DOES THE PAST PREDICT THE FUTURE?: AN EMPIRICAL ANALYSIS OF RECENT IOWA SUPREME COURT USE OF LEGISLATIVE HISTORY AS A WINDOW INTO STATUTORY CONSTRUCTION IN IOWA

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ABSTRACT

This Article provides an empirical analysis of Iowa Supreme Court decisions from 2004–2013 that employ legislative history in interpreting Iowa statutes. It answers the question: When the Iowa Supreme Court consults legislative history in construing an Iowa statute, what specific types of materials are cited? Further, this Article provides an overview of statutory drafting and construction in Iowa and discusses the inherent uncertainties of statutory interpretation, using Sallee v. Stewart *and* State v. Heemstra *to illustrate the variance in how the court decides whether historical analysis applies to a case and, if so, what it means. Although a precise formula for "correctly" reading a statute cannot be formulated, this Article suggests some practices that will help ensure as thorough a reading of an Iowa statute as*

* Professor of Law Librarianship, Drake University School of Law. Thanks to the following individuals, who generously shared their time and expertise: Richard Johnson at Iowa Legislative Services Agency, who provided critical background information about the agency and Iowa legislative process; Jeff Van Engelenhoven at Iowa Legislative Services Agency, for providing historical information related to the Iowa General Assembly website; Drake University School of Law professors Keith Miller, who offered insights at the conceptualization stage, and Jerry Anderson, whose thoughtful review of an article draft greatly improved the final piece; Cory Quist, at the State Law Library, who obtained a particular bill file; Julie Thomas of the Drake Law Library, my go-to source for grammar and punctuation questions; and Marc Wallace, for not only offering suggestions on an early draft but also alerting me to the starts of our boys' swimming races, so I could stop editing and start cheering. Thanks, too, to Drake University and the Drake Law School for approving the summer sabbatical that enabled me to write this Article; to my colleagues at the Drake Law Library, particularly David Hanson and Rebecca Lutkenhaus, who assumed additional responsibilities in my absence; and to the Drake Law Review staff for their attentive editing and professionalism throughout the publication process. This Article is dedicated to the memory of Paul J. Nyholm, who would have been delighted to see it published. In his spirit, I say, "Your move Barnicus."

possible. This Article concludes with two recommendations for the Iowa Supreme Court. First, consistently cite Iowa Code Section 4.6(3) when using legislative history to determine legislative intent. Second, formulate a more complex rule on the use of bill explanations in determining legislative intent, neither abandoning them completely nor always using them, but instead considering them as an extrinsic source of evidence for understanding a statute only when appropriate after analyzing the bill's amendment history.

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I. INTRODUCTION

Documented legislative history in Iowa has been described as nonexistent.[1] While this is an overstatement,[2] the Iowa Supreme Court has noted, and scholars have lamented, the scarcity of useful Iowa legislative history records.[3]

Yet the Iowa Supreme Court can,[4] and sometimes does,[5] turn to legislative history in statutory construction. So, what is the court reading? Although some authors describe available sources of Iowa legislative history—and might even include a few examples[6]—and others consider the development of a single statute,[7] research revealed only one prior-published

1. *See* EDWARD N. MCCONNELL, LEGISLATIVE HISTORY RECORDS 1 (1999) (noting that as a law student, professors told him "there was no state legislative history in Iowa," and any records that do exist are not as important as federal legislative history).

2. *See id.* at 2–5 (explaining some of the Iowa legislative history records to which a researcher has access).

3. *See, e.g.*, Oyens Feed & Supply, Inc. v. Primebank, 808 N.W.2d 186, 188 (Iowa 2011) (citing a bill explanation and then noting that "[o]ther legislative history is sparse"); State v. Comried, 693 N.W.2d 773, 776 (Iowa 2005) (noting a statutory amendment possessed "no direct legislative history"); Wade S. Hauser, Note, *Does Iowa's Health Care External Review Process Replace Common-Law Rights?*, 99 IOWA L. REV. 1401, 1414 (2014) ("As is often the case in Iowa, there is little legislative history to illuminate" the statute under consideration in the article (footnote omitted)); Benjamin M. Parrott, Note, *For Better or for Worse? The Iowa Supreme Court's Decision to Compensate the Innocent Coinsured Spouse in* Sager v. Farm Bureau Mutual Insurance Company, 54 DRAKE L. REV. 561, 582–83 (2006) (observing that "there appears to be no Iowa legislative history explaining the purpose of" the relevant code section, making it difficult to determine legislative intent).

4. IOWA CODE § 4.6(3) (2013).

5. *See, e.g.*, State v. Allen, 708 N.W.2d 361, 366–68 (Iowa 2006); Builder's Land Co. v. Martens, 122 N.W.2d 189, 191 (Iowa 1963) ("We may resort to legislative journals for the legislative history of a statute of doubtful meaning.").

6. *E.g.*, JOHN D. EDWARDS ET AL., IOWA LEGAL RESEARCH 163–90 (2011).

7. *See, e.g.*, Martin D. Begleiter, *Son of the Trust Code—The Iowa Trust Code After*

empirical analysis of the sources actually consulted by the Iowa Supreme Court.[8] Tellingly titled *The Inadequacy of Legislative Recordings in Iowa*, a 1949 Note reviewed a 12-year span of cases published in the Iowa Reports to identify 129 that involved statutory interpretation.[9] In 23 of these opinions, the court examined legislative history, once using "a special committee report and an executive message to determine legislative intent."[10] In the other 22 cases,

> [T]he legislative history of the bill was reviewed . . . either to check upon the constitutional validity of the legislative proceedings or to determine the record of amendments proposed and rejected. By this latter process the court drew an inference from the inaction of the legislature as to its intention.[11]

The current study provides an empirical analysis of Iowa Supreme Court decisions from 2004–2013 that employ legislative history in interpreting Iowa statutes. The study's principal goal is to answer the question: When the Iowa Supreme Court consults legislative history in construing an Iowa statute, what specific types of materials are cited? The question is of obvious interest to the Iowa practitioner. When confronting an ambiguous statute for which the Iowa Supreme Court may turn to legislative history as part of its analysis, attorneys who are aware of the sources the court has considered in the past will be alerted to their importance.

Of course, knowing what to read[12] is only the first step. The question of how the court will apply these sources naturally follows. Here, the study

Ten Years, 59 DRAKE L. REV. 265 (2011); Roger D. Colton, *The Use of Canons of Statutory Construction: A Case Study from Iowa or When Does "Ghoti" Spell "Fish"?*, 5 SETON HALL LEGIS. J. 149 (1982).

8. A related analysis of statutory interpretation in Iowa looked at an undisclosed number of cases "with the purpose of observing the consistency or lack of it in this job of statutory interpretation." Richard S. Hudson, *When a Vending Machine is Not a Vending Machine (A Commentary on Statutory Interpretation in Iowa)*, 11 DRAKE L. REV. 3, 5 (1961). Legislative history is raised as part of the broader discussion. *See generally id.* at 8–14.

9. Note, *The Inadequacy of Legislative Recording in Iowa*, 35 IOWA L. REV. 88, 95 (1949).

10. *Id.*

11. *Id.*

12. It is also important to know how to find the legislative history sources the court is likely to cite, a topic on which this Article will also provide some guidance.

illuminates the inherent uncertainties of statutory interpretation. Just as the justices may look at the words of the statute itself and find the meaning ambiguous, they also may draw different conclusions from that statute's history. This Article will use two recent cases to illustrate the variance in how the court decides whether historical analysis applies to a case and, if so, what it means. The Iowa Supreme Court has a long history of looking at legislative history as part of its interpretation of ambiguous statutes,[13] and in the cases considered in this study, there is no evidence that the court considers any form of legislative history an illegitimate source for understanding a statute.[14] The question of whether historical consideration, including legislative history, applies seems less a philosophical issue and more a practical matter of legal analysis.

These uncertainties in interpretation mean a precise formula for correctly reading a statute cannot be formulated; however, some useful guidelines can be discerned. Based on the cases construed, this Article suggests some practices that will help ensure as thorough a reading of a statute as possible and broadly considers some of the uses the court may make of historical sources.[15]

The relatively narrow focus of this Article should also uniquely contribute to the crowded field of statutory interpretation scholarship.[16] Part

13. *See supra* notes 9–11 and accompanying text; *infra* notes 108–113 and accompanying text.

14. The question of the proper role, if any, of legislative history in statutory interpretation has received widespread attention in the legal academy, particularly after Justice Antonin Scalia's Supreme Court confirmation. *See, e.g.*, Fritz Snyder, *Legislative History and Statutory Interpretation: The Supreme Court and the Tenth Circuit*, 49 OKLA. L. REV. 573, 573 (1996) ("Ever since Justice Antonin Scalia took his place on the Supreme Court in 1986, one area of continuing controversy has been the use of legislative history in determining legislative intent."). In the 10 years following Justice Scalia's start on the Supreme Court, "[w]ell over a hundred law review articles have appeared on this topic." *Id.*

15. *See, e.g.*, *id.* at 578.

16. Of the copious publications on statutory interpretation, most have focused on the U.S. Supreme Court. Jeffrey A. Pojanowski, *Statutes in Common Law Courts*, 91 TEX. L. REV. 479, 480 (2013) ("Statutory interpretation scholars have filled shelves of law reviews while focusing almost exclusively on the Supreme Court . . . ."). Much discussion of legislative history as part of statutory interpretation is also federally focused, often noting the attention Justice Scalia has brought to the issue. *See, e.g.*, James J. Brudney & Corey Ditslear, *Liberal Justices' Reliance on Legislative History: Principle, Strategy, and the Scalia Effect*, 29 BERKELEY J. EMP. & LAB. L. 117, 122 (2008); Snyder, *supra* note 14. Empirical studies of courts' use of legislative history have also focused on

II of the Article defines terms. Part III provides an overview of statutory drafting and construction in Iowa. Part IV explains the study's scope, methodology, and results. Part V considers lessons from the study beyond the quantifiable results, and Part VI recommends two court practices to help researchers find and understand the rules regarding use of historical sources in statutory interpretation.

II. DEFINITIONS

The court may consider a variety of historical sources related to a statute. This study coded the following elements, each of which will be briefly described below: legislative history, Code history, legislative response, legislative acquiescence, contemporaneous circumstances, and contemporaneous commentary.[17]

The term "legislative history" can convey different meanings. A

the U.S. Supreme Court. *See, e.g.*, David S. Law & David Zaring, *Law Versus Ideology: The Supreme Court and the Use of Legislative History*, 51 WM. & MARY L. REV. 1653, 1654 (2010) (discussing the analysis of more than 50 years of U.S. opinions that utilize legislative history to interpret a statute). However, empirical analyses have also been conducted at the state level. *See, e.g.*, Bart M. Davis et al., *Use of Legislative History: Willow Witching for Legislative Intent*, 43 IDAHO L. REV. 585 (2007); William H. Manz, *If It's Out There: Researching Legislative Intent in New York*, N.Y. ST. B.A. J. 43 (2005); WENDY LAMAR, I'M JUST A BILL: CITATIONS TO LEGISLATIVE HISTORY BY THE ARIZONA SUPREME COURT AND UTAH SUPREME COURT 2 (2013), *available at* https://lib.law.washington.edu/lawlibrarianship/CILLPapers/Lamar2013.pdf (student term paper discussing "the use of legislative history by the state courts and attempts to find the original cases and statutes permitting its use"). In addition, the issue of use of legislative history by state courts has also received attention in a less quantitative manner. *See, e.g.*, Kenneth R. Dortzbach, *Legislative History: The Philosophies of Justices Scalia and Breyer and the Use of Legislative History by the Wisconsin State Courts*, 80 MARQ. L. REV. 161 (1997); Stacey L. Gordon & Helia Jazayeri, *Lost Legislative Intent: What Will Montanans Do When the Meaning Isn't Plain?*, 70 MONT. L. REV. 1 (2009); Russell Holder, *Say What You Mean and Mean What You Say: The Resurrection of Plain Meaning in California Courts*, 30 U.C. DAVIS L. REV. 569 (1997); Steven R. Thorpe, *Uncovering Legislative History Sources in Tennessee*, TENN. B.J., May–June 1995, at 18–25; Arthur Wang, *Legislative History in Washington*, 7 U. PUGET SOUND L. REV. 571 (1984). Finally, descriptions of state legislative history resources are also plentiful. For example, in 2011, Legal Reference Services Quarterly published a themed issue that included separate articles on 13 states. *See generally Introduction to Special Issue: Determining Legislative Intent in State Courts: Selected Methods and Sources*, 30 LEGAL REFERENCE SERVS. Q. 1, Jan.–June 2011, at 1.

17. Contemporaneous circumstances and contemporaneous commentary were coded together as one item.

preeminent treatise on statutory interpretation classifies legislative history as an extrinsic aid to understanding a statute, noting that other similar aids might come from the executive or judicial branch or be nongovernmental.[18] The treatise continues, noting that

> aids can be divided chronologically into: (1) preenactment history, including circumstances and events leading up to a bill's introduction; (2) enactment history, including all actions taken and statements made during legislative consideration of the original bill from the time of its introduction until final enactment; and (3) postenactment history, including amendments and any other developments relevant to a statute's operation subsequent to enactment.[19]

For the purposes of this Article, legislative history is construed a bit more broadly than enactment history, referring to a bill's history from drafting through enactment.

The other historical elements considered relate to preenactment and postenactment histories. For the purposes of this Article, the following definitions apply:

- Code history: the evolution of the subject matter in the Code, prior to or after the passage of a particular piece of legislation.
- Legislative response: legislative action taken in apparent response to a related court decision (typically revealed by looking at Code history, though sometimes identified through legislative history).[20]
- Legislative acquiescence: legislative inaction after one or more related court decisions (typically revealed by looking at Code history).
- Contemporaneous circumstances: the historical context that informed the legislature.
- Contemporaneous commentary: external analysis of a statute concurrent with its enactment and implementation.

18. 2A NORMAN J. SINGER & SHAMBIE SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 48:1, at 547 (7th ed. 2014).

19. *Id.* § 48:1, at 548–50.

20. *See, e.g.*, Schaefer v. Putnam, 841 N.W.2d 68, 81 (Iowa 2013) ("The bill specifies that the mediation requirements in Code sections 654A.6 and 654B.3 are jurisdictional prerequisites that must be satisfied before a case can be filed under those chapters. A 1999 federal district court ruling held that the current Code language did not prevent the filing of a suit under chapter 654B prior to mediation of the dispute.") (quoting H.F. 2521, 78th Gen. Assemb., 2d Sess., Explanation (Iowa 2000)).

III. CREATING AND INTERPRETING STATUTES IN IOWA: AN INTRODUCTION

The manner in which statutes are drafted in Iowa and the court's framework for statutory interpretation provide essential background information.

A. *Drafting Iowa Statutes*

In Iowa, the Legislative Services Agency (LSA), "a nonpartisan, central legislative staff agency,"[21] drafts bills upon the request of a legislator or legislative committee.[22] The LSA's roots run deep, created in 1955 as the Legislative Research Bureau (LRB)[23] then becoming the Legislative Service Bureau (LSB) in 1969[24] before assuming its current name in 2003.[25] Bill drafting has been part of the agency's mission throughout these years, although it was not always the exclusive provider of bill-drafting services.[26] Currently, a completed bill request form initiates the drafting process.[27] The drafter returns the bill to the requesting legislator for review and approval or request for further changes.[28]

Chamber rules require that a brief explanation be attached to most introduced bills. Senate Rule 29 provides,

21. IOWA CODE § 2A.1(1) (2013).

22. *See id.* § 2A.1(2)(a). For additional information on the Legislative Services Agency (LSA) see LEGISLATIVE GUIDE: THE IOWA GENERAL ASSEMBLY, LEGAL SERVS. DIV. 31–43 (2006), *available at* https://www.legis.iowa.gov/docs/resources/gaguide.pdf.

23. Act of May 9, 1955, ch. 48, § 1, 1955 Iowa Acts 75.

24. *See* Act of June 5, 1969, ch. 69, § 39, 1969 Iowa Acts 84.

25. Act of April 14, 2003, ch. 35, § 1, 2003 Iowa Acts 44 (codified as amended at IOWA CODE § 2A.1).

26. *See* Act of May 9, 1955, ch. 48, § 5(3), 1955 Iowa Acts 76; *see also* 47 IOWA OFFICIAL REG. 98 (1957–1958) (noting the Legislative Research Bureau (LRB) functions include bill drafting); William J. Yost, Note, *Before a Bill Becomes a Law—Constitutional Form*, 8 DRAKE L. REV. 66, 66 n.1 (1959) (implying that the legislator could either draft the bill or ask someone else to draft it).

27. LEGAL SERVS. DIV., *supra* note 22, at 31–32.

28. *Id.* at 32. Richard Johnson, Dir., Legal Servs. Div. of the LSA, indicates legislators often do request redrafting so that the bill better meets their intent. Richard Johnson Discusses Legislative Bill Drafting, Fiscal One-On-One (Nov. 2011), https://www.legis.iowa.gov/DOCS/AudioVideo/fiscalOneOnOne/One-On-One%20Legislative%20Bill%20Drafting.mp3.

> No bill, except appropriation committee bills and simple or concurrent resolutions, shall be introduced unless a concise and accurate explanation is attached. The chief sponsor or a committee to which the bill has been referred may add a revised explanation at any time before the last reading, and it shall be included in the daily clip sheet.[29]

House Rule 27 provides, in relevant part, "All bills and joint resolutions introduced shall be prepared by the legislative services agency with title, enacting clause, text and explanation as directed by the chief clerk of the house."[30] These explanations have been required by rule for many decades, dating back to 1941 for the House and 1969 for the Senate.[31]

Chamber rules also require that certain types of legislation include a fiscal note explaining the law's financial impact.[32] Joint Rule 17 requires legislation that "reasonably could have an annual effect of at least one hundred thousand dollars or a combined total effect within five years after enactment of five hundred thousand dollars" to have a fiscal note attached.[33] The rule excludes "appropriation[s] and ways and means measures where the total effect is stated in dollar amounts."[34] These notes, also drafted by the LSA, must be attached to the original bill and legislators may request the note be revised if an adopted amendment changes the bill's fiscal effect.[35]

29. S. Res. 5, 85th Gen. Assemb., 1st Sess. (Iowa 2013), *available at* http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&Service=Billbook&menu=text&hbill=SR5&ga=85, *reprinted in* EIGHTY-FIFTH GENERAL ASSEMBLY SENATE RULES 10 (2013), *available at* https://www.legis.iowa.gov/docs/ChamberRules/SenateRules.pdf.

30. H. Res. 7, 85th Gen. Assemb., 1st Sess. (Iowa 2013), *available at* http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&Service=Billbook&menu=text&hbill=HR7&ga=85, *reprinted in* EIGHTY-FIFTH GENERAL ASSEMBLY HOUSE RULES 7 (2013), *available at* https://www.legis.iowa.gov/docs/ChamberRules/HouseRules.pdf.

31. EDWARDS ET AL., *supra* note 6, at 172.

32. H. Con. Res. 5, 85th Gen. Assemb., 1st Sess. (Iowa 2013), *available at* http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&Service=Billbook&menu=text&hbill=HCR5&ga=85, as amended by S. Con. Res. 101, 85th Gen. Assemb., 2d Sess. (Iowa 2014), *available at* http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&Service=Billbook&menu=text&hbill=SCR101&ga=85, *reprinted* in EIGHTY-FIFTH GENERAL ASSEMBLY JOINT RULES 5 (2013) [hereinafter 85th Gen. Assemb. J. Rules], *available at* http://www.legis.iowa.gov/docs/ChamberRules/JointRules.pdf.

33. *Id.*

34. *Id.*

35. *Id.*

Monetary effect is also considered in correctional impact statements.[36] These statements are required for legislation that "proposes a change in the law which creates a public offense or significantly changes an existing public offense or the penalty for an existing offense."[37] The statement must note the effect on the number of criminal cases, cost of confinement, and capacity of jails, prisons, and related correctional facilities.[38] The LSA prepares these statements.[39]

Any bill amendments introduced during the legislative process are also drafted by the LSA.[40] For each legislative session, a bill book is maintained that includes all introduced bills and amendments to each.[41] This includes all amendments introduced, whether adopted or not, as well as any associated fiscal notes with correctional impact statements incorporated as relevant.[42]

B. *Iowa Statutory Construction*

Rules for interpreting Iowa statutes are found in the Code, court rules, and judicial precedent.[43] Although a comprehensive exposition of Iowa statutory construction is beyond the scope of this Article,[44] this Part introduces the most basic interpretive rules and those that apply to the use of historical sources. In addition, this Part discusses the codification of the

36. *See* LEGAL SERVS. DIV., *supra* note 22, at 37.

37. *Id.*

38. *Id.*; IOWA CODE § 2.56(1) (2013).

39. § 2.56(3).

40. LEGAL SERVS. DIV., *supra* note 22, at 33. Note that although bill amendments do not currently have explanations attached, this was apparently not always the case. *See, e.g.*, B. Book for H.F. 587, 64th Gen. Assemb., 1st Sess. (Iowa 1971) at 5, *available at* https://www.legis.iowa.gov/docs/shelves/billbooks/64GA/HF%200587.pdf (including an explanation to an amendment to the bill).

41. EDWARDS ET AL., *supra* note 6, at 171; *see generally Bill Book*, IOWA LEGISLATURE, http://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&Service=Billbook (last visited Nov. 7, 2014).

42. EDWARDS ET AL., *supra* note 6, at 171–73.

43. *See, e.g.*, §§ 4.1–.14.

44. Such broader analyses of high court statutory interpretation have been conducted at the state level elsewhere. *See, e.g.*, Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1771–1811 (2010) (considering Oregon, Texas, Connecticut, Michigan, and Wisconsin); Philip A. Talmadge, *A New Approach to Statutory Interpretation in Washington*, 25 SEATTLE U. L. REV. 179 (2001); Adam G. Yoffie, *From Poritz to Rabner: The New Jersey Supreme Court's Statutory Jurisprudence, 2000–2009*, 35 SETON HALL LEGIS. J. 302 (2011).

rule permitting the use of historical sources, including legislative history.[45]

1. *Statutory Construction Rules*

The Iowa Supreme Court has made it quite clear that, in interpreting statutes, it is trying to determine legislative intent.[46] Although sometimes expressed less emphatically, justices often use language similar to this: "[I]n judicially construing applicable statutes, the polestar is unquestionably legislative intent."[47]

The words of the statute provide the starting point for determining intent.[48] In reviewing those words, the court is to take care not to overstep its authority and legislate from the bench. The fundamental tenet that, "[i]n construing statutes, the court searches for the legislative intent as shown by

45. For additional descriptions of Iowa statutory interpretation as it pertains to specific subject areas, see 4A B. JOHN BURNS, IOWA PRACTICE: CRIMINAL PROCEDURE § 2:3 (Thomson Reuters Westlaw 2014 ed.); Mark S. Soldat, *Penalties and Interest in Iowa Workers' Compensation Law: Statutory Construction, Common-Law Legislation, and Everything In-Between and Beyond*, 45 DRAKE L. REV. 871, 874–77 (1997); and Brad Perri, Note, *Financing the Future: Interpreting the "Economic Development Area" Provision of the Iowa TIF Statute*, 50 DRAKE L. REV. 159, 166–77 (2001). 2A SINGER & SINGER, *supra* note 18, provides a broader and deeper look at rules of statutory construction. Although it is not Iowa-specific, this treatise is often cited by the Iowa Supreme Court. *E.g.*, Teamsters Local Union No. 421 v. City of Dubuque, 706 N.W.2d 709, 714 (Iowa 2005) (citing 2A SINGER, *supra*, § 47.01, at 208) (citing Singer to acknowledge that statutory interpretation always begins with the statute's words); State v. Carpenter, 616 N.W.2d 540, 543–44 (Iowa 2000) (citing 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION §§ 47.23–.25, at 315, 318, 319, 325, 327 (6th ed. 2000)) (using a prior edition of the treatise to support, among other things, the proposition that the search for legislative intent governs statutory interpretation).

46. *See, e.g.*, Hardin Cnty. Drainage Dist. 55, Div. 3, Lateral 10 v. Union Pac. R. Co., 826 N.W.2d 507, 512 (Iowa 2013) ("When approaching a statutory construction issue, we 'begin . . . with a firm understanding of our task. It is only to determine the intent of the legislature.'" (alteration in original) (quoting Andover Volunteer Fire Dep't v. Grinnell Mut. Reins. Co., 787 N.W.2d 75, 81 (Iowa 2010))); Harris v. Olson, 558 N.W.2d 408, 410 (Iowa 1997) ("Legislative intent, the polestar of statutory interpretation, guides our analysis.") (citing Doe v. Ray, 251 N.W.2d 496, 500 (Iowa 1977)); Barnes Beauty Coll. v. McCoy, 279 N.W.2d 258, 259 (Iowa 1979) ("The polestar is legislative intent. Our task is to search out that intent and, wherever possible, give it effect.").

47. Iowa Dep't of Revenue v. Iowa Merit Emp't Comm'n, 243 N.W.2d 610, 614 (Iowa 1976); *accord* cases cited *supra* note 46.

48. *See In re* Det. of Geltz, 840 N.W.2d 273, 275 (Iowa 2013) ("We look 'first and foremost to the language [the legislature] chose in creating the act.'" (quoting *In re* Det. of Swanson, 668 N.W.2d 570, 574 (Iowa 2003))).

what the legislature said, rather than what it should or might have said"[49] is captured in the Iowa Rules of Appellate Procedure as "so well established that authorities need not be cited in support of" it.[50] Moreover, the court "may not extend, enlarge, or otherwise change the meaning of a statute under the guise of construction."[51]

However, while the court is not to consider what the legislature "should or might have said,"[52] the canon of construction *expressio unius est exclusio alterius*[53] permits the court to consider what the legislature did not say: "When interpreting statutes, we follow the rule that legislative intent is 'expressed by omission as well as by inclusion,'"[54] although the rule "is

49. IOWA R. APP. P. 6.904(3)(m).

50. IOWA R. APP. P. 6.904(3).

51. Mulhern v. Catholic Health Initiatives, 799 N.W.2d 104, 113 (Iowa 2011) (citing Auen v. Alcoholic Beverages Div., 679 N.W.2d 586, 590 (Iowa 2004)). At times, the court elaborates on this message. *See, e.g.*, Anderson v. State, 801 N.W.2d 1, 6–7 (Iowa 2011) (quoting Holland v. State, 115 N.W.2d 161, 164 (1962)) ("It is worth repeating in full Justice Thompson's timeless admonition regarding our court's role in statutory interpretation:

> Why the change was made, why the legislature deemed it proper . . ., we do not know, nor is it important that we should understand. Ours not to reason why, ours but to read, and apply. It is our duty to accept the law as the legislative body enacts it. We do not decide what the legislature might have said, or what it should have said in the light of the public interest to be served, but only what it did say; and this we must gather from the language actually used. When a statute is plain and its meaning clear, there is no room for interpretation; or, to put it in another way, there is only one possible construction . . . . If we do not follow the clear language of a statute, or of the Constitution, but by a fallacious theory of construction attempt to impose our own ideas of what is best, even if in so doing we conceive that we are promoting the public welfare and achieving a desirable result, we are indulging in judicial legislation and are invading the province of the Legislative branch of the Government, or of the electorate in amending the basic law. The end does not in such cases justify the means. We must accept [the statute] as the legislature wrote it, and its meaning is definite and beyond fair debate." (alterations in original)).

52. IOWA R. APP. P. 6.904(3)(m).

53. *See* Marcus v. Young, 538 N.W.2d 285, 289 (Iowa 1995) ("[E]xpression of one thing is the exclusion of another. This expresses the well-established rules of statutory construction that legislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned." (citations omitted)).

54. Wiebenga v. Iowa Dep't of Transp., Motor Vehicle Div., 530 N.W.2d 732, 735 (Iowa 1995) (quoting Barnes v. Iowa Dep't of Transp., 385 N.W.2d 260, 263 (Iowa 1986)).

subordinate to the primary search for the intention of the legislature."[55] The omitted words might be observed when a statute explicitly references one Code section but not another[56] or includes a list of exceptions, which the court presumes to be a complete list.[57] Missing language might also be noted when comparing two statutes that are very similar.[58]

When the written statute is "clear and unambiguous, [the court] appl[ies] a plain and rational meaning consistent with the subject matter of the statute."[59] In addition to avoiding absurd results, the construction should uphold the statute's purposes.[60] A literal interpretation that would lead to absurd results contrary to the statute's purpose makes the statute ambiguous.[61] A statute is also considered ambiguous when it has more than one reasonable interpretation.[62] "Ambiguity may arise from specific language used in a statute or when the provision at issue is considered in the context of the entire statute or related statutes."[63]

55. Faeth v. State Farm Mut. Auto. Ins. Co., 707 N.W.2d 328, 333 (Iowa 2005) (citing State v. Carpenter, 616 N.W.2d 540, 543 (Iowa 2000)).

56. *See, e.g.*, Kucera v. Baldazo, 745 N.W.2d 481, 487 (Iowa 2008) (applying Iowa Code section 20.18 to city employees but not deputy sheriffs (county employees) in noting that the amended Code section references the Chapter on city employees but not the Chapter on county employees). *But see Carpenter*, 616 N.W.2d at 544 ("We conclude the omission of section 902.12 from section 232.8(1)(c) does not imply the provisions of section 902.12 are excluded from the sentence served by a juvenile for a forcible felony applicable to section 902.12. The clear intent of section 232.8(1)(c) is to subject certain juvenile offenders to the same treatment as adult offenders.").

57. *E.g.*, Iowa Farmers Purchasing Ass'n, Inc. v. Huff, 260 N.W.2d 824, 827 (Iowa 1977) ("[W]here certain exceptions are enumerated, it is presumed the legislature intended no others be created.").

58. *E.g.*, *In re* Det. of Geltz, 840 N.W.2d 273, 278 (Iowa 2013) ("[T]he legislature is aware that the term 'convicted' does not include juvenile adjudications, and for that reason, section 692A.101(7) expressly mentions juvenile adjudications as an additional trigger for registration requirements. By contrast, section 229A.2(11) makes no mention of juvenile adjudications.").

59. ABC Disposal Sys., Inc. v. Dep't of Natural Res., 681 N.W.2d 596, 603 (Iowa 2004) (citing City of Waukee v. City Dev. Bd., 590 N.W.2d 712, 717 (Iowa 1999)).

60. Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 427 (Iowa 2010) (quoting Case v. Olson, 14 N.W.2d 717, 719 (Iowa 1944)) (noting that even when the statute does not seem ambiguous, the court can depart from a literal interpretation if it would lead to an absurd, unjust outcome inconsistent with the statute's purpose).

61. *Id.* at 427 n.8.

62. *See* Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996) (citing Holiday Inns Franchising, Inc. v. Branstad, 537 N.W.2d 724, 728 (Iowa 1995)).

63. Midwest Auto. III, LLC v. Iowa Dep't of Transp., 646 N.W.2d 417, 425 (Iowa

"Numerous intrinsic aids can help courts discover the intent of a statute in the face of an ambiguity."[64] These aids may include a number of canons of construction,[65] many of which are codified in Chapter 4 of the Code of Iowa, titled "Construction of Statutes."[66] Although this study did not quantify the use of all of these canons, in the hundreds of cases consulted it seems clear the Iowa Supreme Court's interpretation of a statute frequently relies on reading the statute in whole and in context.[67] In part,[68] this means the court considers the statute's placement in the Code structure[69] (including its title,

2002) (citing State *ex rel.* Miller v. Midwest Pork, L.C., 625 N.W.2d 694, 700 (Iowa 2001)).

64. Andover Volunteer Fire Dep't v. Grinnell Mut. Reins. Co., 787 N.W.2d 75, 82 (Iowa 2010). The *Andover* court discussed two intrinsic aids, both of which are rules of statutory construction. *See id.* ("First, we interpret statutes in their context. Second, undefined words used in the statute are normally given their ordinary and common meaning." (citation omitted)).

65. *See* Jacob Scott, *Codified Canons and the Common Law of Interpretation*, 98 GEO. L.J. 341, 427–31 (2010) (listing 73 different canons and notes that have been incorporated, either as an express adoption or rejection, into the Codes of all 50 states and the District of Columbia). This tremendously valuable resource contains one oversight with regard to Iowa. Under the "Technical Changes" heading in Appendix B, "Codified Canons by Legislature," it should have been noted that Iowa adopted the "Written numbers" canon. *See* IOWA CODE § 4.1(8) (2013); *contra* Scott, *supra*, at 428.

66. *See generally* §§ 4.1–.14.

67. *See* Judicial Branch v. Iowa Dist. Ct. for Linn Cnty., 800 N.W.2d 569, 576 (Iowa 2011) ("Our job is to consider a statute as a whole, rather than isolated parts." (citing Thoms v. Iowa Pub. Emps.' Ret. Sys., 715 N.W.2d 7, 13 (Iowa 2006))); Rolfe State Bank v. Gunderson, 794 N.W.2d 561, 564 (Iowa 2011) ("The overall structure of a statute can have strong influence on the meaning of particular words and phrases." (citing AOL LLC v. Iowa Dep't of Revenue, 771 N.W.2d 404, 409 (Iowa 2009))).

68. Depending on the specific facts of the case, the court may employ a wide variety of other interpretive aids in construing statutes.

69. *See Rolfe State Bank*, 794 N.W.2d at 567 ("At the outset, we regard it as unlikely that the legislature would place a significant expansion of the application of minority and marketability discounts with respect to a wide variety of transactions in a division of the Iowa Banking Act dealing solely with bank mergers. . . . [I]t would have more likely placed this language in the general provisions of the Iowa Business Corporation Act.").

subtitle, or chapter);[70] looks for statutory definitions,[71] legislative findings,[72] and statements of purpose;[73] harmonizes related Code provisions;[74] and avoids both rendering words superfluous[75] and construing statutes in such a way as to not question their constitutionality.[76] Subject-specific rules of construction may also apply.[77]

70. *See, e.g.*, Iowa Sup. Ct. Attorney Disciplinary Bd. v. Rhinehart, 827 N.W.2d 169, 176–77 (Iowa 2013) (stating the court's conclusion that a rule of professional conduct applies to behavior in the role of advocate "is buttressed by the fact that this rule is found in a section of the rules entitled, 'Advocate.'").

71. *See, e.g.*, Rivera v. Woodward Res. Ctr., 830 N.W.2d 724, 730 (Iowa 2013) ("We are primarily guided by the definition of the word 'claim' provided by our legislature in the Act. We are bound to follow statutory definitions and to use them to build the foundation of our interpretive analysis." (citation omitted)).

72. *E.g.*, Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co., 606 N.W.2d 370, 376 (Iowa 2000) (using legislative findings to determine the legislative intent and purpose of the statute).

73. *E.g.*, Gacke v. Pork Xtra, L.L.C., 684 N.W.2d 168, 177–78 (Iowa 2004) (examining the statute's statement of purpose to conclude it "is within the police power of the state").

74. *See, e.g.*, State v. Dann, 591 N.W.2d 635, 638 (Iowa 1999) (citing American Asbestos Training Ctr., Ltd. v. E. Iowa Cmty. Coll., 463 N.W.2d 56, 58 (Iowa 1990)) ("When more than one statute is pertinent to the inquiry, the court considers the statutes together in an attempt to harmonize them.").

75. Thoms v. Iowa Pub. Emps.' Ret. Sys., 715 N.W.2d 7, 15 (Iowa 2006) (determining the correct way to calculate public pension retirement benefits in part because the alternative method would render part of the statute unnecessary).

76. State v. Jones, 817 N.W.2d 11, 17 (Iowa 2012) ("[W]e strive to avoid constitutional problems when we interpret our rules. If possible, we will construe a rule to avoid doubts as to its constitutionality." (citation omitted)).

> The principle that we interpret statutes to avoid unconstitutional results should be used judiciously. It is only a rule of construction and only one of several such rules. When we rely on that rule to reach an implausible interpretation when the more plausible interpretation would also be constitutional, as it is here, we are reshaping what the legislature gave us and exceeding our proper role.

Id. at 23 (Mansfield, J., concurring specially) (citation omitted).

77. *See, e.g.*, State v. Lindell, 828 N.W.2d 1, 5 (Iowa 2013) ("[W]e construe criminal statutes strictly and resolve doubts in favor of the accused." (citing State v. Adams, 810 N.W.2d 365, 369 (Iowa 2012))), *cert. denied*, 134 S. Ct. 249. For a more thorough discussion of the Iowa Supreme Court's use of the rule of lenity, see *id.* at 13 (noting that when legislative history clearly indicates legislative intent, the rule of lenity will not apply (quoting State v. Hearn, 797 N.W.2d 577, 586 (Iowa 2011))). Tax is another area with subject-specific rules of construction. *See, e.g.*, Dial Corp. v. Iowa Dep't of Revenue, 634 N.W.2d 643, 646 (Iowa 2001) ("Tax exemption statutes are construed strictly, with all

Iowa Code Chapter 4 begins with a statement that emphasizes both legislative intent and context: "In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute . . . ."[78]

Among these statutory rules, the Code expressly enumerates seven extrinsic aids that "the court, in determining the intention of the legislature, may consider among other matters" when interpreting an ambiguous statute, including the following historical sources:

> 2. The circumstances under which the statute was enacted.
>
> 3. The legislative history.
>
> 4. The common law or former statutory provisions, including laws upon the same or similar subjects.[79]

The court has noted that understanding the circumstances under which the statute was enacted—contemporaneous circumstances—helps ascertain

doubts resolved in favor of taxation." (quoting Heartland Lysine, Inc. v. Iowa Dep't of Revenue & Fin., 503 N.W.2d 587, 588 (Iowa 1993)) (internal quotation marks omitted)). Note, too, that the application of another rule of construction—such as considering the statute's purpose—may give rise to additional subject-specific rules. Second Injury Fund of Iowa v. Kratzer, 778 N.W.2d 42, 46 (Iowa 2010). "Workers' compensation statutes are to be liberally construed in favor of the employee." *Id.* (citing Myers v. F.C.A. Servs., Inc., 592 N.W.2d 354, 356 (Iowa 1999)).

> The legislature enacted the workers' compensation statute primarily for the benefit of the worker and the worker's dependents. Therefore, we apply the statute broadly and liberally in keeping with the humanitarian objective of the statute. We will not defeat the statute's beneficent purpose by reading something into it that is not there, or by a narrow and strained construction.

Id. (quoting Holstein Elec. v. Breyfogle, 756 N.W.2d 812, 815–16 (Iowa 2008)).

78. IOWA CODE § 4.1 (2013).

79. *Id.* § 4.6 (first item omitted). Iowa is one of several states whose Code expressly provides for consideration of legislative history. *See* Scott, *supra* note 65, at 419 (listing 11 states—Colorado, Connecticut, Hawaii, Iowa, Minnesota, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, and Texas—that codified a provision allowing consideration of legislative history in statutory interpretation under various circumstances); *see also* Mary Whisner, *Other Uses of Legislative History*, 105 LAW LIBR. J. 243, 252–54 (2013) (listing 11 states whose codes explicitly allow the use of legislative history in statutory construction—Colorado, Iowa, Louisiana, Minnesota, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, and Texas—and another three that arguably allow it—Georgia, Hawaii, and Massachusetts).

legislative intent to properly interpret the statute.[80] A related interpretive tool considers contemporaneous understandings of a statutory scheme.[81] This has also been used by the court, in part to supplement legislative history.[82]

Legislative history is something the court has noted that it is able to consider[83] and finds instructive.[84] The court has also articulated interpretive rules specific to bill explanations. This has been primarily expressed as acknowledgement that the court "give[s] weight to explanations attached to a bill,"[85] although, as will be further discussed later, the court appears to be in the process of refining this rule.[86] When Iowa enacts a law based on a law from another jurisdiction or a model or uniform law, the court also looks to the history of that legislation in the absence of direct Iowa legislative history.[87] Changes in the way Iowa enacted the model legislation are also considered to indicate legislative intent.[88]

The court has sometimes characterized its use of former statutory

80. State v. Jenkins, 788 N.W.2d 640, 642 (Iowa 2010).

81. Scott, *supra* note 65, at 381 & n.222 (considering Section 4.6 a codification of this canon, as well as a codification of the allowance of consideration of contemporaneous circumstances).

82. *See* Oyens Feed & Supply, Inc. v. Primebank, 808 N.W.2d 186, 188 (Iowa 2011) (noting "[o]ther legislative history is sparse" and therefore considering "[c]ommentators contemporaneous [input relevant] to the [statute's] enactment").

83. Mulhern v. Catholic Health Initiatives, 799 N.W.2d 104, 113 (Iowa 2011) (citing State v. Allen, 708 N.W.2d 361, 366 (Iowa 2006)).

84. Postell v. Am. Family Mut. Ins. Co., 823 N.W.2d 35, 49 (Iowa 2012) (citing *Allen*, 708 N.W.2d at 366; Richards v. Iowa Dep't of Revenue, 362 N.W.2d 486, 488 (Iowa 1985)).

85. *Id.* (citing City of Cedar Rapids v. James Props., Inc., 701 N.W.2d 673, 677 (Iowa 2005)).

86. *See infra* Part VI.B.

87. *See* State v. Lindell, 828 N.W.2d 1, 7–8 (Iowa 2013) ("Since the language of the statute was derived directly from the Model Anti-Stalking Code, we look to the comments from the model code to aid us in determining legislative intent."), *cert. denied*, 134 S. Ct. 249; Office of Citizens' Aide/Ombudsman v. Edwards, 825 N.W.2d 8, 15 n.2 (Iowa 2012) ("In the absence of instructive Iowa legislative history, we also look to the comments and statements of purpose contained in Uniform Acts to guide our interpretation of a comparable provision in an Iowa Act." (quoting Alcor Life Extension Found. v. Richardson, 785 N.W.2d 717, 722 (Iowa Ct. App. 2010)) (internal quotation marks omitted)), *reh'g denied* (Jan. 16, 2013).

88. *See* Freedom Fin. Bank v. Estate of Boesen, 805 N.W.2d 802, 814 (Iowa 2011) ("We can determine legislative intent from selective enactment or divergence from uniform acts.").

provisions as part of legislative history, noting it "consider[s] the legislative history of a statute, including prior enactments, when ascertaining legislative intent."[89] When considering code history, "[t]he legislature is presumed to know the state of the law, including case law, at the time it enacts a statute."[90] Changes to the relevant Code section(s) are presumed to change the law[91] and apply prospectively.[92] However, "remedial or procedural statutes may be applied retroactively."[93] To determine whether the statute should be applied retroactively, the court will "look at the language of the statute, the evil to be remedied, and whether there was an existing statute that governed the evil to be remedied."[94]

In addition, in some cases a Code section amendment is viewed as merely clarifying the law, rather than changing it, meaning the prior version of the statute should be applied as if the clarification were already in place.[95] The intent to clarify can be indicated through legislative history.[96] Clarification can also be shown by the timing of the Code section amendment: "When a statute is amended soon after controversy has arisen as to the meaning of ambiguous terms in an enactment, the court has reason to believe the legislature intended the amendment to provide clarification of such terms."[97] Conversely, when the legislature does not amend a Code section that the court has interpreted or amends it in such a way that does

89. State v. Romer, 832 N.W.2d 169, 176 (Iowa 2013) (quoting *In re* Estate of Bockwoldt, 814 N.W.2d 215, 223 (Iowa 2012)).

90. *In re* Estate of Vajgrt, 801 N.W.2d 570, 574 (Iowa 2011) (quoting State v. Jones, 298 N.W.2d 296, 298 (Iowa 1980)) (internal quotation marks omitted).

91. *In re* Estate of Myers, 825 N.W.2d 1, 6 (Iowa 2012) (citing Davis v. State, 682 N.W.2d 58, 61 (Iowa 2004)).

92. IOWA CODE § 4.5 (2013).

93. Hannan v. State, 732 N.W.2d 45, 51 (Iowa 2007); *see* § 4.5.

94. *Hannan*, 732 N.W.2d at 51 (citing Bd. of Trs. v. City of W. Des Moines, 587 N.W.2d 227, 231 (Iowa 1998)).

95. *See, e.g.*, Reilly v. Iowa Dist. Ct. for Henry Cnty., 783 N.W.2d 490, 494 (Iowa 2010) (noting there is no basis to claim retroactive application when an amendment clarifies rather than changes the law).

96. *See* City of Asbury v. Iowa City Dev. Bd., 723 N.W.2d 188, 196 (Iowa 2006). "When the legislature amends a statute, we generally presume it intended to change the statute's meaning." *Id.* (citing Martin v. Waterloo Cmty. Sch. Dist., 518 N.W.2d 381, 383 (Iowa 1994)). "However, this presumption can be overcome by legislative history or by an explanation accompanying the amendment." *Id.* (citing *Martin*, 518 N.W.2d at 383).

97. Taft v. Iowa Dist. Ct. for Linn Cnty., 828 N.W.2d 309, 317 (Iowa 2013) (citing Bob Zimmerman Ford, Inc. v. Midwest Auto. I, L.L.C., 679 N.W.2d 606, 610 (Iowa 2004)).

not affect the court's interpretation of the statute, the court considers this legislative acquiescence—evidence that the court has correctly interpreted the statute.[98]

Adoption dates are also considered when the court cannot harmonize two conflicting statutes or otherwise determine which prevails.[99] In such a case, "the statute latest in date of enactment by the general assembly prevails. If provisions of the same Act are irreconcilable, the provision listed last in the Act prevails."[100]

2. *History of Iowa Code Section 4.6*

At the beginning of Chapter 4, the directive to follow the rules of the Chapter unless they are "inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute"[101] dates back to the laws first enacted when Iowa was still a territory.[102]

The provisions in Section 4.6 permitting the courts to turn to legislative

98. *See, e.g.*, Richards v. Anderson Erickson Dairy Co., 699 N.W.2d 676, 682 (Iowa 2005) ("[T]he legislature's silence over the years is evidence of its tacit approval of our construction of the statutory framework."); *see also* Welch v. Iowa Dep't of Transp., Motor Vehicle Div., 801 N.W.2d 590, 599–600 (Iowa 2011).

99. There are additional tools the court uses first to determine which of two seemingly incompatible statutes prevails. For example, "[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision." IOWA CODE § 4.7 (2013).

100. *Id.* § 4.8; *accord* Iowa Right to Life Comm., Inc. v. Tooker, 808 N.W.2d 417, 429 (Iowa 2011) (citing Section 4.8 to support the conclusion that of two seemingly conflicting statutes, the later enacted one would take precedence).

101. § 4.1.

102. As part of an Act entitled "Construction of Statutes," the 1839 Statute Laws of the Territory of Iowa provided, "In the construction of all statutes the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the legislature, or repugnant to the context of the same statute . . . ." THE STATUTE LAWS OF THE TERRITORY OF IOWA 77 (1839). The Section continues, providing 17 interpretive rules related to interpretation of words and phrases. *Id.* at 77–79. Some of these interpretive rules are still present in the current provisions, with the addition of several others. *See generally* § 4.1. In an article that provides interesting observations about the nineteenth-century conception of the phrase "intention of the legislature," the author notes that the quoted language, which originated in the Iowa Territorial Code of 1839, was later adopted in Oregon. Jack L. Landau, *The Intended Meaning of "Legislative Intent" and Its Implications for Statutory Construction in Oregon*, 76 OR. L. REV. 47, 60 (1997) (internal quotation marks omitted).

history, Code history, and contemporaneous circumstances do not date to territorial times. They were adopted in 1971, when Iowa's 64th General Assembly unanimously enacted House File 587.[103] As noted in the Bill's explanation, it adopted "the majority of the provisions of the uniform statutory construction act not already contained in chapter 4 of the Code."[104] This result was not changed during the Bill's enactment history, wherein a single amendment defining the terms "shall," "must," and "may," was adopted.[105] The Iowa General Assembly adopted Section 4.6 substantially verbatim from the Uniform Act.[106] In the Uniform Act, the comment to this Section notes, "Although none of the mentioned extrinsic aids is to be controlling, the list simply provides a persuasive indication of the original legislative intent."[107] Similarly, the explanation of the enacted Iowa Bill notes,

> Other provisions of this Act establish guidelines for the interpretation of statutes. While the courts may not be bound to follow such rules in all cases, the existence of them cannot be ignored and they should aid in the interpretation of statutes. Iowa courts have in most cases held the proposed rules to be the law in Iowa.[108]

As indicated in the explanation, the adoption was seen as a codification of Iowa common law.[109] The bill drafting file, available at the State Archives, underscores that the Bill was seen as a codification of existing court

103. *See* Act of May 24, 1971, ch. 77, § 4, 1971 Iowa Acts 99, 99; *see also* H. JOURNAL, 64th Gen. Assemb., 1st Reg. Sess. 977 (Iowa 1971) (documenting there were 90 aye votes, 0 nay votes, and 10 absences or abstentions).

104. H.F. 587, 64th Gen. Assemb., 1st Sess. (Iowa 1971), at Explanation. The referenced uniform law is the MODEL STATUTORY CONSTR. ACT § 15, 14 U.L.A. 765–66 (1965).

105. *See* H. JOURNAL, *supra* note 103, at 976-77 (showing adoption of the amendment including the definitions of these terms); *see also* B. Book for Iowa H.F. 587, *available at* https://www.legis.iowa.gov/docs/shelves/billbooks/64GA/HF%200587.pdf (showing there were no other adopted amendments).

106. *Compare* IOWA CODE § 4.6, *with* MODEL STATUTORY CONSTR. ACT § 15, 14 U.L.A. 765. When enacting the law, the Iowa Legislature changed the Model Act Section by replacing semicolons at the end of each list item with periods and adding the words "or statement of policy" to the end of "7. The preamble." *Compare* Act of May 24, 1971, ch. 77, § 4, 1971 Iowa Acts 99, 99, *with* MODEL STATUTORY CONSTR. ACT § 15, 14 U.L.A. 765.

107. MODEL STATUTORY CONSTR. ACT, § 15 cmt., 14 U.L.A. 766.

108. Iowa H.F. 587, at Explanation.

109. *See id.*

practices.[110] Then-LSB Director Serge Garrison championed the Bill,[111] noting in a memo to then-State Representative Richard F. Drake that it "would be of benefit for bill drafting purposes and resolving a lot of doubts as to interpretation and intent."[112] In that same memo, Garrison notes that after extensively researching the Bill, he asked former Iowa Supreme Court Chief Justice Theodore Garfield to review it, and Justice Garfield "agreed that it expresses the law in Iowa and also agreed that it would be useful to insert such law into the statutes."[113]

The bill drafting file also includes a memo from Garrison with a more extensive explanation of the Bill that explains its purpose:

> The purpose of the codification is to put the General Assembly on record as agreeing with previous judicial holdings so that legislation may be written fully understanding the rules that will be used to interpret the legislation. The codification will allow any person interested in legislation to refer to the statutes in order to determine how such statutes might be interpreted.[114]

In addition, the bill drafting file contains an extensive memo that both compares "the Uniform Statutory Construction Act and Iowa statutory and case law" and also notes "which extrinsic aids the Supreme Court of Iowa uses, or might use if they were made available as part of the legislative

110. In the years studied by this Article, the court did not cite materials from the bill drafting file. These materials are more removed from the legislature than items in the bill book. In many cases, the files might not have much additional information beyond the bill request form and the original bill draft. However, in this case, the bill drafting file contained a wealth of information, including the memos cited *infra* notes 111–15. For more information about these files, including which files can be accessed and how to obtain them, see *Iowa Legislative History*, DRAKE LAW LIBRARY, http://libguides.law.drake.edu/IowaLegHist (last updated Dec. 3, 2014), at *Step 8: Bill Drafting Files*.

111. As the head of the unit tasked with drafting bills, Garrison would naturally have specific interest in this Bill. *See* 53 IOWA OFFICIAL REGISTER 1969–70 118 (L. DALE AHERN ED. 1969). LSB services were to be objective. *Id.* at 117. Garrison recognized the possible conflict with his advocacy, noting, "I do not know if I would have to register as a lobbyist for this bill, however I think it has a great deal of merit." Memorandum from Serge H. Garrison, Dir., Iowa Legislative Services Bureau (LSB), to Charles H. Pelton, Iowa State Rep. 1 (Jan. 11, 1971) (on file with Author).

112. Memorandum from Serge H. Garrison, Dir., Iowa LSB, to Richard F. Drake, Iowa State Rep. 2 (March 12, 1971) (on file with Author).

113. *Id.* at 1.

114. Memorandum from Serge H. Garrison, Dir., Iowa LSB, Explanation of H. File 587 Enacting Rules of Statutory Construction 1 (Apr. 12, 1971) (on file with Author).

history of a statute, in determining legislative intent."[115] Prepared by LRB staff member Jim Wisby at Garrison's request several years before the enacting legislation was introduced,[116] the memo cites cases in which the court has already applied similar rules to those of Sections 13–25 of the Uniform Act.[117] Considering Section 15, the basis for what became Iowa Code Section 4.6, the three cited cases mentioning legislative history indicate it has no effect when the statute is unambiguous, but it can be considered when the statute is ambiguous.[118]

The memo also considers the specific legislative history sources the court might use, discussing available materials, providing some examples of sources cited in the past, and recommending a few changes.[119] The memo notes that not all of the sources considered include the type of information the courts would find most useful in ascertaining intent.[120] Over the years, some of these sources have become more accessible, but they still do not have the kinds of statements of intent Wisby recommended.[121]

The memo begins by discussing the legislative journals, widely available both then and now.[122] Wisby provides an example of the court citing the journals when referring to adopted bill amendments in interpreting a statute.[123] He also notes that standing committee reports are accessible because they are reprinted in the journals, but they are not very useful because they do not contain sufficient detail explaining the committee's recommendations about whether the Bill should pass.[124] Wisby suggests adding "an explanation of the committee's reasons for [the]

115. Staff Memorandum from Iowa LRB 1 (Oct. 10, 1968) [hereinafter Staff Memo].

116. *See* Garrison, *supra* note 112, at 1.

117. *See generally* Staff Memo, *supra* note 115, at 2–13.

118. *Id.* at 5 (citing City of Emmetsburg v. Gunn, 86 N.W.2d 829 (Iowa 1957); Iowa–Ill. Gas & Elec. Co. v. City of Bettendorf, 41 N.W.2d 1 (Iowa 1950); Indep. Sch. Dist. of Cedar Rapids v. Iowa Emp't Sec. Comm'n, 25 N.W.2d 491 (Iowa 1946)). Note, too, that the cited 1946 case reinforces the court's established practice of turning to legislative history to ascertain intent. *Indep. Sch. Dist. of Cedar Rapids*, 25 N.W.2d at 496 ("We have frequently held that history of legislation may properly be considered in case of ambiguity.").

119. Staff Memo, *supra* note 115, at 13–20.

120. *See id.* at 20.

121. It is unclear what kind of consideration the recommendations in the memo were given beyond the fact that they were seen by Serge Garrison, then-Director of the LRB.

122. Staff Memo, *supra* note 115, at 13–14.

123. *Id.* at 13 (citing Lever Bros. Co. v. Erbe, 87 N.W.2d 469 (Iowa 1958)).

124. *Id.* at 13–14.

recommendation, as well as a statement of its understanding of the nature, purpose and effect of the bill."[125] This recommendation has not been adopted.[126]

Study committee reports are noted as a potentially valuable source of legislative history information—and one the court has endorsed in the past.[127] Here, Wisby also states, "A specific statement of the study committee's intent as to the purposes of a particular study bill, or comments to that effect following the sections within the bill, would be a valuable aid to Iowa courts in construing a statute based on that study bill."[128] He also recommends the statement of intent be republished in the journals, presumably to make it easier to access, because at the time these reports were only available through the LSB.[129] The recommendation to include such a statement in the journals has not been adopted.

Even though these statements are not in the journals, it has become much easier to access interim study committee reports in the Internet era.[130] These reports include potentially useful information, such as study bills arising from the committee work, the committee charge, summaries of meetings or testimony before the committee, recommendations, and a list of materials distributed for the committee's meetings, which are on file with the LSA.[131] If the study committee formulates a study bill, the committee sponsorship should be noted on the study bill.[132] Any subsequent house or senate files introduced on the basis of a study bill should have that study bill number referenced in the bill history, allowing a researcher to trace the bill back to the related interim study committee report.[133] However, if the bill

125. *Id.* at 14.

126. *See, e.g.*, S. JOURNAL, 85th Gen. Assemb., 2d Sess. 298 (Iowa 2014) (recommending S.F. 2240 for approval without explanation).

127. Staff Memo, *supra* note 115, at 14 (citing Yarn v. City of Des Moines, 54 N.W.2d 439 (Iowa 1952)).

128. *Id.* at 15.

129. *Id.* at 14–15.

130. For options for accessing interim study committee reports, see *supra* note 110, at *Step 7: Reports*.

131. *See generally Committees*, IOWA LEGISLATURE, https://www.legis.iowa.gov/committees (last visited Nov. 12, 2014).

132. *See, e.g.*, S. Study B. 3164, 82d Gen. Assemb., 2d Sess. (Iowa 2008), *available at* http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=BillInfo&Service=Billbook&ga=82&hbill=SSB3164 (noting study bill was "recommended by Freedom of Information, Open Meetings, and Public Records Interim Study Committee").

133. *See* B. History for S.F. 2378, 82d Gen. Assemb., 2d Sess. (Iowa 2008), *available*

was not directly created through interim study committee work but was instead inspired by study committee recommendations, nothing routinely recorded in the bill history indicates the connection.[134] This standard is deliberate because the legislation as introduced may vary from the study committee recommendations, and an overt connection between the two may misleadingly suggest the bill completely endorses the study committee work.[135]

Wisby did not find any examples of the court consulting the minutes of standing or study committee meetings or hearings, which he attributed to the fact that "no official verbatim record of such meetings and hearings has been kept in Iowa,"[136] although minutes summarizing those meetings and hearings were available then, as they are today.[137] He discusses a then-current proposal to begin recording standing committee minutes as well.[138] Those minutes are now recorded and, for recent years, are easily available through the General Assembly website.[139]

Wisby discusses the problem with using the comments of individual legislators to ascertain legislative intent—not knowing whether the comments of one individual reflect the sentiment of the majority.[140] After noting the same argument could also be applied to committee meeting and hearing statements, Wisby notes a then-current proposal for LSB to begin recording audio of floor debates.[141] Wisby believes the Iowa Supreme Court

at http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=BillInfo&Service=DspHistory&var=SF&key=1075B&GA=82 (last visited Nov. 12, 2014) (noting it was formerly S. Study B. 3164).

134. Telephone interview with Richard Johnson, Dir., Legal Servs. Div. of the LSA (June 18, 2014).

135. *Id.*

136. Staff Memo, *supra* note 115, at 15.

137. *Id.* at 16.

138. *Id.*

139. Accessing these minutes does involve a few steps. On the Committees page of the General Assembly site, https://www.legis.iowa.gov/committees, a gray bar above the heading "Standing Committees" provides the current General Assembly number. This can be changed by clicking on the green down-arrow at the far right of that bar. Select the desired General Assembly (minutes will not be available for all listed General Assemblies). Then click on the committee of interest. When that committee page opens, the selected General Assembly number should still be in the gray bar. Near the bottom of the page under the heading "Committee Information," click on the link titled "Meetings." Available minutes will be linked under the column headed "Minutes."

140. Staff Memo, *supra* note 115, at 16–17.

141. *Id.* at 17–18.

might be able to use the recordings in statutory interpretation, noting that it has used "constitutional debates in construing ambiguous constitutional provisions."[142] The 1968 proposal to record chamber debate appears to have been unsuccessful, although live audio streams are now available.[143] In addition, recorded video has been available for both chambers since 2013.[144] Connecting recorded floor action with a particular bill can be done through the online bill book where the LSA includes links to senate and house video archives related to a particular bill.[145] The court has not yet used this source to construe a statute. Possibly, the court would deem it an unreliable source to ascertain legislative intent for the reasons Wisby discussed but dismissed.[146] However, the court has given some indication it would be willing to cite floor debate.[147] In a 2011 case, it lamented the lack of Iowa legislative history available, specifically noting, "As with most Iowa statutes, there are no committee hearings or floor debates to review."[148]

IV. EMPIRICAL ANALYSIS OF THE IOWA SUPREME COURT'S USE OF HISTORICAL SOURCES

With definitions and statutory interpretation background established, this Article now turns to a study of Iowa Supreme Court opinions. This Part explains the scope and methodology and presents quantifiable results.

A. *Scope and Methodology*

Several Lexis Advance and WestlawNext searches[149] identified Iowa

142. *Id.* at 18–19.

143. Email from Jeff Van Engelenhoven, Div. Editor/Supervisor, Computer Servs. Div., Iowa Legis. Servs. Agency, to Author (June 22, 2014) (on file with Author). A live stream provides a service to those who want to listen to legislative floor activities in real time. However, because it is not recorded, it cannot be referenced at a later point in time, so it is not useful for purposes of statutory interpretation.

144. *Id.*

145. *See, e.g.*, S.F. 2240, 85th Gen. Assemb., 2d Sess. (Iowa 2014), *available at* http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=billinfo&Service=Billbook&hbill=SF2240&section=1&GA=85&version=Enrol.

146. *See* Staff Memo, *supra* note 115, at 16–17.

147. *See* Oyens Feed & Supply, Inc. v. Primebank, 808 N.W.2d 186, 188 (Iowa 2011).

148. *Id.*

149. A keyword and a topical search were run in each system. The final data set was the compilation of all search results after removing any duplicate cases. The keyword search on WestlawNext was run by first limiting the sources to be searched to "Iowa Supreme Court Cases," entering "adv: legislat! /5 (inten! or history)," and filtering

Supreme Court cases decided in the years 2004–2013 involving interpretation of an Iowa statute or Iowa court rule.[150] Each case in this initial data set was coded to indicate the author of the majority opinion and the primary area of law involved.[151] Additional coding was based not on the case as a whole but on the main statute the opinion construed.[152] The data set was refined to exclude certain types of analyses outside the scope of the study. Laws interpreted primarily to answer questions of constitutionality or interpretation of administrative regulations were excluded.[153] In cases where an administrative agency interpreted the statute before the question came to the court, the court typically engaged in the analysis of at least two statutes; the first was an analysis of Iowa Code Section 17A.19 to determine the deference to be given to an agency interpretation.[154] This discussion was

results with a date range limit of 01/01/2004 to 12/31/2013. (As a note on the functionality of WestlawNext, the same search run without first limiting the source to "Iowa Supreme Court Cases" yields many fewer Iowa cases—a good reminder that despite the ease of searching across all content types when there are certain content areas a researcher wants to cover comprehensively, it is a good idea to limit searches to those areas before executing them.) In Lexis Advance, the search "legislat! /5 (inten! or history)" was run in the source "IA Supreme Court Cases from 1839." A postsearch filter limited the date from 01/01/2004 to 12/31/2013. For the topical searches in Lexis Advance, cases with "{Topic: Interpretation}" from the source "IA Supreme Court Cases from 1839" were selected and then the same date limit applied. In WestlawNext, content was limited to "Iowa Supreme Court Cases," and the search "adv: DI(361)" was run. (The 361 topic in the West KeyNumber system is Statutes.) The results were then limited to the identified date range. The topical searches yielded fewer results than the keyword searches, suggesting that some cases that interpreted a statute did not have a related headnote—a fact confirmed when reviewing the search results. This means that any statutory interpretation cases over the 10-year time period would not have been identified if they did not have a "Statutes" headnote in Westlaw, an "Interpretation" headnote in Lexis, or fit the keyword criteria (which included the concept of legislative intent).

150. *See* Fisher v. Davis, 601 N.W.2d 54, 60 (Iowa 1999) ("[Court r]ules have the force and effect of statutes. Consequently, we interpret rules in the same manner we interpret statutes." (citation omitted)).

151. To try to ensure consistency, the area of law was identified by the WestlawNext summary.

152. Because the court reads statutes in whole and in context, *see supra* note 67, discussion of one statute often led to discussion of others, but only the jumping-off statute was noted in the data collection.

153. Note, however, administrative regulations are construed very similarly to statutes. *See* Office of Consumer Advocate v. Iowa Utilities Bd., 744 N.W.2d 640, 643 (Iowa 2008) ("We have applied nearly identical rules for the construction of statutes to the construction of administrative rules." (citing Hollinrake v. Iowa Law Enforcement Acad., 452 N.W.2d 598, 601 (Iowa 1990))).

154. *See, e.g.*, Sunrise Ret. Cmty. v. Iowa Dep't of Human Servs., 833 N.W.2d 216,

excluded,[155] but the other questions of statutory interpretation—those involving the dispute at issue—were selected. The selected construed statutes form the "statutory interpretation data set."[156]

The statutory interpretation data set was further refined to select those construed statutes wherein the majority opinion significantly incorporated[157] historical sources in its analysis. For these statutes, the type of historical information cited was also coded.[158] For cases that cited legislative history sources, additional coding noted the specific sources of legislative history cited[159] and whether the opinion cited Iowa Code Section 4.6 in support of its use of legislative history. In addition, a general assessment of the court's use of the cited historical information was also noted for each statute construed. This was coded as follows:

(1) if the court relied on that information in determining the meaning of the statute,

219 (Iowa 2013); Iowa Med. Soc'y v. Iowa Bd. Of Nursing, 831 N.W.2d 826, 838–39 (Iowa 2013).

155. For a discussion of how the court engages in this analysis, see Renda v. Iowa Civil Rights Comm'n, 784 N.W.2d 8, 10–14 (Iowa 2010). Note that this discussion relies on a type of relatively rare Iowa historical source: a report providing contemporaneous commentary. Specifically, the *Renda* court often cites ARTHUR E. BONFIELD, AMENDMENTS TO IOWA ADMINISTRATIVE PROCEDURE ACT, REPORT ON SELECTED PROVISIONS TO IOWA STATE BAR ASSOCIATION AND IOWA STATE GOVERNMENT (1998). *Renda*, 784 N.W.2d at 11, 14, 15. Part of the reason the agency-deference portion of the decision was not coded was to avoid skewing the data to overrepresent such reports.

156. Primarily, each statute construed came from a separate case, but two cases construed two relevant statutes completely independently of each other, and each were selected for separate coding. The only historical source cited by the "second" statute in each of these cases was Code history.

157. "Significant" does not mean the opinion hinged on the historical material, but it does mean it included more than a mere mention of the date when a statute was enacted. Opinions were also not selected if the court was relying on precedent and simply mentioned that a prior case had considered historical sources. However, if the opinion proceeded to discuss that history, it was selected. The study erred in favor of selecting borderline cases.

158. That is, legislative history, Code history, legislative response, legislative acquiescence, or contemporaneous circumstances/commentary. *See supra* Part II.

159. Note that when a discrepancy was discovered between the citation in the opinion and the actual information cited, coding was for the actual information cited. For example, if the court cited a bill but quoted from its explanation, the explanation was coded.

(2) if the court used that information to support an interpretation arrived at through other means, or

(3) if the information primarily provided context or background that may have informed the interpretation but was not the basis for it.

Although most coded data relied on fairly objective standards, there was some subjectivity involved, particularly when assigning a value to the court's use of the historical sources. (In an effort to increase consistency, the Author coded everything herself but recognizes the imprecision of coding this last data point.)

B. *Results*

The combined search results of the initial data set yielded 430 unique cases. Of those, 56 were outside the scope of the study because the primary consideration of the Iowa statute related to its constitutionality (41) or because they construed a non-Iowa statute (9), municipal ordinance (2), or Iowa administrative regulation (4). The remaining 374 cases formed the statutory interpretation data set. Of these, 138 (37 percent) used at least one type of historical analysis in the opinion.[160] Thus, for the period studied, the court considered some form of history related to the statute in a sizable minority (more than one-third) of its statutory interpretation cases that were identified in this study.

The specific types of historical sources considered follows. Sixty-four cases considered legislative history. One hundred eight cases considered at least one of the following related elements: Code history (99), legislative response (20), or legislative acquiescence (17). Twenty-seven cases considered contemporaneous circumstances/ commentary.[161] Law review articles comprised the primary source for the latter, although the court also drew upon other sources, including LSA Summaries of Legislation, treatises, federal government reports, American Law Reports annotations, other states' statutes in force at the time Iowa adopted provisions on the same subject, historical discussion in other cases, and historic events.[162] The court

160. As further discussed *supra* note 156, two of these cases used historical sources in construing two different relevant statutes; while the total number of cases using historical sources was 138, the total number of statutes considered was 140.

161. When the number of cases associated with each of these three categories is totaled, the result is more than 138 because some cases considered more than one category of historical analysis.

162. *E.g.*, Iowa Right to Life Comm., Inc. v. Tooker, 808 N.W.2d 417, 420 (Iowa 2011) (citing Watergate as instrumental in bringing campaign finance reform to Iowa).

has exhibited a willingness to consider a wide range of sources that might help it interpret a statute consistent with legislative intent.

Looking more closely at the 64 cases that considered legislative history, 33 considered Iowa legislative history, 24 considered the legislative history of the statute on which the Iowa provision was modeled, and seven considered the legislative history of both the Iowa statute and the model legislation. In total, 40 of the cases in the statutory interpretation data set considered Iowa legislative history. In other words, over the sample 10-year period, the court cited Iowa legislative history sources in almost 11 percent of all the identified cases in which it interpreted an Iowa statute for reasons other than evaluating its constitutionality. Although this is certainly a minority of statutory interpretation cases, it is not a trivial minority. Moreover, as discussed below, it possibly underrepresents the number of cases in which legislative history might have been usefully employed.[163]

Table 1 provides the specific Iowa legislative history sources cited. Note that bill explanations were used as a source of Iowa legislative history almost twice as much as the next most commonly consulted source, the act text (in its session law form).[164] In addition, the chart footnotes indicate the cases that cite each form of Iowa legislative history, providing easy access to examples of the court's uses of these sources.[165]

Table 1

Source	Number of Opinions Citing Source
Explanation	21
Act text	12
Bill amendment that passed	8
Act summary[166]	5
Fiscal note	4
Prior bill/study bill	2
Drafter's comments or report	2

163. *See* discussion *infra* Part V.B.5.

164. *See infra* Table 1. The usage rate of explanations would still be the highest, but by a smaller margin, if the act text is combined with the act summary and title.

165. For citations associated with the "Number of Opinions Citing Source" column within Table 1 see *infra* Appendix.

166. This appears at the top of the Bill directly under the bill number and begins with the words "AN ACT." Two opinions referred to it as the title, but the quoted sections clearly came from the summary, so that is how they were coded.

Act title[167]	1
Bill amendment that failed	1
Bill title	1

As noted in Table 1, the act text was cited in 12 cases.[168] There were several reasons the court may have cited the act text rather than the Code. Sometimes the provision was codified but no longer appeared in the current Code at the time the opinion was written.[169] Sometimes the provision was never codified; among these 12 cases, two opinions cite to uncodified sections titled "legislative findings and declaration"[170] and "legislative intent,"[171] respectively.[172] Two other cases cite to untitled first sections.[173] One begins, "It is the purpose of this Act . . . .,"[174] and the other includes legislative findings and a statement of intent.[175] The court may look at the act to consider related provisions in order to get a better sense of the act's overall purpose. This analysis can also help the court understand the relationship between the statute under consideration and other statutes that may have been modified by the same act.[176]

As explained in the scope and methodology, the extent to which the

167. The act title appears at the top of the bill directly under the chapter number.

168. *See supra* Table 1.

169. *See, e.g.*, Sierra Club Iowa Chapter v. Iowa Dep't of Transp., 832 N.W.2d 636, 643, 645 (Iowa 2013) (quoting 1974 Iowa Acts ch. 1090, § 9, noting its 1975 codification).

170. *See* Schaefer v. Putnam, 841 N.W.2d 68, 79 (Iowa 2013), *as corrected* (Dec. 18, 2013) (quoting 1990 Iowa Acts ch. 1143, § 1).

171. *See* Drake Univ. v. Davis, 769 N.W.2d 176, 185 (Iowa 2009) (quoting 2004 1st Extraordinary Session Iowa Acts, ch. 1001, § 20).

172. Similar sections are sometimes codified. Some of the opinions reviewed cited these codified sections, but they were, of course, not counted as a citation to legislative history. This does underscore the importance of reading statutes in whole and in context, as discussed *supra* note 67 and accompanying text.

173. *See* State v. Tesch, 704 N.W.2d 440, 451 (Iowa 2005) (quoting 1986 Iowa Acts ch, 1178, § 1); Scholte v. Dawson, 676 N.W.2d 187, 191 (Iowa 2004) (quoting 1975 Iowa Acts ch. 239, § 1).

174. 1986 Iowa Acts, ch. 1178, § 1; *see Tesch*, 704 N.W.2d at 451 (quoting 1986 Iowa Acts ch. 1178, § 1).

175. 1975 Iowa Acts ch. 239, §1; *see Scholte*, 676 N.W.2d at 191 (quoting 1975 Iowa Acts ch. 239, § 1).

176. *See, e.g.*, *In re* Estate of Whalen, 827 N.W.2d 184, 190 (Iowa 2013), *reh'g denied* (Mar. 8, 2013) ("The best evidence that the legislature intended [a provision] to govern the final disposition of a decedent's remains to the exclusion of any common law obligation to implement the decedent's wishes can be found by examining the simultaneous changes the legislature made to . . . the Iowa Cemetery Act.").

court relied on its historical analysis was coded as 1 (relied on), 2 (supported), or 3 (background).[177] Table 2 provides that data by type of historical information. Note that in about 36 percent of construed statutes citing Code history, that information was presented primarily as background, whereas this was only the case 10 percent of the time for cited Iowa legislative history. In other words, Iowa legislative history may be less frequently cited than Code history, but its use is proportionately more likely to influence the decision.

Table 2

Extent to Which Court Relied on Historical Sources	Number of Construed Statutes	Types of Historical Information Cited in Analysis of Each Construed Statute[178]					
		Iowa legislative history	Model legislative history	Code history	Legislative response	Legislative acquiescence	Contemporaneous circumstances/ commentary
1	50	22	13	37	10	5	11
2	45	14	11	28	8	10	9
3	45	4	7	36	2	2	7

Cases were also coded based on the author of the majority opinion. Table 3 notes the total number of opinions in the statutory interpretation data set that each justice authored and how many of these opinions cited historical sources according to the study parameters. During the period studied, each justice cited historical sources to some extent, ranging from a low of 20 percent of their statutory interpretation cases (Justice Louis Lavorato) to a high of 61.1 percent (Justice Edward Mansfield).

It is difficult to draw definitive conclusions from this data. The different rates of citation of historical sources may relate more to the particular statute

177. *See supra* Part IV.A.

178. The coding for the extent to which the court relied on historical sources was specific to the statute construed, not the source used. *See supra* note 156. The total of all the source-specific numbers in the chart (236) exceeds the number of relevant statutes construed (140 in 138 cases) because the statutory analysis frequently cited more than one type of historical data.

being construed, the arguments raised by the parties, or the historical sources available than the justice writing the majority opinion. However, it does clearly demonstrate that all justices who served on the Iowa Supreme Court during the time period studied have authored opinions that cite to historical sources as part of the court's analysis. To the extent that the individual justice's preference for citing historical materials accounts for any of the differences in citation rates, historical sources may be increasingly important to consider. The seven justices currently on the court have the highest percentage use of historical materials in their statutory interpretation cases.

Table 3

Justice (Years of Study on Court)	Stat. Interp. Opinions Citing Historical Sources	Stat. Interp. Opinions Not Citing Historical Sources	Total Statutory Interpretation Opinions Authored	Percentage of Statutory Interpretation Opinions Citing Historical Sources
Mansfield (2011-2013)	11	7	18	61.1%
Waterman (2011-2013)	13	10	23	56.5%
Zager (2011-2013)	9	11	20	45.0%
Cady (2004-2013)	20	25	45	44.4%
Hecht (2006-2013)	15	20	35	42.9%
Appel (2006-2013)	12	20	32	37.5%
Wiggins (2004-2013)	21	40	61	34.4%
Carter (2004-2006)	5	10	15	33.3%
Ternus (2004-2010)	11	25	36	30.6%

Baker (2008-2010)	4	11	15	26.7%
Larson (2004-2008)	5	15	20	25.0%
Streit (2004-2010)	11	36	47	23.4%
Lavorato (2004-2006)	1	4	5	20.0%
Per Curiam	0	2	2	0.0%

Table 4 provides the area of law listed in the WestlawNext summary for each case, noting those that cited historical sources and those that did not. Again, it is difficult to identify clear implications from this data. The sample of cases interpreting statutes was too small in some areas, such as agriculture and securities regulation, to draw any conclusions. Other areas, such as criminal justice, provided a more robust case sample. Thirty percent of those cases used historical sources. Although that percentage is likely to fluctuate, it seems reasonable to infer that historical sources will remain relevant to a significant minority of criminal justice cases.

Table 4

Area of Law	Stat. Interp. Opinions Citing Historical Sources	Stat. Interp. Opinions Not Citing Historical	Total Statutory Interpretation Opinions	Percentage of Statutory Interpretation Opinions Citing Historical Sources
Agriculture	1	0	1	100.0%
Business Organizations	1	0	1	100.0%
Civil Rights	1	2	3	33.3%
Commercial Law	5	4	9	55.6%
Criminal Justice	34	78	112	30.4%
Education	7	10	17	41.2%

Energy and Utilities	1	5	6	16.7%
Environmental Law	1	1	2	50.0%
Estate Planning and Probate	8	5	13	61.5%
Family Law	12	8	20	60.0%
Finance and Banking	1	0	1	100.0%
Government	19	23	42	45.2%
Government Contracts	0	2	2	0.0%
Health	9	13	22	40.9%
Insurance	5	9	14	35.7%
Labor and Employment	9	33	42	21.4%
Legal Services	2	6	8	25.0%
Litigation	1	4	5	20.0%
Maritime Law	0	1	1	0.0%
Native Americans	0	2	2	0.0%
Products Liability	1	1	2	50.0%
Real Property	9	10	19	47.4%
Securities Regulation	0	1	1	0.0%
Taxation	5	6	11	45.5%
Torts	4	8	12	33.3%
Transportation	2	4	6	33.3%

V. IMPLICATIONS

The numerical data quantifies the court's use of historical considerations and specific sources of legislative history. Beyond the numbers, the study reveals the rather elusive nature of statutory interpretation. Although rules dominate the task of interpreting a statute, their application can be uncertain.

A. *Statutory Interpretation Is an Art That Sometimes Masquerades as a Science*[179]

This Part illustrates two of the vagaries of statutory interpretation. First, the court does not consistently find the same interpretive rules compelling in all cases. In part, this naturally flows from the specific facts of the case and can even be rather predictable. However, sometimes a rule seemingly should apply and may not be used or even recognized in the majority opinion. Second, when the court turns to historical sources, individual justices may interpret these in different ways, meaning the source that was meant to illuminate the intent of the ambiguous statute may well be ambiguous itself. Historical sources do not always act as beacons, brightening everything around them, but can be closer akin to flashlights, shining light only where directed.

1. *Rules Apply . . . Except When they Don't Apply*

To some extent, the basic rules of Iowa statutory construction[180] provide predictable guidelines. When introducing the interpretative rules used in a particular opinion, these are sometimes described as "well established" or the like.[181] The rub comes when a rule that has often been

179. The view of statutory interpretation as art, rather than science, has a long history. *See* JOHN CHIPMAN GRAY, THE NATURE AND SOURCES OF THE LAW 167 (1909) ("The dependence of the statutes upon the will of the judges for their effect is indicated by the expression often used, that interpretation is an art and not a science . . . ."). Today, that is presented as the consensus view. UNIF. STATUTE AND RULE CONSTR. ACT § 18 cmt. (1995), 14 U.L.A. 499 (2005) ("Most writers would probably agree that there is a consensus that statutory construction is an art and not a science, but that the construer should conscientiously seek the legislature's view and not the construer's view."). It has been articulated repeatedly. *E.g.*, Robert John Araujo, *Statutory Making and Interpretation: The Lessons of 1533–35 for the Present Age*, 83 MISS. L.J. 543, 543 (2014); Ron Beal, *The Art of Statutory Construction: Texas Style*, 64 BAYLOR L. REV. 339, 343 (2012); *see also* Jonathan Uffelman, *Caliban's "Grace": A Statutory Interpretation of Shakespeare's Monster*, 23 SETON HALL J. SPORTS & ENT. L. 69, 122 (2013) (criticizing the view that statutory interpretation is a science). *But see* ANTONIN SCALIA, A MATTER OF INTERPRETATION 14–15 (1997) (referencing "the science of statutory interpretation"); Abbe R. Gluck, *The Federal Common Law of Statutory Interpretation: Erie for the Age of Statutes*, 54 WM. & MARY L. Rev. 753, 778–79 (2013) (calling the art-not-science view romanticized).

180. *See supra* Part III.

181. *E.g.*, State v. Adams, 810 N.W.2d 365, 376–77 (Iowa 2012) ("Application of our *well-settled* principles of statutory interpretation . . . ." (emphasis added)); Renda v. Iowa Civil Rights Comm'n, 784 N.W.2d 8, 15 (Iowa 2010) ("When interpreting statutory provisions, we utilize our *well-established* rules of statutory construction." (emphasis

utilized is not applied in a particular case.[182] The court has noted, "Importantly, the rules of interpretation established to assist courts in determining legislative intent do not follow a common path, only a common outcome."[183] Yet the outcome often does, in fact, depend on what interpretive rules are employed. As has long been observed, "[T]he weapon of interpretation is a powerful one and vastly different results may be achieved by the substitution of one method of interpretation for another."[184]

The Iowa Supreme Court's felony–murder decision in *State v. Heemstra*[185] provides a good example of this difference. In *Heemstra*, the court overruled a series of prior cases and held that "if the act causing willful injury is the same act that causes the victim's death, the former is merged into the murder and therefore cannot serve as the predicate felony for felony-murder purposes."[186] In so doing, the court chose not to apply—nor even directly acknowledge—two of its own rules of statutory interpretation.[187]

First, the court sidestepped a discussion of legislative acquiescence.[188] According to this study, there have been 17 times in 10 years where the court has indicated that when the legislature does not enact legislation in response

added)); Lange v. Iowa Dep't of Revenue, 710 N.W.2d 242, 247 (Iowa 2006) ("Our rules for interpreting statutes are *well established*." (emphasis added)).

182. *Compare* Mall Real Estate, L.L.C. v. City of Hamburg, 818 N.W.2d 190, 199 (Iowa 2012) (opting not to apply the canon *noscitur a sociis*, wherein the meaning of a term is ascribed in relation to associated words, because its application "would lead to an absurd result that would thwart the legislative intent"), *with id.* at 201–02 (Cady, C.J., dissenting) (arguing it makes sense to apply the *noscitur a sociis* doctrine and that its application would lead to a result different than that of the majority opinion, and the majority's "conclusion not only defies common sense, it defies our accepted rules of construction").

183. Ackelson v. Manley Toy Direct, L.L.C., 832 N.W.2d 678, 688 (Iowa 2013).

184. Editorial Note, *Genuine and Spurious Interpretation*, 12 IOWA L. REV. 276, 276 (1927).

185. State v. Heemstra, 721 N.W.2d 549 (Iowa 2006).

186. *Id.* at 558.

187. *See id.* (declining to establish there was any legislative "intent to abolish the principle of merger" and acknowledging that the court "should not defer to the legislature for a signal for [it] to adopt a legal principle that is the responsibility of the court and within the power of the court to apply"). Arguably, it ignored more than two rules. The dissent believed it also ignored one of the more important rules, "the plain meaning of the controlling statutes." *Id.* at 563 (Carter, J., dissenting).

188. *See id.* at 558. *But see supra* text accompanying note 98 (explaining how the court may cite legislative acquiescence as evidence of intent).

to court opinions in an area of law, this inaction serves as an endorsement of the court's application of the law.[189] This inaction typically speaks for itself without the court referencing any specific indication that the legislature considered the issue and chose not to respond.[190] In *Heemstra*, however, the court took another tack.[191] Although its prior decisions (dating back to 1982) were discussed at length, they were not discussed in the context of legislative acquiescence.[192] In fact, legislative silence here indicates that the legislature simply has never considered the matter:

> It is argued in this case that,
>
> > [a]lthough the reasoning of those courts and commentators that reject the use of felonious assaults as crimes for which felony murder may be established is based on sound policy considerations, those considerations have been rejected by [the Iowa] legislature. As a result, this court is not free to invoke those considerations no matter how valid we find them to be.
>
> This is simply not true. The legislature has never considered the issue of whether, when the act causing willful injury is the same as that causing death, the two acts should be deemed merged.[193]

The court later underscored the point:

> Although the State argues that merger principles should not apply to these facts, nothing in any of the statutes relied upon to support that argument suggests that the legislature had any intent to abolish the principle of merger under the circumstances of this case. Furthermore, we should not defer to the legislature for a signal for us to adopt a legal principle that is the responsibility of the court and within the power of the court to apply, based on legal precedent, common sense, and

189. *See supra*, Table 2.

190. *See, e.g.*, State v. Ross, 729 N.W.2d 806, 811 (Iowa 2007). *Ross* provides a typical illustration of how legislative acquiescence is presented:

> Moreover, in 1992 this court held . . . that the mandatory minimum sentence of section 902.11 trumped the mandatory minimum sentence of section 902.8. The legislature has taken no action in the fourteen years since that decision to correct our interpretation of these statutes, if indeed that interpretation was wrong.

Id. (citation omitted).

191. *See Heemstra*, 721 N.W.2d at 557–58.

192. *See generally id.* at 555–58.

193. *Id.* at 557 (alterations in original).

fairness.[194]

While the majority opinion made no note of legislative acquiescence, the dissent presents it as one of the reasons past precedent should not have been overturned:

> Although the reasoning of those courts and commentators that reject the use of felonious assaults as crimes for which felony murder may be established is based on sound policy considerations, those considerations have been rejected by our legislature. As a result, this court is not free to invoke those considerations no matter how valid we find them to be. As the majority has noted, this court has stood strong on this issue in the years following *Beeman,* and we have reaffirmed that decision on no less than four occasions. This chain of authority presents yet another reason why the result reached in *Beeman* should not now be altered. We have recognized that stare decisis is particularly applicable "where the construction placed on a statute by previous decisions has been long acquiesced in by the legislature, by its continued use or failure to change the language of the statute so construed, the power to change the law as interpreted being regarded, in such circumstances, as one to be exercised solely by the legislature." That principle of law has been previously invoked by this court in our consideration of the *Beeman* line of cases. [195]

Even if the court found reason to overturn precedent, directly acknowledging the legislative acquiescence argument would have helped formulate a more nuanced understanding of Iowa statutory interpretation principles. Other cases have contributed in this way. For instance, in a case decided the year before *Heemstra*, the court overruled *Smith v. ADM Feed Corp.*[196] by granting a jury trial under the Iowa Civil Rights Act (ICRA).[197] The decision explicitly acknowledged the limits of legislative acquiescence arguments:

> As for the legislative-assent-from-silence argument, it should be noted that the majority in *Smith* ignored this very principle. The dissent in *Smith* correctly noted that in several cases before that case was decided claimants *were* afforded a jury trial under the ICRA. Indeed, historically

194. *Id.* at 558.

195. *Id.* at 566 (Carter, J., dissenting) (citations omitted) (quoting Cover v. Craemer, 137 N.W.2d 595, 599 (Iowa 1965)).

196. Smith v. ADM Feed Corp., 456 N.W.2d 378 (Iowa 1990).

197. McElroy v. State, 703 N.W.2d 385, 395 (Iowa 2005).

> Iowans were afforded the right to a jury trial under previous civil rights statutes. Rather than attempt to divine legislative intent in this fashion, we must remember that legislation sometimes persists on account of "inattention and default rather than by any conscious and collective decision."[198]

In another case, decided two years after *Heemstra*, the court departed from its prior interpretation of the medical malpractice statute of limitations but explained why it was not deferring to legislative acquiescence:

> This case requires us once again to visit the medical malpractice statute of limitations and apply it to the facts of a particular case. We have done this on a number of occasions since the special statute was enacted in 1975, and have developed a body of interpretative law in the process. Yet, this law has raised some questions about the fairness of the outcome of a number of these cases. This perception has not gone unnoticed by us, for we have freely acknowledged the statute can "severely restrict[] the rights of unsuspecting patients." Nevertheless, we have declined to change course, recognizing it is the role of the legislature to "address this problem."
>
> It is, of course, the role of the legislature to write statutes, and it is our role to interpret them based on their application in the course of litigation. Moreover, the legislature can rewrite a statute to reflect its intent when it does not believe our interpretation in a particular case has accomplished this goal. Yet, these general principles of separation of powers and fundamental duties do not totally absolve us from our continued responsibility to interpret applicable statutes in each case and, more importantly, to revisit our past interpretations if we are convinced they have not clearly captured the intent of our legislature. We adhere to precedent, but also remain committed to clarifying the law as we work with our precedent. When our interpretation of a statute has created problems in the application of the statute to subsequent cases, we should be willing to reexamine our precedent to see if our understanding of the legislative intent can be better articulated.[199]

Although that explanation may leave the application of legislative acquiescence murky, it at least acknowledged that the principle exists and helps frame its limitations.

198. *Id.* (citations omitted) (quoting RONALD DWORKIN, LAW'S EMPIRE 319 (1986)).

199. Rathje v. Mercy Hosp., 745 N.W.2d 443, 447 (Iowa 2008) (alteration in original) (citations omitted) (quoting Schlote v. Dawson, 676 N.W.2d 187, 194 (Iowa 2004)).

A second principle that the *Heemstra* court ignored is the presumption that the legislature is aware of the state of the law when it enacts a statute.[200] In adopting the merger limitation, the court confirmed one scholar's analysis that its prior application of the felony–murder doctrine risked creating "an ever-expanding felony murder rule."[201] As another commentator noted, this "fear of expansion, however, ultimately stems not from the structure of Iowa's felony-murder doctrine, but from the belief that the Iowa Legislature carelessly will label certain crimes felonious assaults without realizing the potential felony-murder implications."[202]

Again, it is only the dissent that articulated the rule that the legislature is presumed to know the state of the law when it enacts a statute:

> After considering the merger doctrine as approved in other jurisdictions, the court stated in *Beeman*:
>
> > We conclude that the inclusion, by the legislature, of "felonious assault" in sections 707.2(2) and 702.11, indicates that it intended that felonious assaults, including willful injury under section 708.4, be felonies that may serve as the basis of a felony-murder and that the merger doctrine discussed in *Hinkle* not apply to such assaults.
>
> This result was compelled by the unambiguous wording of the controlling statutes and the long-standing judicial recognition that the legislature is aware of the meaning of all related statutory provisions and does not enact inconsistent provisions without expressly recognizing the inconsistency. In the present situation, the legislature is presumed to have knowledge of those offenses constituting forcible felonies when it used the unqualified term "forcible felony" in the enactment of the felony-murder provision. The idea that in including willful injury among those offenses giving rise to felony murder the legislature had in mind a compartmentalization of assaultive conduct with the conclusion of an earlier assault prior to the act that does the victim in is absurd.[203]

200. *See, e.g., In re* Vajgrt, 801 N.W.2d 570, 574 (Iowa 2011) (quoting State v. Jones, 298 N.W.2d 296, 298 (Iowa 1980)).

201. *See Heemstra*, 721 N.W.2d at 558 (quoting 4 ROBERT R. RIGG, IOWA PRACTICE CRIMINAL LAW (I) § 3:16 (2006)) (internal quotation mark omitted).

202. Douglas Van Zanten, Note, *Felony Murder, the Merger Limitation, and Legislative Intent in* State v. Heemstra: *Deciphering the Proper Role of the Iowa Supreme Court in Interpreting Iowa's Felony-Murder Statute*, 93 IOWA L. REV. 1565, 1577 (2008).

203. *Heemstra*, 721 N.W.2d at 565 (Carter, J., dissenting) (citations omitted) (quoting State v. Beeman 315 N.W.2d 770, 777 (Iowa 1982)).

Although the chief argument in the dissent is that a plain language reading of the statutes demands the court follow precedent, the dissent also relied on legislative history, as documented through contemporaneous commentary, to support its argument.[204] It noted the legislature rejected a proposed limitation "providing that homicide and assaults would not be a basis for felony murder."[205]

Predictable rules of interpretation help the legislature create law that will be interpreted as intended. They also help anyone trying to read and follow the law understand its meaning. Every interpretive rule will not apply to every situation, but when rules reasonably seem relevant, their existence should at least be noted and their application (or determined inapplicability) be discussed.

2. *Evidence of Intent, Including Legislative History, Can Support More than One Position*

The idea that evidence can be used to support more than one position likely seems unsurprising. It bears further consideration, though, in the context of statutory interpretation where the court is searching for legislative intent.[206] When legislative intent is uncertain from the language of the statute and the court seeks clarification in legislative history, that history might not be conclusive either. For instance, in *Iowa Dental Ass'n v. Iowa Insurance Division*, the court detailed a bill's[207] enactment path, noting,

> It is difficult to draw definitive conclusions from this legislative history. One might infer that Senator Warnstadt's amendment was

204. *Id.* (Carter, J., dissenting).

205. *Id*. (Carter, J., dissenting) (citing John J. Yeager, *Crimes Against the Person: Homicide, Assault, Sexual Abuse and Kidnapping in the Proposed Iowa Criminal Code*, 60 IOWA L. REV. 503, 510–11 (1975)).

206. The question of whether legislative intent exists and can be discerned has frequently appeared in legal scholarship. *See*, *e.g.*, Victoria F. Nourse, *A Decision Theory of Statutory Interpretation: Legislative History by the Rules*, 122 YALE L.J. 70, 80–90 (2012); M.B.W. Sinclair, *Statutory Reasoning*, 46 DRAKE L. REV. 299, 305–334 (1997); Nicholas S. Zeppos, *Legislative History and the Interpretation of Statutes: Toward A Fact-Finding Model of Statutory Interpretation*, 76 VA. L. REV. 1295, 1341–44 (1990). The preeminent treatise on statutory construction says the debate is settled with legislative intent being a widely accepted construct. SINGER & SINGER, *supra* note 18, § 45:6, at 44 (noting the "nonsubjective concept of 'legislative intent' has become a standard of judgment in statutory interpretation").

207. H.F. 2229, 83d Gen. Assemb., 2d Sess. (Iowa 2010).

> intended to accomplish something different from Senator McCoy's, or that it was just viewed as a better way of saying the same thing. One might infer that Representative Quirk's amendment would have altered the meaning of the statute. In this respect, it would have resembled several other amendments that were offered at the same time, that presumably were not supported by the dentists, and that were also withdrawn . . . . Or, one might infer that Representative Quirk's amendment was withdrawn because it was viewed as unnecessary (unlike those other amendments).[208]

In other cases, the justices draw on historical sources to reach different conclusions. One special concurrence colorfully describes the majority opinion's use of legislative history: "My colleagues try to make some hay out of the legislative history, but their bales are meager."[209] Turning from figurative to literal hay, the case *Sallee v. Stewart* nicely exemplifies opposing uses of historical sources.[210]

In that case, Kimberly Ann Sallee, a kindergarten field trip chaperone, sued the owners of a dairy farm for negligence after she fell through a hay drop—a hole in the hayloft floor—covered with a bale of hay and broke her wrist and leg.[211] The children had been allowed into the loft to play under Sallee's supervision.[212] The Iowa Supreme Court ruled Iowa's recreational use statute, Iowa Code Chapter 461C, did not apply "because the chaperone was not engaged in a recreational purpose within the scope of the statute."[213] Both the majority and dissenting opinions considered the history of the statute in some detail, particularly the changes from the model legislation the legislature made when first enacting the law and the history of how the statute had been amended in the intervening years.[214] Although these same sources are used in both opinions, the justices reached opposite conclusions about their appropriate application.[215]

208. Iowa Dental Ass'n v. Iowa Ins. Div., 831 N.W.2d 138, 147 n.3 (Iowa 2013).

209. State v. Jones, 817 N.W.2d 11, 26 (Iowa 2012) (Mansfield, J., concurring specially) (proceeding to present additional provisions enacted at the same time as the statute in question as evidence of legislative intent).

210. *Compare* Sallee v. Stewart, 827 N.W.2d 128, 149–50 (Iowa 2013) *with id.* at 158–64 (Mansfield, J., dissenting).

211. *Id.* at 130–32.

212. *Id.* at 131.

213. *Id.*

214. *See id.* at 133–42, 149–50; *id.* at 158–64 (Mansfield, J., dissenting).

215. *Compare id.* at 131, *with id.* at 162. Note this discussion only focuses on the issue when legislative history was at play: whether Sallee was engaged in a recreational use

The majority opinion provides a five-page description of the historical development of recreational use statutes in the United States, noting that these statutes "limit the liability of landowners whose lands are used for recreational purposes such as hunting, fishing and sightseeing."[216] This historical discussion describes two different recreational use model acts: one developed in 1965 and the other in 1979.[217] The opinion then reviews other states' recreational use statutes, organizing their definitions of "recreational purpose" into four categories: those based on the 1965 model act; those based on the 1979 model act; those that combine elements from both model acts; and those that follow neither, instead adopting a very limited definition of recreational purpose.[218]

Against this rather extensive historical background, the court then looks at the Iowa statute, noting it was based on the 1965 model act with the same title and substantially the same text.[219] It also notes the purpose of the statute by discussing the bill explanation, which noted "a need to encourage private landowners to make their lands available by defining any potential liability."[220] The court then considers amendments passed before the Bill was enacted that caused the definition of recreational purpose to deviate from the 1965 model act.[221]

The opinion continues, discussing the history of amendments to the Code section and noting that although the legislature has modified its definition of recreational purpose over the years to add specific qualifying activities, it never opted to adopt any of the more expansive choices followed by other jurisdictions—the "includes, but is not limited to" clause from the 1965 model act, the kind of "catch-all provision" found in several other states, or the broader definition in the 1979 model act.[222] Because the definition instead uses the phrase "*means the following or any combination thereof*,"[223] the court noted, "[T]he Iowa legislature created a closed universe

under the statute.

216. *Id.* at 134 (quoting Comment, *Wisconsin's Recreational Use Statute*, 66 MARQ. L. REV. 312, 315 (1983)); *see generally id.* at 133–38.

217. *Id.* at 135–37.

218. *Id.* at 138–41.

219. *Id.* at 141.

220. *Id.* (citing H.F. 151, 62d Gen. Assemb., Reg. Sess., Explanation (Iowa 1967)).

221. *Id.* at 141–42.

222. *Id.* at 142.

223. *Id.* (quoting IOWA CODE § 461C.2(5) (2009)) (internal quotation mark omitted).

of outdoor activities that trigger the protections of the statute."[224]

At the time of the case, Iowa Code Section 461C.2(5) read,

> 5. "*Recreational purpose*" means the following or any combination thereof: Hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, all-terrain vehicle riding, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein.[225]

After analyzing related case law,[226] the court affirmed the statute's ambiguity and the appropriateness of employing extrinsic aids in its construction.[227] This process began by noting that both the Iowa statute and the 1965 model act have the stated purpose of "giv[ing] the public more recreational opportunities."[228] The court found that "[t]here can be no question that the evil sought to be addressed by recreational use statutes is the inadequacy of resources for outdoor recreation."[229] The court found support for this proposition in "[t]he history of the development of recreational use statutes, the express language of the [Outdoor Recreation Resources Review Commission] Report, the 1965 model act, and the 1979 proposed model act."[230] The court also found,

> The list of recreational uses strongly suggests that the statute is designed to protect activities traditionally undertaken outdoors. While the statute recognizes that recreational use immunity may apply to appurtenant structures, such immunity for injuries that occur in structures is only applicable when the structure itself is part of or incidental to the underlying recreational use. Indeed, although there are hundreds of cases involving recreational use immunity, almost none of them occur within structures. For those that do, the user was actually engaged in the recreational purpose while inside the structure.[231]

224. *Id.*
225. § 461C.2(5) (2013).
226. *Sallee*, 827 N.W.2d at 147–48.
227. *See id.* at 149.
228. *Id.*
229. *Id.* at 149–50.
230. *Id.* at 150.
231. *Id.*

Additional support for a limited application of the statute came from "the fact that the legislature ha[d] not adopted expansive language in its recreational purpose section."[232] The court held that although a more expansive definition "might be supported by policy reasons, any such action must be taken by the legislature, not by" the court.[233] Taken together, this evidence led the court to "conclude that the best interpretation of Iowa's recreational use statute is that the closed universe of activities specifically listed in [the statute] must be interpreted in a fashion consistent with promoting true outdoor activity."[234]

With the interpretive framework in place, the court applied the law to the facts of the case, finding that the court should focus on the activity precipitating the injury[235] and that "frolicking in a hayloft"[236] fit neither the specifically articulated recreational purposes nor the more general phrase in the definition "other summer sports."[237] A broader interpretation of that phrase would render the listed activities meaningless.[238] The court evocatively stated, "We cannot convert the phrase 'other summer sports' into a statutory PAC-MAN that goes backward to gobble up preexisting statutory limitations and then goes forward to consume subsequent legislative language."[239] The court noted that the drafting history, wherein the legislature amended the original definition from the 1965 model act, and the subsequent history of amendments to the Code section, wherein the legislature did not adopt the more expansive definition from the 1979 model act, also dispel a broader reading of "other summer sports."[240] The court concluded that the recreational use statute did not apply because Sallee's injuries were not incurred while engaged in a recreational purpose, as required by statute.[241]

232. *Id.*
233. *Id.*
234. *Id.*
235. *See id.* at 150–51.
236. *Id.* at 151.
237. *Id.* at 152–53 (internal quotation marks omitted). Note that the court applies the statutory construction rule *ejusdem generis* to determine that since "other summer sports" comes at the end of a list of specific activities, the phrase only encapsulates other activities similar in character to those listed. *Id.* at 153.
238. *Id.*
239. *Id.*
240. *Id.*
241. *Id.*

The dissent, on the other hand, found that the recreational use statute should limit farm owners' liability.[242] Among other rationale, the dissent supported its argument by using Code section history and comparing the Iowa statute, as adopted, to the 1965 model act.[243] The dissent purposely limited the majority opinion's broad consideration of the history of recreational use statutes in general and in other states to focus on the evolution of Iowa's statute.[244] Quoting from the original act, the dissent noted the definition of "land" included both agricultural lands and "'buildings, structures and machinery or equipment' that were 'appurtenant thereto,' such as a barn."[245] Next, the dissent noted the definition of "recreational purpose" was expanded twice in 1971.[246] The first change added "horseback riding" to the recreational purposes list.[247] The second added both "motorcycling" and "snowmobiling," while also changing "winter sports" to "other summer and winter sports."[248]

The dissent noted, "Although we do not have helpful legislative history for the second 1971 amendment, it seems logical to conclude that the legislature wanted to obviate the need for future piecemeal amendments by including some kind of a catchall—other summer and winter sports."[249] Thus, whereas the majority opinion looked at the history of changes to the recreational purpose definition and found evidence the legislature did not intend to adopt one of the three broader models of that definition, the dissent found the legislature did, in fact, follow the catch-all provision path.[250]

The dissent also rebuffed the majority's emphasis on outdoor recreation, commenting, "The statute nowhere requires an outdoor use, and indeed the reference to buildings is inconsistent with such a restriction."[251] The dissent also drew upon the way the legislature changed the definition of

242. *See id.* at 157–58 (Mansfield, J., dissenting).
243. *Id.* at 158–61 (Mansfield, J., dissenting).
244. *See id.* at 158–59 (Mansfield, J., dissenting).
245. *Id.* (Mansfield, J., dissenting) (quoting 1967 Iowa Acts ch. 149, § 2).
246. *See id.* (Mansfield, J., dissenting).
247. *Id.* (Mansfield, J., dissenting) (quoting 1971 Iowa Acts ch. 129, § 1) (internal quotation marks omitted).
248. *Id.* (Mansfield, J., dissenting) (quoting 1971 Iowa Acts ch. 130, § 1) (internal quotation marks omitted).
249. *Id.* (Mansfield, J., dissenting).
250. *See id.* (Mansfield, J., dissenting).
251. *Id.* at 159 (Mansfield, J., dissenting).

land from the one in the 1965 model act and instead emphasized agricultural use.[252] Further, the dissent argued Sallee's activities fit under the "other summer and winter sports" clause of the recreational purpose definition, noting that this language was inserted by the same amendment that "added 'motorcycling' and 'snowmobiling' to the list of covered activities."[253] This is seen as indicative of legislative intent to define "sports" broadly:

> In short, I conclude the legislature intended in 1971 to introduce some flexibility into the definition of "recreational purpose" that other states (which used the model act language) already had. In short, while our general assembly had elected not to use the model act's broader phrasing—"includes, but is not limited to"—in 1967, it nonetheless opened up the definition of "recreational purpose" in 1971 by making clear that other summer and winter sports would be covered.[254]

As to the PAC-MAN argument—that such a broad definition would render listing specific activities meaningless, and the legislature certainly would not have added more specific activities later[255]—the dissent suggested the majority's definition of sports would be subject to the same criticism and stated, "I think we should acknowledge the reality that groups often go to the legislature seeking a *specific* statutory immunity even when a more general immunity already protects them."[256]

"Under a dictionary definition where 'sport' means 'a source of diversion: RECREATION' and 'physical activity engaged in for pleasure,' jumping in a hayloft clearly qualifies as a sport."[257] Moreover, the dissent found that although "[f]rolicking in hay can be and frequently is an outdoor sport," it does not have to be an outdoor activity to be covered.[258] "[T]he legislature did not say that sports would only be covered when played outdoors," and including buildings in the definition of land "would not have made sense if the legislature did not mean some indoor activities to be covered by the statute."[259] The dissent also concluded that Sallee did not

252. *Id.* at 159–60 (Mansfield, J., dissenting) (citations omitted).

253. *Id.* at 162 (Mansfield, J., dissenting) (citing 1971 Iowa Acts 244).

254. *Id.* (Mansfield, J., dissenting).

255. *See supra* text accompanying note 239.

256. *Sallee*, 827 N.W.2d at 162 n.13 (Mansfield, J., dissenting).

257. *Id.* at 163 (Mansfield, J., dissenting) (quoting MERRIAM–WEBSTER'S COLLEGIATE DICTIONARY 1134 (10th ed. 2002)).

258. *See id.* (Mansfield, J., dissenting).

259. *Id.* (Mansfield, J., dissenting).

have to be playing in the hay herself to trigger the statute; it was sufficient that she was there to support a recreational purpose.[260]

The *Sallee* opinion was released on February 15, 2013,[261] and the legislature wasted no time responding. That same legislative session it amended Chapter 461C, the statute at issue in that case.[262] Among other provisions, the Act expanded both the purpose statement and the definition of recreational purpose.[263] It added the following language to Iowa Code Section 461C.1: "The provisions of this chapter shall be construed liberally and broadly in favor of private holders of land to accomplish the purposes of this chapter."[264] In Iowa Code Section 461C.2(5), the recreational purpose definition, the legislature added "educational activities" to the listed activities.[265] The legislature also added the following:

> "*Recreational purpose*" includes the activity of accompanying another person who is engaging in such activities. "*Recreational purpose*" is not limited to active engagement in such activities, but includes entry onto, use of, passage over, and presence on any part of the land in connection with or during the course of such activities.[266]

Lest there be any doubt the legislation was adopted in response to the *Sallee* decision, the bill explanation[267] puts a fine point on it: "The bill relates to the recent decision rendered by the Iowa Supreme Court in Sallee v. Stewart, (No. 11-0892) (Iowa 2013)."[268] Although the legislature expanded the definition of recreational purpose, it still left it somewhat limited, opting not to change the phrase "means the following or any combination thereof."[269]

Sallee provides a particularly good example of the limitations of simply

260. *Id.* at 164 (Mansfield, J., dissenting).
261. *Id.* at 128.
262. *See* Act of June 17, 2013, 2013 Iowa Acts ch. 128.
263. *See id.* §§ 1, 2(5).
264. *Id.* § 1.
265. *Id.* § 3(5).
266. *Id.*
267. Note that the bill was not amended before enactment. *See* B. History for H.F. 649, IOWA LEGISLATURE, http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=BillInfo&Service=DspHistory&var=HF&key=0708C&GA=85 (last visited Nov. 12, 2014).
268. Iowa H.F. 649, at Explanation.
269. *See* Act of June 17, 2013, 2013 Iowa Acts ch. 128, § 2(5).

knowing which historical sources the court may consider when interpreting a statute. Even though both the majority and dissent looked at the 1965 model act, Iowa's original enactment of its recreational use statute, and changes over time to the definition of recreational purpose, this evidence leads to different conclusions.

B. *The Art of Reading an Iowa Statute*

As the above discussion of the *Heemstra* and *Sallee* cases illustrates, although statutory interpretation may draw on established rules, their application is not rigid, and results may vary.[270] Legislative intent is inferred from a great variety of tools.[271] Those who understand as many of these tools as possible will be best positioned to comprehend and apply a statute. When there is more than one reasonable construction of a statute, an understanding of the tools of statutory construction can help build the strongest possible case to support a particular reading.

To that end, the following questions may be helpful to consider when confronting an ambiguous statute.[272]

1. *Carefully Consider the Language of the Statute and its Context*

Is every word in the statute being construed to have meaning?

Where does the ambiguity arise? Is there more than one reasonable interpretation based on either specific language used or the provision considered within the context of the entire statute or related statutes, or does a literal interpretation lead to absurd results counter to the statute's purpose?

What is the statute's context? Where is it placed in the code? Does it explicitly reference any other statutes? Are there relevant definitions, statements of purpose, or legislative findings that apply to the title, subtitle, or chapter? Do other code sections use similar language? If so, do these similar statutes contain words or provisions omitted by the statute in question?

Are there definitions or rules in the construction rules[273] that might apply?

270. *See supra* Part V.A.1–2.

271. *See supra* Part III.

272. Of course, related regulations and case law must also be read for a complete understanding of the statute.

273. IOWA CODE §§ 4.1–.14 (2013).

2. *Check Code History*

How has the statute evolved over time? If there was a significant change in the code section at some point, does all past case law still apply, or did some prior cases construe the statute in a substantially different form? If the provision has long been unmodified, is that likely to be considered evidence of legislative acquiescence to interpretive court opinions?

How did the entire act adding or modifying the statute read? What was its overall intent?

What was its title and summary? How was it presented in the LSA Summary of Legislation?

3. *Check Legislative History*

Is the Iowa law based on another law? If so, are there relevant drafters' comments, commentary, or interpretive cases to consult? How was the Iowa statute modified from the model before its adoption?

What can be learned from the bill file where the relevant provision was added? What was the bill title? What does the explanation say? Was the bill amended after being introduced? Did any proposed amendments fail? Were there prior or related versions of the bill from the same or an earlier General Assembly? Were any fiscal notes attached?

4. *Check for Persuasive and Secondary Authority*

If other states have similar statutes, what do they say, and how have they been construed?

Was contemporaneous commentary published? Have any secondary sources considered the statute?

5. *When Does the Court Use Historical Sources?*

In addition to reading the statute and its associated history as thoroughly as possible, it also helps to have an idea of the circumstances under which the court has considered historical sources in the past.[274] As this

274. This study did not trace arguments into the briefs to identify when and how the parties cited historical sources in support of their positions. While the court sometimes may consider historical sources primarily to address arguments raised in briefs, it is possible that at other times the court, of its own accord, opts to review historical materials to better understand the statute.

study shows, using historical sources is an important instrument in the statutory construction tool kit. More than one-third of the cases in the statutory interpretation data set cited historical sources as part of the analysis.[275] Moreover, the consideration of history tends to be important. In just more than two-thirds of those cases providing historical analysis, that discussion either influenced the interpretation or supported one interpretation over another.[276]

Even narrowing the historical sources considered to legislative history leaves a fair number of cases, with just more than 17 percent of the statutory interpretation data set looking at either Iowa or model act legislative history and almost 11 percent looking at Iowa legislative history.[277] Thus, it would be foolish to assume that no relevant legislative history exists for an ambiguous statute or to gamble that because recorded Iowa legislative history is rather sparse, it can simply be ignored. Savvy researchers will know when the courts might use legislative history and how to find it.

This study notes the number of times when the court used legislative history from 2004–2013.[278] However, it is difficult to say whether there were other times it might have consulted legislative history, but either did not look for it or searched fruitlessly without acknowledging the unsuccessful search in the opinion. There is some evidence, though, that historical sources could have been cited more often than they actually were. For instance, one commentator discussing *State v. Isaac*[279] noted that although neither the majority opinion nor the dissent used legislative history, "that history is instructive."[280] To the extent that Iowa legislative history has been perceived as nonexistent,[281] attorneys may not seek it and bring it to the court's attention as often as they could. In addition, the court's openness to citing a

275. *See supra* note 160 and accompanying text.

276. *See supra* Table 2. Although the table references total statutes construed rather than total court cases, these numbers are almost identical. *See supra* note 156.

277. *See supra* Table 2.

278. *Id.*

279. State v. Isaac, 756 N.W.2d 817 (Iowa 2008).

280. Michael C. Dorf, *What the Iowa Supreme Court's Recent Public Indecency Decision Reveals About Statutory Interpretation*, FINDLAW (Sept. 10, 2008), http://writ.news.findlaw.com/dorf/20080910.html. Note, however, that Dorf's discussion of the history of Iowa Code § 709.9, which he calls legislative history, would be defined by this Article as code history.

281. *See* MCCONNELL, *supra* note 1.

variety of historical sources[282] combined with technological advances providing new sources of recorded legislative history may increase the future rate of citation to Iowa legislative history.

a. *Legislative History*. The statute authorizing the courts to look at legislative history to determine legislative intent is conditional, noting this is an option "[i]f a statute is ambiguous."[283] Case law offers the same conditions,[284] often noting that no statutory construction will occur at all unless a statute is ambiguous.[285] Ambiguity may arise in more than one way, from the obvious issue of legitimate doubt as to a statute's meaning to the perhaps less apparent qualification of a literal interpretation leading to absurd results.[286]

The court has established, "A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute."[287] It is, however, not sufficient for the two parties to present different versions of a statute's meaning for the court to consider it ambiguous.[288] For instance, in *State v. Finders*, the court interpreted the then-current grandfather provision of Iowa Code Section 692A.2A(4)(c),[289] which exempted those who were convicted of sexual offenses against a minor and who had established their

282. *See supra* note 162 and accompanying text; *see also supra* Table 2.

283. IOWA CODE § 4.6 (2013).

284. *E.g.*, Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp., 606 N.W.2d 359, 365 (Iowa 2000) (citing State v. McSorley, 549 N.W.2d 807, 809 (Iowa 1996)) ("Legislative history is properly considered in interpreting statutory language found to be ambiguous.").

285. *E.g.*, State v. McCullah, 787 N.W.2d 90, 94 (Iowa 2010) (citing Carolan v. Hill, 553 N.W.2d 882, 887 (Iowa 1996)) ("If, as the State contends, the statute is unambiguous, we will not engage in statutory construction."); Rolfe State Bank v. Gunderson, 794 N.W.2d 561, 564 (Iowa 2011) (citing State v. Tesch, 704 N.W.2d 440, 451 (Iowa 2005)) ("Before engaging in statutory construction, we examine whether the language of the statute is ambiguous.").

286. *See supra* notes 61–63 and accompanying text.

287. *Carolan*, 553 N.W.2d at 887 (citing Holiday Inns Franchising, Inc. v. Branstad, 537 N.W.2d 724, 728 (Iowa 1995)).

288. This may be similar to the contract interpretation rule that "a mere disagreement between the parties regarding the meaning of undefined terms does not automatically establish an ambiguity." LeMars Mut. Ins. Co. v. Joffer, 574 N.W.2d 303, 307 (Iowa 1998) (citing A.Y. McDonald v. Ins. Co. of N. Am., 475 N.W.2d 607, 619 (Iowa 1991)).

289. This Code section was repealed by Act of May 21, 2009, ch. 119 § 31, 2009 Iowa Acts 411, 430.

residence prior to July 1, 2002, from the statutory prohibition against residing within 2,000 feet of a school or child care facility.[290] The decision notes, "Both parties contend the grandfather provision, section 692A.2A(4)(c), is ambiguous," explaining that Finders's interpretation emphasizes the word "person" rather than "residence," and the State's reading means that the exemption is lost when the residence changes.[291] The court wrote, "While the grandfather provision is not a model of clarity, we do not find it ambiguous."[292] The court proceeded to explain its agreement with the State's interpretation.[293]

Even when the statute is not ambiguous, the court sometimes looks at legislative history to support its plain language interpretation. For instance, one case states that an amended version of a Code section is clear on its face, but continues to quote from the bill explanation, noting, "This interpretation is consistent with the general assembly's explanation accompanying the House version of the bill."[294]

b. *Code History*. There is no threshold of ambiguity required before the court considers code history, which may partially account for its more frequent use. In approximately 29 percent of the statutes construed in the statutory interpretation data set, the court looked at code history or its related considerations, legislative response, or legislative acquiescence.[295] The evolution of a codified area of law can provide the background by which the court considers the statute and inform its interpretation of legislative intent. As with all statutory interpretation, the relevant statutes are considered in whole and in context,[296] meaning this analysis can be more involved than simply tracing the history of a single code section. In addition, current code sections, their historical evolution, and legislative history data can become intertwined as the court examines a statute. For example, in *State v. Fischer* the court decided that an electronic form met the requirement in Iowa Code Section 321J.6 for a police officer to issue a written request before testing the blood, breath, or urine of a driver

290. *See* State v. Finders, 743 N.W.2d 546, 548 (quoting IOWA CODE § 692A.2A(4)(c) (2007)).

291. *Id.* at 548–49.

292. *Id.* at 549.

293. *See id.*

294. *In re* Estate of Myers, 825 N.W.2d 1, 6 (Iowa 2012).

295. *See supra* Table 2.

296. *See supra* note 67 and accompanying text.

suspected of operating while intoxicated (OWI).[297] The opinion briefly looks at the history of Iowa's OWI laws before turning more specifically to the implied consent provisions.[298] The opinion notes that "the current 'written request' requirement was a part of Iowa's original statute."[299] After discussing relevant case law,[300] the court invoked then-current statutory definitions, starting with the definition of "written," as codified in the rules of construction.[301] According to that definition, the term may "include an electronic record as defined in section 554D.103."[302] The court then turned to the referenced section, noting "'electronic record' is defined as any record 'created, generated, sent, communicated, received, or stored by electronic means.'"[303] This led the court to consult the history of Section 554D.103, quoting from its original statement of purpose (later repealed) and citing information in the fiscal note attached to that Bill.[304]

Another notable use of code history involves deciding whether prior case law still applies. This analysis requires determining whether code amendments subsequent to court decisions modified the statutes in such a way that those earlier opinions no longer apply. For instance, in one 2013 case, the court considered whether punitive damages could be awarded under the ICRA.[305] In discussing the history of the ICRA, the opinion indicates, "[T]he statutory language at issue in this case has not been changed in any meaningful way since the 1978 amendments."[306] A supporting footnote briefly details the changes to the Code section that the court deemed irrelevant.[307] In contrast, in a 2011 case, the court rejected a particular precedent as inapplicable in light of the fact that the Code sections it was interpreting had since been amended.[308]

297. State v. Fischer, 785 N.W.2d 697, 698, 706 (Iowa 2010).
298. *Id.* at 699–701.
299. *Id.* at 701 (citing IOWA CODE § 321B.3 (1966)).
300. *See id.*
301. *Id.* at 702 (quoting § 4.1(39) (2009)).
302. *Id.* (quoting § 4.1(39)).
303. *Id.* (quoting § 554D.103(7)).
304. *Id.* (quoting 2000 Iowa Acts ch. 1189, § 2) (citing H.F. 2205, 78th Gen. Assemb., 2d Sess., Fiscal Note (Iowa 2000)).
305. Ackelson v. Manley Toy Direct, L.L.C., 832 N.W.2d 678, 679 (Iowa 2013).
306. *Id.* at 681.
307. *Id.* at 681 n.2.
308. Krupp Place 1 Co-op, Inc. v. Bd. of Review of Jasper Cnty., 801 N.W.2d 9, 15–16 (Iowa 2011).

6. *Finding Iowa Legislative History and Code History*

Because historical sources may affect the interpretation of a statute, knowing how to find them is critical. An increasing amount of information is now freely accessible on the Internet, from many of the source documents themselves to guides explaining how to find these materials.[309] It would be foolish to replicate here the information available in an online research guide, partly because as availability changes, a guide, unlike this Article, can be updated. However, a few basic tips will help the researcher more effectively use a research guide as a jumping-off point.

a. *Read the Background Information on the Guides.* Research guides may include important explanatory information as well as direct researchers to specific sources to search. For instance, the Drake Law Library Iowa Legislative History guide[310] explains the basics of reading statutory history in both the Code of Iowa and the Iowa Code Annotated[311] and also notes that bill explanations are found at the end of the bill as introduced, rather than the end of the enrolled bill.[312]

b. *Pay Attention to the General Assembly Number.* Bill numbers are only sequential for both sessions of a particular General Assembly and then restart with the next General Assembly.[313] The legislative website defaults to the current General Assembly but often provides the option to access older General Assemblies by clicking on a green down arrow at the far right of the gray bar indicating the General Assembly selected. Pay attention to this selection. When revising a search in an older General Assembly, the selected

309. Jennifer Bryan Morgan, Government Documents Librarian at Indiana University Maurer School of Law, maintains State Legislative History Research Guides, an index to legislative history research guides for every state and the District of Columbia. *See State Legislative History Research Guides Inventory*, MAURER SCH. OF LAW, http://law.indiana.libguides.com/c.php?g=19813&p=112411 (last updated Nov. 30, 2014).

310. *See supra* note 110, at *Overview*.

311. *See id.* at *Step 2: Code Section History*.

312. *See id.* at *Step 4: Bill Versions (Bill Book)*.

313. Some parts of the General Assembly site provide both General Assembly number and year while others list only General Assembly number. In this case it might be useful to consult the Drake Law Library chart correlating years to General Assembly numbers. *See* Karen Wallace, *Year to Iowa General Assembly Conversion Chart*, DRAKE LAW LIBRARY, http://facstaff.law.drake.edu/karen.wallace/GAYears.pdf (last visited Nov. 12, 2014).

legislative term will often revert to the current. In addition, be aware that in some places, this selection tool searches the entire General Assembly, while in others it is session specific.[314]

c. *Watch for Changes in the General Assembly Site.* The General Assembly site continues to evolve, including more information and enhancing the means of finding it. In addition to a wealth of quick search options, tables, and indexes on its site, the General Assembly page offers an advanced search feature. For years,[315] this interface, the Advanced Document Search, or NXT,[316] has offered reliable, albeit somewhat clunky,[317] search access to sources including the current Code and session laws dating back to 1993. The State of Iowa is in the process of switching to a more modern interface, the Iowa Legislature Document Research, or SOLR, search engine.[318] At least some SOLR features have been available to the general public since summer 2012, but other features (including the user guide) have been restricted to legislators and legislative staff.[319] Though SOLR was initially released as a separate, linked site, the LSA plans to integrate SOLR within the General Assembly site and complete its migration before the 2015 legislative session.[320] In both iterations, SOLR provides left-hand filters that allow the user to refine searches either before or after entering other search criteria,[321] a layout similar to many current

314. On *Committees*, IOWA LEGISLATURE, https://www.legis.iowa.gov/committees/committees (last visited Nov. 12, 2014), compare the General Assembly selection bar directly under the heading "Legislative Council" (for the entire General Assembly) with the selection bar under the heading "Interim Study Committees" (select by General Assembly session). Also, note the difference with the bar under the heading "Permanent Statutory Committees" (select by calendar year).

315. The interface was available to the public as of fall 2004. Van Engelenhoven, *supra* note 143.

316. *Advanced Search*, IOWA LEGISLATURE, http://search.legis.state.ia.us/NXT/gateway.dll?f=templates&fn=default.htm (last visited Nov. 12, 2014).

317. For instance, search forms allowed users to limit searches to a particular source or sources, or subset of the same. However, the user could not edit the search without reapplying any desired limits.

318. *Iowa Legislature Document Research*, IOWA LEGISLATURE, https://research.legis.iowa.gov/search (last visited Nov. 12, 2014).

319. Van Engelenhoven, *supra* note 143.

320. *Id.* The integrated SOLR is available at https://www.legis.iowa.gov/publications/search.

321. Filters can be added and removed to update search results, but a more robust ability to edit keyword search terms is still lacking in the new interface.

search interfaces.[322] Managing these improvements is a large job, and as additional content is added and site design changes, linked content on the General Assembly site may move or disappear. When this occurs, researchers may have to regroup and access the content in another way. Fortunately, the wide variety of site search options means alternatives are typically available for the persistent researcher.

d. *Consider the Best Starting Point for the Research Need.* The precise type of information needed helps determine the most efficient research approach.[323] For instance, the court may need to consider how a code section read at an earlier point in time, as relevant to the litigated matters.[324] In this case it might be easiest to start directly with the code that was current at the time in question rather than starting with the current code and tracing backward. The court may also need to consider the evolution of the subject matter in the code.[325] This can span decades and may involve multiple code sections. Checking to see if a law review article or other secondary source has already provided this analysis can save time in the long run. If that approach fails, using code indexes often proves more efficient than conducting keyword searches. Not only are the indexes to the Iowa Code available in print from Iowa's major law libraries,[326] they are also available as part of the General Assembly's PDF Code archive.[327] The court may also

322. For instance, WestlawNext and Lexis Advance allow the user to refine searches both before and after entering initial search criteria.

323. Note that the approaches described here are not mutually exclusive; one or more techniques used in tandem can often provide the most helpful information to ascertain the statute's meaning.

324. *E.g.*, State v. Hutton, 796 N.W.2d 898, 902–03 (Iowa 2011) (looking to an older version of the Code to find the version of the relevant statute in effect when the contested action occurred); *cf.* Kolb v. City of Storm Lake, 736 N.W.2d 546, 553–54 n.6 (Iowa 2007) (choosing to cite to the current Code rather than one in effect at the time of the dispute because the only change in the Code was a renumbering of the Section).

325. *See, e.g.*, Sierra Club Iowa Chapter v. Iowa Dep't of Transp., 832 N.W.2d 636, 643–47 (Iowa 2013) (analyzing the development of Iowa Code Section 17A.9 from its inception using both primary and secondary sources).

326. Drake University Law Library, State Law Library of Iowa, and University of Iowa Law Library.

327. *Iowa Code Archive*, IOWA LEGISLATURE, https://www.legis.iowa.gov/archives/shelves/code (last visited Nov. 12, 2014). For older codes where indexes are not listed separately, they are incorporated at the end of the code itself. The index to the Iowa Code Annotated is generally more detailed than the index to the official Iowa Code, particularly after the Code index was greatly reduced in 2013, in favor of relying on other

need to look at the history of amendments to a code section, tracing the addition or deletion of a particular portion of a statute.[328] Unless a secondary source has already created such a timeline, this work typically starts by using the information provided in the code section history.[329] Once the specific legislation that made the relevant change is identified, any available sources related to its legislative history can be obtained using the act and bill numbers together with the associated General Assembly number and year.

VI. RECOMMENDATIONS FOR THE IOWA SUPREME COURT

Most of the information in this Article attempts to illuminate, not change, Iowa Supreme Court practices. However, the court could easily implement two practices that would facilitate the legal researcher's ability to find and apply rules relating to the use of legislative history when interpreting an Iowa statute. These suggestions follow.

A. *Consistently Cite Iowa Code Section 4.6 in Court Opinions That Use Iowa Legislative History*

When the legislature enacted Iowa Code Section 4.6, it was intended to codify the common law approach to statutory interpretation of ambiguous statutes.[330] Thus, the statute did not preempt the common law as it would have if the statutes conflicted.[331] Even so, it still seems surprising that when the court is asserting its authority to use legislative history to interpret a statute, it does not consistently cite the current, directly relevant statute as

methods of electronic searching. *General Index to the Code of Iowa*, IOWA GEN. ASSEMB., Editor's Notes (2013). However, older Iowa Code Annotated indexes are more difficult to access. In print, the title is updated by pocket parts and supplements. When the new annual index arrives, a law library may not save the superseded index. On Westlaw, the title can be searched in historical versions back to 1988, but the index access is only to the current version.

328. *See, e.g.*, City of Cedar Rapids v. James Props., Inc., 701 N.W.2d 673, 677–78 (Iowa 2005) (using both Code history and legislative history related to a later change to the statute to help explain what the statute meant at the time relevant to the case).

329. Often, the editor's and revisor's notes (also under the heading "historical and statutory notes") of the Iowa Code Annotated might prove a more efficient starting point than the unannotated official Code.

330. *See supra* notes 108–118 and accompanying text.

331. 2B NORMAN J. SINGER & SHAMBIE SINGER, STATUTES AND STATUTORY CONSTRUCTION § 50:1, at 151–52 (7th ed., rev. 2012) ("[W]here legislation and the common law conflict, legislation governs because it is the latest expression of the law.").

authority for that proposition.[332] Yet, in the study's 40 cases in which the court uses Iowa legislative history, it either specifically cites Iowa Code Section 4.6(3) or cites all of Iowa Code Section 4.6 six times,[333] meaning that the Code provision is directly cited in only 15 percent of the cases to which it is relevant.[334]

This phenomenon could represent a deliberate, philosophical choice if the court believed that codified rules of statutory interpretation invaded its constitutional authority.[335] In other jurisdictions, conflicts between the judicial and legislative branches over who has the authority to establish rules of statutory interpretation have raised separation of powers arguments.[336] However, that does not seem to be what is occurring here—the question is not so much one of choosing whether to consider legislative history when construing an ambiguous statute but merely one of how to indicate that principle's authority. Further, the court may cite other provisions of Iowa Code Chapter 4 even when it does not cite the Chapter for authority to use legislative history. In fact, this study found that in more than one-third of the cases in which the court uses Iowa legislative history without citing Iowa

332. *See* IOWA CODE § 4.6(3) (2013).

333. Moreover, one of these citations may have been made in error in that it is unclear why the court specifically mentioned Iowa Code Section 4.6; the context suggests the better reference would have been to all of Chapter 4. *See* State v. Fischer, 785 N.W.2d 697, 702–03 (Iowa 2010) ("As directed by our legislature, the rules and definitions set out in section 4.6 do not apply if 'inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute . . . .'" (alteration in original) (quoting IOWA CODE § 4.1 (2009)).

334. In some cases, the court cited cases for the authority to utilize legislative history, and these underlying cases cited Iowa Code Section 4.6(3). *See, e.g.*, Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008) (citing State v. Dohlman, 725 N.W.2d 428, 431–32 (Iowa 2006)).

335. *See* IOWA CONST. art. V, § 1 (granting the judicial power to a supreme court and other established courts).

336. Gluck, *supra* note 44, at 1756 ("Every state legislature in the nation, in fact, has enacted into law some rules of interpretation, which many state courts are refusing to implement."). Gluck documents Texas courts ignoring, and Delaware courts overruling as unconstitutional, interpretive statutes in their states because it is the courts' place to interpret the law. *Id.* at 1825. On the other side, she notes how, in response to a Connecticut Supreme Court decision establishing an interpretive framework allowing the court to consult extrinsic sources even in the absence of statutory ambiguity, the Connecticut legislature enacted a law forbidding use of "extratextual evidence" unless the meaning expressed through its language and relation to other statutes is ambiguous or absurd. *Id.* at 1792 n.152 (quoting CONN. GEN. STAT. § 1-2z (2003)) (internal quotation marks omitted). *See generally id.* at 1791–94.

Code Section 4.6(3) or Section 4.6 as a whole, other provisions of that Chapter were cited. Moreover, the Code history undercuts this possibility; given that Iowa has had some interpretive rules in its statutes since territorial times, much of the current iteration of Chapter 4 has been in place since 1971, and when the 1971 provisions were adopted, the law represented a codification of the common law and had the approval of the former Chief Justice of the Iowa Supreme Court.[337]

Why then does the court not regularly cite Iowa Code Section 4.6(3) when using legislative history to construe a statute? There might be times when the court eschews the codified rule in favor of presenting a more nuanced rule of interpretation established by case law. As *Sutherland Statutory Construction* notes,

> Legislative enactment of the rules governing human affairs reduces the statement of the law to a more concise form than common or unwritten law. The advantages of brevity, however, sacrifice a legislature's ability to provide specifically for numerous situations which might arise. In common law jurisdictions, this shortcoming is overcome by judicial constructions which modify and synchronize statute law with common law rules and maxims.[338]

For instance, of the 21 cases that cite bill explanations,[339] five opinions that cite neither Iowa Code Section 4.6(3) nor Section 4.6 as a whole provide common law support for the more specific proposition that the court looks to bill explanations for legislative intent,[340] and another opinion supports the idea that the presumption that enactment of a statutory amendment is a change in the law can be overcome by legislative history that suggests it is merely a clarification.[341]

In other cases, however, the court cites case law rather than Iowa Code

337. *See supra* notes 101–3, 107–13 and accompanying text.

338. 2B SINGER & SINGER, *supra* note 331, § 50:2, at 156 (footnote omitted).

339. *See infra* Appendix n.ii; *supra* Table 1 and accompanying text.

340. *See, e.g.*, Klinge v. Bentien, 725 N.W.2d 13, 18 (Iowa 2006) ("We give weight to explanations attached to bills as indications of legislative intent." (quoting City of Cedar Rapids v. James Props., Inc., 701 N.W.2d 673, 677 (Iowa 2005)) (internal quotation marks omitted)).

341. *See* City of Asbury v. Iowa City Dev. Bd., 723 N.W.2d 188, 196 (Iowa 2006) (citing Martin v. Waterloo Cmty. Sch. Dist., 518 N.W.2d 381, 383 (Iowa 1994); Tiano v. Palmer, 621 N.W.2d 420, 423 (Iowa 2001); State v. Schuder, 578 N.W.2d 685, 687 (Iowa 1998)).

Section 4.6(3), not to provide a more nuanced articulation of its rule, but simply to support the use of legislative history.[342] In still other cases, it cites nothing to support its use of legislative history.[343] It is possible that in some of these cases, the court merely thought it unnecessary to cite the Code in support of the well-established practice of citing legislative history.[344] In certain instances, the omitted Code citation is more jarring than others. For instance, one 2013 decision cites Iowa Code Section 4.6(2) to support its use of "the circumstances of [the] statute's enactment," but rather than citing the subsequent Code subsection to support its "consider[ation of the] legislative history when interpreting an ambiguous statute," it cites case law.[345]

Consistently citing the appropriate Code provisions related to statutory interpretation offers two advantages. First, it brings attention to the rules codified in Chapter 4, a source that might sometimes be overlooked.[346] Second, it improves research results using KeyCite or Shepard's because a citator relies on direct citation of an authority for that authority to appear in its reports. Citing the relevant code section also increases the likelihood it will appear in the annotations to that Section in the Iowa Code Annotated.

The uniformity of the code provision offers another advantage to citing the code provision instead of case law that says the same thing. Rather than uniquely wording the principle as opinions do, the statute uses the same words (until it is amended). This can help avoid subtle changes to a rule's meaning as it is promulgated in different iterations.

342. *See, e.g.*, Postell v. Am. Family Mut. Ins. Co., 823 N.W.2d 35, 49 (Iowa 2012) ("The legislative history of a statute is also instructive in determining legislative intent." (citing State v. Allen, 708 N.W.2d 361, 366 (Iowa 2006); Richards v. Iowa Dep't of Revenue, 362 N.W.2d 486, 488 (Iowa 1985))).

343. *See, e.g.*, State v. DeSimone, 839 N.W.2d 660, 667 (Iowa 2013).

344. In this way, it might be similar to the rule that no authority need be cited in support of the proposition that the court looks for legislative intent in what the legislature actually said rather than what it should or could have said. *See supra* notes 49–50 and accompanying text.

345. Schaefer v. Putnam, 841 N.W.2d 68, 75 (Iowa 2013) (discussing the general rule under Iowa Code Section 4.6(2) but citing State v. Romer, 832 N.W. 2d 169, 176 (Iowa 2013) to support its use of legislative history).

346. *See* State v. Velez, 829 N.W.2d 572, 586 (Iowa 2013) (Wiggins, J., dissenting) (noting the majority opinion failed to examine "a fundamental principle of statutory construction memorialized in the Code itself"). When the court does not cite Chapter 4, it is possible that it is simply overlooking that Chapter itself.

B. *Clarify the Rule Regarding Use of Bill Explanations*

Whereas Section 4.6(3) simply authorizes the court to look at legislative history in construing an ambiguous statute,[347] the common law expounds on this, using explanations as a valid source of legislative history and legislative intent.[348] However, explanations have been noted as sources to which the court gives weight under two different circumstances. In this study, the rule was primarily expressed unconditionally,[349] but in another articulation, the use of explanations was limited to times when there were no substantive amendments before the bill's enactment.[350] The same underlying authority has been cited for support for both propositions.

That authority is *City of Cedar Rapids v. James Properties, Inc.*[351] In this case, the court supported its use of an explanation without qualification, noting, "We give weight to explanations attached to bills as indications of legislative intent."[352] The Bill in question in the case was amended several times before its enactment, although none of these changes appear to have undercut the material quoted in the explanation.[353]

In the current study, the court cited bill explanations in 21 opinions.[354] In only one of these, *Root v. Toney*, a 2013 opinion, did the court explicitly note the narrower rule for the use of explanations, stating, "There were no subsequent amendments before the bill's enactment. Under these circumstances, '[w]e give weight to explanations attached to bills as

347. IOWA CODE § 4.6(3) (2013).

348. *See* Oyens Feed & Supply, Inc. v. Primebank, 808 N.W.2d 186, 188 (Iowa 2011) (citing a bill explanation and then noting that "[o]ther legislative history is sparse"); In re Det. of Fowler, 784 N.W.2d 184, 187 (Iowa 2010) ("As previously stated, we look to the legislative intent. We need not guess at the legislature's intent in enacting this chapter because an explanation is contained within the bill." (citation omitted)).

349. *See* Postell v. Am. Family Mut. Ins. Co., 823 N.W.2d 35, 49 (Iowa 2012) (citing City of Cedar Rapids v. James Props., Inc., 701 N.W.2d 673, 677 (Iowa 2005)).

350. Root v. Toney, 841 N.W.2d 83, 88 (Iowa 2013) (quoting *James Props.*, 701 N.W.2d at 677).

351. *See James Props.*, 701 N.W.2d at 677 (citing State *ex rel.* Chwirka v. Audino, 260 N.W.2d 279, 284–85 (Iowa 1977); City of Altoona v. Sandquist, 230 N.W.2d 507, 509 (Iowa 1975)).

352. *Id.* (citing *Audino*, 260 N.W.2d at 284–85; *Sandquist*, 230 N.W.2d at 509).

353. *See* H. JOURNAL, 79th Gen. Assemb., 1st Reg. Sess. 1062, 1065–66 (Iowa 2001) (indicating amendments to H.F. 582, 79th Gen. Assemb., 1st Reg. Sess. (Iowa 2001)); *see also James Props.*, 701 N.W.2d at 677 (quoting Iowa H.F. 582, at Explanation).

354. *Supra* Table 1.

indications of legislative intent.'"[355] In four additional cases, the court discussed the amendment history of the bill along with the cited explanation.[356] Among the other 16 cases, there are instances where the bill was amended without any explicit consideration in the court opinion as to whether these amendments might suggest a change in intent from what was expressed in the explanation. Some of these amendments were sweeping. For instance, *Oyens Feed & Supply, Inc. v. Primebank* cited a bill explanation with no discussion of the Bill's amendment history.[357] This Bill passed in the following session after it was essentially completely rewritten through amendments, with one adopted amendment "striking everything after the enacting clause" and offering new Bill text.[358] The amendment itself was further amended three times before being adopted.[359] Yet, even in that case, the broad language of the quoted portion of the explanation still seems relevant to the statute as enacted.[360]

Just as it is often difficult to determine legislative intent at all, it can be problematic to determine whether the explanations clearly indicate intent. Despite some court opinions suggesting the explanation offers the words of the bill sponsor,[361] it is drafted by the LSA. Although the LSA writes both

355. *Root*, 841 N.W.2d at 88 (alteration in original) (footnote omitted) (quoting *James Props.*, 701 N.W.2d at 677).

356. *See* Schaefer v. Putnam, 841 N.W.2d 68, 81 (Iowa 2013), as corrected (Dec. 18, 2013) (noting "[t]here were no relevant amendments before the bill's enactment"); State v. DeSimone, 839 N.W.2d 660, 667–68 (Iowa 2013) (noting that adopted amendments changed the validity of the bill explanation); Sallee v. Stewart, 827 N.W.2d 128, 141–42 (Iowa 2013) (using the explanation to support the proposition that the legislation was based on a model act and continuing to note amendments to the Bill before its enactment); Postell v. Am. Family Mut. Ins. Co., 823 N.W.2d 35, 48–49 (Iowa 2012) (quoting a bill explanation before noting the Bill was replaced by another Bill using the same relevant language, then discussing some, but not all, of the amendments to the substitute Bill).

357. *See* Oyens Feed & Supply, Inc. v. Primebank, 808 N.W.2d 186, 188 (Iowa 2011) (quoting S.F. 510, 70th Gen. Assemb., 1st Sess., Explanation (Iowa 1984)).

358. Amend. S-5122, 70th Gen. Assemb., 2d Sess. (Iowa 1984); *see* S. JOURNAL, 70th Gen. Assemb., 2d Sess. 434–35 (Iowa 1984) (noting the adoption of the amendment and the subsequent passage of the Bill).

359. *See* S. JOURNAL, 70th Gen. Assemb., 2d Sess. 434–35 (Iowa 1984).

360. *See id.* at 1858–65 (displaying the text of the amendment); *cf. Primebank*, 808 N.W.2d at 188 (quoting Iowa S.F. 510).

361. *See, e.g.*, Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008) ("In the explanation to the bill enacting section 86.13, the committee on labor and industrial relations of the senate stated . . . ."); State v. Dohlman, 725 N.W.2d 428, 432 (Iowa 2006) ("First, in the explanation of the bill, the committee on the judiciary

the bill and its explanation, the legislature votes only on the bill, not on its explanation.[362] The senate rule on explanations explicitly allows the sponsor to amend the explanation, while the house rule does not.[363] In practice, however, amended explanations are rare. In fact, when the bill is amended by the chamber that introduced it, the version of the bill sent to the second chamber incorporates any adopted amendments and omits the explanation.[364] (In these circumstances, the explanation would still be available to legislators through the bill book.) Therefore, even if a bill is substantively changed in such a way that the intent articulated in the explanation is also altered, it is highly unlikely that the explanation itself will also be changed. Consequently, it is clearly problematic to read and apply a bill explanation without considering that bill's amendment history. It may even be reasonable to argue that explanations should only be used by the court when the bill was not amended before enactment. However, this approach may be excessively cautious, leaving the court to determine legislative intent with little alternative evidence beyond a statute that has already been deemed ambiguous. As an alternative, this Article recommends the court overtly analyze each explanation in light of the history of bill amendments, relying on an explanation only if it still seems to reflect intent accurately.[365] This process would be similar to one the court routinely follows when determining whether case precedent still applies to an amended code section.[366]

If the legislature felt that a more direct endorsement of the explanation would be beneficial, it could change its process to vote on the explanation, in addition to the bill. The drawbacks would expectedly outweigh any

stated . . . .").

362. That distinction was first brought to this Author's attention in 2002 by Doug Adkisson, who is now LSA Senior Legal Counsel.

363. *See supra* notes 29–30 and accompanying text.

364. Email from Richard Johnson, Dir., Legal Servs. Div. of the LSA, to Author (June 23, 2014) (on file with Author).

365. The court should also note the bill history to ensure it cites the appropriate explanation. In one instance, the court quoted an explanation to a bill that was not the version subsequently enacted. *See In re* Estate of Myers, 825 N.W.2d 1, 6 (Iowa 2012) (quoting H.F. 677, 83d Gen. Assemb., 1st Sess., Explanation (Iowa 2009)). Although the court quoted House File 677, the version of the legislation that was eventually enacted came from the senate. *See* S.F. 365, 83d Gen. Assemb., 1st Sess. (Iowa 2009); *see also* B. History for Iowa S.F. 365, http://coolice.legis.iowa.gov/Cool-ICE/default.asp?Category=BillInfo&Service=DspHistory&var=SF&key=0399B&GA=83 (last visited Nov. 13, 2014). Note, however, that the two explanations contained identical language.

366. *See supra* notes 305–08 and accompanying text.

advantages of this approach, however. Not only would such a change likely significantly slow the legislative process, it would also probably change the nature of the explanations themselves. Bill explanations intend to provide a concise, objective statement of the manner in which the bill would change the law.[367] Were the legislature to vote on them, explanations would almost assuredly assume a more partisan perspective in their final form. As a more modest change, the house could amend its rule on explanations and explicitly allow the option of amending an explanation in those rare cases when this would be deemed necessary. As a practical matter, however, the change might not be very meaningful; the Senate's lack of use of this option suggests it is not a necessity.

The legislature should certainly be aware of the court's use of explanations, given that this is its most frequently cited source of legislative history, at least in the years considered in this study.[368] It therefore seems reasonable to assume that legislators should already consider the use that the courts may make of the explanation when debating the bill and voting. To this extent, explanations are somewhat similar to fiscal notes,[369] another source of legislative history that is not specifically endorsed via a vote but is available to inform both that vote and the interpretation of the enacted law.[370]

However, a recent change to the presentation of explanations reflects the legislature's desire that explanations be used cautiously. Beginning with 2014 legislation, bill explanations now start with the following disclaimer: "The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly."[371] This language was added by legislative leaders from both parties in consultation with the LSA, in part due to concern that the court was citing explanations of introduced bills without thoroughly considering the bills' amendment

367. *See* Johnson, *supra* note 134. Note that this has been true since at least the late 1970's; before this time, explanations may have been less objective, noting the merits of the proposal. *Id*.

368. *See supra* Table 1.

369. *See id.*

370. Note, though, that fiscal notes indicate budgetary implications of the proposal. 85th Gen. Assemb. J. Rules, *supra* note 32. In contrast, under current drafting guidelines, bill explanations include neither fiscal nor other consequences that would result from the change in law were the bill enacted as drafted. Email from Richard Johnson, Dir., Legal Servs. Div. of the LSA, to Author (June 23, 2014) (on file with Author).

371. *E.g.*, S.F. 2001, 85th Gen. Assemb., 2d. Sess., Explanation (Iowa 2014).

histories.[372]

Given that all five cases in the study that both cite the bill explanation and discuss amendment history are from either 2012 or 2013 and that no 2013 case cites a bill explanation without some discussion of the bill's history of amendments, it is possible that the court is already in the process of refining the rule on its use of explanations in response to conversations with legislative leaders. If this is the case, it would not be apparent from the opinions alone, since the court did not explicitly indicate it is refining its rule but has continued to cite to some of the same cases to support its use of explanations.

It will be interesting to observe how the court treats bill explanations in the coming years, especially when it first construes a statute enacted in or after 2014 that contains a disclaimer at the top of its explanation. The first opinion issued in 2014 in which the court cites a bill explanation does not clarify matters. In *Star Equipment, Ltd. v. Iowa Department of Transportation*, the court cited a 1988 bill explanation, indicating it was attached to "[t]he final version of the Senate File."[373] However, the Bill was amended after it was introduced,[374] and the final senate version as it appears in the bill book did not include an explanation.[375] The amendment itself does not seem to undermine the explanation.[376] Even so, the amendment history was, at best, ignored and, at worst, misrepresented. To support its use of the bill explanation, the court quoted *Root*, which, in turn, quoted *James Properties*, but omitted the "[u]nder these circumstances" portion of the

372. *See* Johnson, *supra* note 370.

373. Star Equip., Ltd. v. Iowa Dep't of Transp., 843 N.W.2d 446, 454 (Iowa 2014) (discussing S.F. 2271, 72d Gen. Assemb., 2d Sess. (Iowa 1988)).

374. *See* S. JOURNAL, 72d Gen. Assemb., 2d Sess. 857 (Iowa 1988).

375. *See* B. Book for Iowa S.F. 2271, *available at* https://www.legis.iowa.gov/docs/shelves/billbooks/72GA/SF%202271.pdf (showing, in order: the introduced version of the Bill with the explanation at the end and amendment S-5271 taped to the first page, the version that passed the Senate with no explanation attached, the earlier iteration of the bill as S. Study B. (SSB) 2180 along with its explanation, and the enrolled version of the Senate File).

376. In quoting the explanation, the court emphasizes the Bill is intended to extend certain remedies. *Star Equip.*, 843 N.W.2d at 454 (quoting Iowa S.F. 2271). The amendment does not seem to negate the extension of these remedies but rather to specify how to seek them. *See* B. Book for Iowa S.F. 2271, *available at* https://www.legis.iowa.gov/docs/shelves/billbooks/72GA/SF%202271.pdf (showing the bill amendment that designated what type of action may result in remedies).

explanation rule.[377] However, a footnote to the explanation rule introduces new details on the rule's proper application:

> The legislature enacts the bill—not the accompanying explanation. But, the internal rules governing the general assembly require the title and explanation to be accurate. An explanation or title included when a bill is introduced may become irrelevant when the text of the bill is materially changed by subsequent amendments. But, when the explanation accompanies the text of the bill enacted without a relevant substantive change, the explanation is part of the legislative history that can be examined in our efforts to determine the meaning of the text.[378]

This expanded rule on the use of explanations does not indicate it is a change from the court's earlier practice. If the court does not discuss bill amendment history when it cites a bill explanation, it will be difficult to ascertain whether the court considered that history and decided it did not result in a relevant substantive change or simply did not consider the history. A later 2014 case quotes, albeit only in a footnote, the explanation of a Bill that was enacted with no amendments[379] as part of its discussion of the evolution of the relevant Code section.[380] However, the opinion does not note the cited explanation accompanied a Bill that passed without amendment and provides no statutory construction rule supporting its use of the explanation or other Code section history.[381]

VII. CONCLUSION

There is not a precise formula that will alert someone reading the Code as to how the court will apply a particular statute to a specific set of facts, especially if the court is interpreting the statute for the first time. However, established interpretive aids can help either develop an educated guess as to a statute's most likely interpretation or build a case that supports one reading over another. A sophisticated reading of a statute can be rather complex. Therefore, a careful reader will always examine a statute in context. This may well include considering its historical context.

377. *Compare Star Equip.*, 843 N.W.2d at 454 (Iowa 2014) (quoting Root v. Toney, 841 N.W.2d 83, 88 (Iowa 2013)), *with Root*, 841 N.W.2d at 88.

378. *Star Equip.*, 843 N.W.2d at 454–55 n.3 (citations omitted).

379. Shumate v. Drake Univ., 846 N.W.2d 503, 511 n.3 (Iowa 2014) (quoting S.F. 456, 72d Gen. Assemb., 2d Sess., Explanation (Iowa 1988)); *see* B. Book for Iowa S.F. 456, *available at* https://www.legis.iowa.gov/docs/shelves/billbooks/72GA/SF%200456.pdf.

380. *See Shumate*, 846 N.W.2d at 510 n.2, 512 n.5.

381. *See generally id.* at 510–16.

As this study has shown, the Iowa Supreme Court can and does use historical sources, including legislative history, when interpreting ambiguous statutes. The court's rates of citation to legislative history in this study—just more than 17 percent of identified statutory interpretation opinions citing either Iowa or model act legislative history and almost 11 percent citing Iowa legislative history—are sufficiently significant to encourage researchers to avoid overlooking these potentially relevant sources. Furthermore, a few hints exist that these rates could increase. The court is currently composed of the seven justices with the study's highest rates of incorporating historical considerations in their statutory interpretation opinions. The court has also demonstrated an openness to considering a variety of historical sources, including floor debate, which is now available.

The study denotes the specific sources of legislative history the court has used in the past. Although this may provide a good indication of what the court will use in the future, be aware that the court's uses of extrinsic evidence may evolve in subtle ways, as appears to be occurring now with bill explanations. The court does not always clearly label refined interpretive rules as changes, making them easy to miss. This supports the argument that a court opinion that cites legislative history should cite Iowa Code Section 4.6(3) among its authorities, also citing case law as necessary to provide a more nuanced application of the statutory principle. Such consistent citation of the Code provision would facilitate the compilation and comparison of these cases through the use of a citator or the Iowa Code Annotated, thus making it easier to understand the court's practices with regard to legislative history.

APPENDIX

Table 1

Source	Number of Opinions Citing Source[i]
Explanation	21[ii]
Act text	12[iii]
Bill amendment that passed	8[iv]
Act summary	5[v]
Fiscal note	4[vi]
Prior bill/study bill	2[vii]
Drafter's comments or report	2[viii]
Act title	1[ix]
Bill amendment that failed	1[x]
Bill title	1[xi]

i. The total of this column is greater than the total of unique opinions citing at least one Iowa legislative history source because some opinions cited more than one source.

ii. Root v. Toney, 841 N.W.2d 83, 88, 89 (Iowa 2013) (quoting H.F. 113, 75th Gen. Assemb., 1st Sess., Explanation (Iowa 1993)); Schaefer v. Putnam, 841 N.W.2d 68, 81 (Iowa 2013) (quoting Iowa H.F. 2521, 78th Gen. Assemb., 2d Sess., Explanation (Iowa 2000)); State v. DeSimone, 839 N.W.2d 660, 667 (Iowa 2013) (quoting H.F. 674, 77th Gen. Assemb., 1st Sess., Explanation (Iowa 1997)); Sallee v. Stewart, 827 N.W.2d 128, 141 (Iowa 2013) (citing H.F. 151, 62d Gen. Assemb., Reg. Sess., Explanation (Iowa 1967), at Explanation); *In re* Estate of Myers, 825 N.W.2d 1, 6, 7 (Iowa 2012) (quoting H.F. 677, 83d Gen. Assemb., 1st Sess. (Iowa 2009)); *id.* at 4–5 n.5 (quoting H.F. 799, 81st Gen. Assemb., 1st Sess., Explanation (Iowa 2005)); *id.* at 6 n.6 (citing S.F. 365, 83d Gen. Assemb., 1st Sess. (Iowa 2009), Explanation (appearing in Legis. Serv. Agency, 2009 Summary of Legislation); Postell v. Am. Family Mut. Ins. Co., 823 N.W.2d 35, 48 (Iowa 2012) (quoting H.F. 854, 81st Gen. Assemb., 1st Sess., Explanation (Iowa 2005)); Mueller v. Wellmark, Inc., 818 N.W.2d 244, 256 (Iowa 2012) (quoting H.F. 2307, 72d Gen. Assemb., 2d Sess. § 604, Explanation (Iowa 1988)); Oyens Feed & Supply, Inc. v. Primebank, 808 N.W.2d 186, 188 (Iowa 2011) (quoting S.F. 510, 70th Gen. Assemb., 1st Sess., Explanation (Iowa 1984)); *id.* at 189 (quoting S.F. 379, 80th Gen. Assemb., 1st Reg. Sess., Explanation (Iowa 2003)); Rolfe State Bank v. Gunderson, 794 N.W.2d 561, 566 (Iowa 2011) (quoting H.F. 445, 78th Gen. Assemb., 1st Sess., Explanation (Iowa 1999)); *id.* at 567–68 (quoting H.F. 2197, 78th Gen. Assemb., 2d Sess., Explanation (Iowa 2000)); State v. Fountain, 786 N.W.2d 260, 265 (Iowa 2010) (citing H.F. 2546, 79th Gen. Assem., 1st Sess., Explanation (Iowa 2001)); State v. Fischer, 785 N.W.2d 697, 700 (Iowa 2010) (citing H.F. 257, 57th Gen. Assemb., Reg. Sess., Explanation (Iowa 1957)); Van Sloun v. Agans Bros., Inc., 778 N.W.2d 174, 183–84 (Iowa 2010) (quoting S.F. 289, 71st Gen. Assemb., 1st Sess., Explanation (Iowa 1985)); Griffen v. State, 767 N.W.2d 633, 635–36 (Iowa 2009) (quoting S.F. 376, 63d Gen. Assemb., 1st Reg. Sess., Explanation (Iowa 1969)); Schadendorf v. Snap-On Tools Corp., 757 N.W.2d 330, 338 (Iowa 2008) (quoting S.F. 539, 69th Gen. Assemb., 2d Reg. Sess., Explanation (Iowa 1982)); City of Waterloo v. Bainbridge, 749 N.W.2d 245, 248 (Iowa 2008) (citing H.F. 2291, 80th Gen. Assemb., 2d Reg. Sess., Explanation (Iowa 2004)); State v. Dohlman, 725 N.W.2d 428, 432 (Iowa 2006) (quoting Iowa H.F. 674, at Explanation); Klinge v. Bentien, 725 N.W.2d 13, 18 (Iowa 2006) (quoting Iowa H.F. 2521, at Explanation); City of Asbury v. Iowa City Dev. Bd., 723 N.W.2d 188, 196 (Iowa 2006) (quoting S.F. 78, 81st Gen. Assemb., 1st Reg. Sess., Explanation (Iowa 2005)); Fjords N., Inc. v. Hahn, 710 N.W.2d 731, 735 (Iowa 2006) (citing H.F. 115, 61st Gen. Assemb., Reg. Sess. (Iowa 1965)); Nixon v. State, 704 N.W.2d 643, 648, 655 (Iowa 2005) (citing Iowa S.F. 376, at Explanation); City of Cedar Rapids v. James Props., Inc., 701 N.W.2d 673, 677 (Iowa 2005) (quoting H.F. 582, 79th Gen. Assemb., 1st Reg. Sess. (Iowa 2001), at Explanation).

iii. *Schaefer*, 841 N.W.2d at 76 (citing 1986 Iowa Acts, ch. 1214, §§ 18–19); *id.* at 76–77 (quoting 1986 Iowa Acts, ch. 1214, § 1); *id.* at 79 (quoting 1990 Iowa Acts, ch. 1143, § 1); Hook v. Trevino, 839 N.W.2d 434, 440 n.1 (Iowa 2013) (quoting 1987 Iowa Acts, ch. 212, § 20); *id.* at 444 & n.4 (citing 1987 Iowa Acts ch. 212, §§ 2, 6–9, 11–13, 15, 19); Sierra Club Iowa Chapter v. Iowa Dep't of Transp., 832 N.W.2d 636, 643, 645 (Iowa 2013) (quoting 1974 Iowa Acts, ch. 1090, § 9); *id.* at 643 (citing 2008 Iowa Acts, ch. 1032 § 201(2); 1998 Iowa Acts ch. 1202, §13); *In re* Estate of Whalen, 827 N.W.2d 184, 188, 190, 191 (Iowa 2013), *reh'g denied* (Mar. 8, 2013) (citing 2008 Iowa Acts, ch. 1051, §§ 1–3, 17–

21, 22); *Sallee*, 827 N.W.2d at 141–42 (quoting 1967 Iowa Acts, ch. 149, § 2; 1971 Iowa Acts, chs. 129–30; 1988 Iowa Acts, ch. 1216, § 48; 2012 Iowa Acts, ch. 1100, § 58); State v. Jones, 817 N.W.2d 11, 16 (Iowa 2012) (quoting 1976 Iowa Acts, ch. 1245(2), § 1301; 1977 Iowa Acts, ch. 153, § 44); Iowa Right to Life Comm., Inc. v. Tooker, 808 N.W.2d 417, 420–23, 428 (Iowa 2011) (citing and quoting several acts to trace Code history and noting multiple changes derived from a single piece of legislation); *In re* Det. of Johnson, 805 N.W.2d 750, 754 (Iowa 2011) (citing 2002 Iowa Acts, ch. 1139, §§ 1–27); *Gunderson*, 794 N.W.2d at 566, 568 (citing 1999 Iowa Acts, ch. 162, § 1; 2000 Iowa Acts, ch. 1211, §§ 1–3); *id.* at 567–68 (quoting 2000 Iowa Acts ch. 1211, § 3); Drake Univ. v. Davis, 769 N.W.2d 176, 185 (Iowa 2009) (quoting 2004 Iowa Acts, ch. 1001, § 20); State v. Tesch, 704 N.W.2d 440, 451 (Iowa 2005) (quoting 1986 Iowa Acts, ch. 1178, § 1); Schlote v. Dawson, 676 N.W.2d 187, 191 (Iowa 2004) (quoting 1975 Iowa Acts, ch. 239, § 1).

iv. State v. DeSimone, 839 N.W.2d 660, 667–68 (Iowa 2013) (citing amendments to Iowa H.F. 674); Iowa Dental Ass'n v. Iowa Ins. Div., 831 N.W.2d 138, 146 n.3 (Iowa 2013) (quoting S. Amendment 5185, 83rd Gen. Assemb., 2d Sess. (Iowa 2010)); H. Amend. 8490, 83d Gen. Assemb., 2d Sess. (Iowa 2010)) (citing S. Amend. 5233, 83d Gen. Assemb., 2d Sess. (Iowa 2010)) (discussing amendments to H.F. 2229, 83d Gen. Assemb., 2d Sess. (Iowa 2010)); *In re Estate of Whalen*, 827 N.W.2d at 190–92 (discussing amendments to S.F. 473, 82d Gen. Assemb., 2d Sess. (Iowa 2008)); *Sallee*, 827 N.W.2d at 141 (discussing amendments to Iowa H.F. 151); *Tooker*, 808 N.W.2d at 430 (discussing changes to S. Study B. 3210, 83d Gen. Assemb., 2d Sess., § 1; S.F. 2354, 83d Gen. Assemb., 2d Sess. § 1 (Iowa 2010)); *In re* Marshall, 805 N.W.2d 145, 156 (Iowa 2011) (discussing amendments to S.F. 85, 66th Gen. Assemb., 2d Sess. (Iowa 1976)); Wright v. Iowa Dep't of Corr., 747 N.W.2d 213, 216 (Iowa 2008) (discussing amendments to S.F. 2197, 79th Gen. Assemb., 2d Reg. Sess. (Iowa 2002)); State v. Allen, 708 N.W.2d 361, 367 (Iowa 2006) (discussing amendments to S.F. 101, 78th Gen. Assemb., 1st Reg. Sess., Fiscal Note (Iowa 1999)).

v. *Iowa Dental Ass'n*, 831 N.W.2d at 140, 149 (quoting 2010 Iowa Acts ch. 1179); State v. Velez, 829 N.W.2d 572, 580 (Iowa 2013) (quoting 1976 Iowa Acts ch. 1245(1), § 804); *Gunderson*, 794 N.W.2d at 568 (quoting 2000 Iowa Acts ch. 1211); Renda v. Iowa Civil Rights Comm'n, 784 N.W.2d 8, 19 (Iowa 2010) (quoting 1965 Iowa Acts ch. 121); State v. Lathrop, 781 N.W.2d 288, 295 (Iowa 2010) (quoting 2005 Iowa Acts ch. 158).

vi. Sherwin-Williams Co. v. Iowa Dep't of Revenue, 789 N.W.2d 417, 421 (Iowa 2010) (citing H.F. 126, 77th Gen. Assemb., 1st Sess., Fiscal Note (Iowa 1997)); State v. Fischer, 785 N.W.2d 697, 702 (Iowa 2010) (citing H.F. 2205, 78th Gen. Assemb., 2d Sess., Fiscal Note (Iowa 2000)); State v. Dohlman, 725 N.W.2d 428, 432 (Iowa 2006) (quoting Iowa H.F. 674, at Fiscal Note); State v. Allen, 708 N.W.2d 361, 367 (Iowa 2006) (citing Iowa S.F. 101, at Fiscal Note; Amend. S–3071 to Iowa S.F. 101, at Fiscal Note).

vii. *Tooker*, 808 N.W.2d at 430 (citing S. Study B. 3210, 83d Gen. Assemb., 2d Sess. § 1 (Iowa 2010) and first version of Iowa S.F. 2354); Dalarna Farms v. Access Energy Coop., 792 N.W.2d 656, 660 n.3 (Iowa 2010) (citing H. Study B. 278, 80th Gen. Assemb., 2d Sess. § 1 (Iowa 2004)).

viii. *In re* Estate of Sampson, 838 N.W.2d 663, 667, 670 (Iowa 2013) (quoting IOWA CODE ANN. §§ 488 bar comm. cmt., at 140, 489 bar comm. cmt., at 141 (West Supp. 1963)); *Sierra Club Iowa Chapter*, 832 N.W.2d at 647 (quoting ARTHUR EARL BONFIELD, AMENDMENTS TO IOWA ADMINISTRATIVE PROCEDURE ACT, REPORT ON SELECTED PROVISIONS TO IOWA STATE BAR ASSOCIATION AND IOWA STATE GOVERNMENT 36–37, 39–40 (1998)) (citing BONFIELD, *supra*, at 1–8) (discussing the comments to Section 17A.9 from the task force that drafted the recommendations).

ix. *Lathrop*, 781 N.W.2d at 295 (quoting 2005 Iowa Acts ch. 158).

x. *See Iowa Dental Ass'n*, 831 N.W.2d at 146–47 n.3 (citing the history of amendments that both passed and failed for Iowa House File 2229).

xi. Sallee v. Stewart, 827 N.W.2d 128, 141 (Iowa 2013) (citing H.F. 151, 62d Gen. Assemb., Reg. Sess., Explanation (Iowa 1967)).