibly create future interpretation problems.<sup>175</sup> Instead of providing an inconsistent opinion, the court should have followed other states by analyzing the purpose of the statute, or stopped after the *in pari materia* discussion.<sup>176</sup>

The current “inherent limitations” adopted in *Luhm* allow the court to shift the meaning of teacher based on the “commonly understood meaning of teaching.”<sup>177</sup> A textualist approach will continue to focus on the statute’s reader and, depending on the current views of the interpreter, the meaning of the

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*Interpretation*, 122 HARV. L. REV. 2003, 2010 (2009) (explaining originalists are willing to expand the level of generality based on policy issues, where textualist will not).

<sup>171</sup> See *Seyfang*, 563 P.2d at 1381.

<sup>172</sup> See Bradford C. Mank, *Is a Textualist Approach to Statutory Interpretation Pro-Environmentalist?: Why Pragmatic Agency Decisionmaking Is Better than Judicial Literalism*, 53 WASH. & LEE L. REV. 1231, 1235 (1996) (describing how originalists will go beyond the legislature’s original intent to estimate meaning when original intent is difficult to determine, or when applying a statute to circumstances the legislature did not predict); Manning, *supra* note 27, at 87 (“[P]urposivists are far less willing than textualists to adhere to the conventional social meaning of a statutory provision . . .”).

<sup>173</sup> See, e.g., *Irish v. Collins*, 107 A.2d 455, 457–58 (R.I. 1954) (holding that even though a superintendent is subject to political hazards, they are not teachers); *Mish v. Tempe Sch. Dist. No. 3*, 609 P.2d 73, 78 (Ariz. Ct. App. 1980) (holding a computer programmer was not a teacher because she had not proven herself in a classroom as the caliber of teacher that tenure protects).

<sup>174</sup> See *Mish*, 609 P.2d at 73 (demonstrating where a court reviewed the purpose of a statute to decide whether an employee qualified for tenure); see also, e.g., *Eelkema v. Bd. Educ. of City of Duluth*, 11 N.W.2d 76, 78–79 (Minn. 1943) (holding a superintendent was not tenured because policy requires a superintendent should be discharged if in conflict with a school board, which is different than a teacher).

<sup>175</sup> See Bradford C. Mank, *Legal Context; Reading Statutes in Light of Prevailing Legal Precedent*, 34 ARIZ. ST. L.J. 815, 828 (2002) (“[B]y ignoring a statute’s intent or purposes, textualist judges may adopt a literal interpretation of a statute that no longer serves societal interests if there have been significant changes in social circumstances since Congress enacted it.”); Manning, *supra* note 27, at 91–93 (explaining how textualists give priority to semantics over policy).

<sup>176</sup> See *supra* notes 131–35, 151–69 and accompanying text (arguing why the textualist analysis should have stopped after the *in pari materia* analysis and the additional limits fit with an originalist view).

<sup>177</sup> See *Luhm v. Bd. of Trs. of Hot Springs Cnty. Sch. Dist. No. 1*, 206 P.3d 1290, 1297 (Wyo. 2009); J.T. Hutchens, *A New New Textualism: Why Textualists Should not be Originalists*, 16 KAN. J.L. & PUB. POL’Y 108, 126–27 (2007) (admitting cases previously decided under different statutory theories may be overturned when analyzed under a textualist view); Glen Staszewski, *Reason-Giving and Accountability*, 93 MINN. L. REV. 1253, 1310 (2009) (“When a statute’s plain meaning is deemed



statute may change with it.<sup>178</sup> Consequently, future employees seeking protection under the WTEL must ask if the position they hold falls within the “commonly understood meaning” of teacher, not whether they should be afforded protection from unfounded charges.<sup>179</sup> For example, a state certified librarian with a designated classroom may not know whether the court will classify her as a teacher and would question if the “commonly understood meaning” of teacher has changed since *Luhm*.<sup>180</sup> The *Luhm* decision undermines the predictability of the Wyoming Supreme Court because changing attitudes and conditions in society will directly affect whether a person meets the highly flexible standard of “inherent limitations” of “teacher.”<sup>181</sup>

### CONCLUSION

The Wyoming Supreme Court used a textualist approach in interpreting a statute the court had previously interpreted using an originalist approach.<sup>182</sup> The court borrowed language from its previous ruling but approached interpreting the statute based on a semantic context rather than a policy consideration as in the original interpretation.<sup>183</sup> The court’s decision allows the interpretation of “teacher” to change with the injected “inherent limitations” including the commonly understood meaning of the term.<sup>184</sup> Both approaches are valid methods of interpretation, but the court should uphold one or the other to maintain consistency.<sup>185</sup>

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unambiguous after an examination of its semantic context, the resulting interpretations will also be random and potentially arbitrary to the extent that its policy consequences were never explicitly considered by the legislature or the judiciary.”); George H. Taylor, *Structural Textualism*, 75 B.U. L. REV. 321, 384 (1995) (“[T]extualism appears susceptible to injections of judicial predilection, preference, and discretion . . . .”); *supra* notes 151–69 (arguing the court used different analyses in *Seyfang* and *Luhm*).

<sup>178</sup> See Taylor, *supra* note 177, at 384 (“Structural analyses of the interrelations within a text, between part and part or between part and whole, must not be collapsed into evaluations based on external political or cultural norms.”).

<sup>179</sup> See *supra* notes 143–69 (arguing the modern Wyoming Supreme Court will use a textualist approach in interpreting the WTEL).

<sup>180</sup> See generally *Allen v. Rapides Parish Sch. Bd.*, 204 F.3d 619 (5th Cir. 2000) (holding a well-qualified librarian did not qualify as a teacher for tenure purposes).

<sup>181</sup> See Maltz, *supra* note 131, at 776 (“[A]ny attempt to base a theory of statutory interpretation on changing attitudes and conditions inevitably will increase rather than decrease the indeterminacy of the process.”).

<sup>182</sup> See *supra* notes 112–29 and accompanying text.

<sup>183</sup> See *supra* notes 130–69 and accompanying text.

<sup>184</sup> See *supra* notes 177–81 and accompanying text.

<sup>185</sup> See *supra* notes 170–76 and accompanying text.