# Topicality – Transportation Infrastructure

Resolved: The United States federal government should substantially increase its transportation infrastructure investment in the United States.

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## Key Topic Definitions

### Transportation – Infrastructure

#### The better definition of transportation should reference infrastructure and systems

**Regenold**, August **2005** (Michele – Center for Transportation Research and Education, Workforce Recruitment Dilemma: Defining Transportation and Transportation Careers, Mid-Continent Transportation Research Symposium, p. 9)

Students defined “transportation” in ways that I anticipated—primarily as movement rather than as the infrastructure that supports the movement. I was somewhat surprised, however, by the transportation professionals’ definitions. Generally, they defined it in terms of movement of goods and people. As people who are mostly engaged in work related to the transportation infrastructure, I expected their definitions to include more about the infrastructure or about transportation systems. So, the fact that the differences in the groups’ definitions were not pronounced was surprising.

### Transportation – Not Just Rails/Bridges/Roads/Other Physical Objects

#### Transportation is not only the physical objects but all the factors involved

**Ballentine’s Law Dictionary 2010** p. Lexis

1. The carriage of persons or property from one point to another. Removing a person from the country by way of punishment upon his conviction of an offense against the laws of the country. Fong Yue Ting v United States, 149 US 697, 709, 37 L Ed 905, 911, 13 S Ct 1016. As used in the Interstate Commerce Act: -- not only the physical instrumentalities, but all services in connection with the receipt, delivery, elevation, transfer in transit, ventilation, refrigeration or icing, storage, and handling of the property transported.

### Infrastructure – Flow of Services

#### Infrastructure is the system that allows for the reliable flow of products and services

**Moteff et. al**, 1/29/**2003** (John, Claudia Copeland, and John Fischer – Resources, Science and Industry Division of the Congressional Research Service, Critical Infrastructures: What Makes an Infrastructure Critical?, Report for Congress, p. 2-3)

Using the language of this EO, the Commission’s final report 5 to the President defined critical infrastructure in the Glossary as: “Infrastructures so vital that their incapacitation or destruction would have a debilitating impact on defense or economic security.” The following supporting definitions were provided: Infrastructures: The framework of interdependent networks and systems comprising identifiable industries, institutions (including people and procedures), and distribution capabilities that provide a reliable flow of products and services essential to the defense and economic security of the United States, the smooth functioning of government at all levels, and society as a whole.

### Infrastructure – System

#### Infrastructure is a fundamental system

**Random House Dictionary 2012**

1. the basic, underlying framework or features of a system or organization.

2. the fundamental facilities and systems serving a country, city, or area, as transportation and communication systems, power plants, and schools.

3. the military installations of a country.

#### Infrastructure is a basic structure of a system

**Collins English Dictionary 2009**

1. the basic structure of an organization, system, etc

2. the stock of fixed capital equipment in a country, including factories, roads, schools, etc, considered as a determinant of economic growth

### Transportation Infrastructure – Laundry List

#### Transportation infrastructure is defined as transit, highways, airports, railways, waterways and intermodal links

**Trimbath 2011** (Susanne, Ph.D., former Senior Research Economist in Capital Market Studies at Milken Institute, Transportation Infrastructure: Paving the Way, STP Advisory Services, LLC, p. 9)

The strategy applied by the US Chamber of Commerce for the infrastructure performance index project presents a model for developing the way forward. A stakeholder-centric approach allows you to measure the right things, communicate to the people in a language they understand and get to ACTION faster. The process, detailed in the Technical Report last summer (US Chamber 2010), is basically this:

1. Clearly **define “transportation infrastructure**” as the underlying structures that support the

delivery of inputs to places of production, goods and services to customers, and customers to

marketplaces. The structures are:

• Transit

• Highways

• Airports

• Railways

• Waterways (Ports)

• Intermodal Links

#### Transportation infrastructure includes highways, bridges, ports, airports, railroads, and pipelines.

**Goodchild et. al**, **2002** (Michael – director of University of California, Santa Barbara’s Center for Spatial Studies, Richard L. Church, and Val Noronha, Spatial Information Technologies in Critical Infrastructure Protection, National Consortium on Remote Sensing in Transportation, p. 2)

Examples of Critical Transportation Infrastructure (CTI)

1. Major arterial highways and bridges comprising the National Highway System (NHS), including the Strategic Highway Network (STRAHNET) and National Intermodal Connectors.

2. International marine harbors, ports and airports.

3. Major railroads, including depots, terminals and stations.

4. Oil and natural gas pipelines.

5. Transportation Control Systems (e.g., air traffic control centers, national rail control centers) [Everett].

#### Transportation infrastructure includes highways, roads, bridges, and various other systems

**Revised Code of Washington** 47.46.020, **2010** (http://apps.leg.wa.gov/rcw/default.aspx?cite=47.46.020)

(5) "Transportation systems and facilities" means capital-related improvements and additions to the state's transportation infrastructure, including but not limited to highways, roads, bridges, vehicles, and equipment, marine-related facilities, vehicles, and equipment, park and ride lots, transit stations and equipment, transportation management systems, and other transportation-related investments.

#### Transportation infrastructure consists of roads, bridges, airports, ports and rail lines

**Alshawi**, 11/20/**2009** (Mustafa – chairman of the Iraq Institute for Economic Reforms, and Associate Dean of Research at the University of Salford, Concept and Background to Public Private Partnership (PPP)/Private Finance Initiative (PFI): UK Experience, p. 1)

1 Infrastructure is defined as transportation infrastructure (roads, bridges, airports, ports, rail lines); communications infrastructure; housing; and electricity generation and distribution. Infrastructure projects can be “mega projects” (dams, coast-to‐coast highways, mega‐ports, large power plants) or much smaller projects that can include communication franchises or limited highway spurs.

### Transportation Infrastructure – How Much

#### The U.S. invests $58 billion in transportation infrastructure a year

**A**merican **R**oad & **T**ransportation **B**uilders **A**ssociation **2012** (FAQs, p. http://www.artba.org/about/faqs-transportation-general-public/faqs/#7)

HOW MUCH DOES THE FEDERAL GOVERNMENT INVEST IN TRANSPORTATION IMPROVEMENTS EACH YEAR? The federal government invested $58 billion in transportation improvements through the core federal transportation improvement programs during FY 2011, which began October 1, 2010 and ended September 30, 2011. This was the same amount of funding as was provided during FY 2010. Federal investment in highway improvements in FY 2011 included $41.8 billion through the core highway program, the same as during FY 2010. Most federal highway investment is used to upgrade and maintain the nation's core highways, including the Interstate Highway System, and to repair and replace deficient bridges. For public transportation, the federal government invested $10.3 billion during FY 2011, also the same as during FY 2010. Federal public transportation program funds are used to build and upgrade rail mass transit systems in major cities and to purchase and upgrade buses and facilities of local transit agencies. The federal government’s investment in airport improvements in FY 2011 included $3.51 billion through the core Airport Improvement Program, also unchanged from FY 2010. Airport improvement funds are used to build and upgrade airport runways, taxiways and other ground facilities. The federal government also finances the air traffic control system and helps airports pay for equipment upgrades. Most of the $9 billion annual construction work on railroads is privately-financed by the nation's railroad companies. The federal government, however, provides an annual appropriation, of just under $1.5 billion in FT 2011, for capital improvements to Amtrak as well as to help cover operating expenses. In addition to the above amounts, Congress provided $527 million in FY 2011 for the Transportation Investment Generating Economic Recovery (TIGER) program under which state and local governments can apply for grants that can be used for highway, transit or railway improvements.

### Transportation Infrastructure – AT: Counter-Interpretation

#### Transportation is hard to define --- only clear communication on the definition as roads, bridges, rail lines and runways can create clarity

**Regenold**, August **2005** (Michele – Center for Transportation Research and Education, Workforce Recruitment Dilemma: Defining Transportation and Transportation Careers, Mid-Continent Transportation Research Symposium, p. 2)

When high school and college students hear the term “transportation,” what comes to mind? Moving goods and people? Driving somewhere? Maybe taking a plane? What generally does not come to mind is the transportation infrastructure—the roads and bridges, rail lines and runways. These elements are invisible to them. Transportation can be a vague, even misleading, word, so it’s not surprising that workforce development efforts, especially those targeting children, avoid the term. The concept of transportation careers is nearly as ambiguous. What job titles does that term encompass? In the Des Moines Register’s help-wanted ads, for example, one category of jobs is “Automotive/Transportation.” The majority of the jobs advertised in this section is usually truck drivers. While moving goods across the country is important and necessary work, it does not reflect the breadth of the transportation career field. Misperceptions about transportation careers compound the recruiting problem. Yet the field of transportation is a great industry for people looking for long-term work. According to the National LTAP (Local Technical Assistance Program) Association, nearly half of the current transportation workforce may retire by 2010. The U.S. is beginning to experience a serious worker shortage at all skill and education levels. Attracting young people to transportation careers, particularly careers related to the transportation infrastructure, has become critical. But designing, developing, and maintaining the infrastructure can be an invisible function to young people and to their parents, teachers, and guidance counselors. Even when the work is visible, as in the case of road work zones, high school students (and most adults, for that matter) have no idea what kind of work and planning is done before and after that work zone goes up. There is a fundamental communication gap between transportation professionals and laypeople about the work that goes on to keep this country moving. Because of this communication gap, recruiting young people into professional and non-professional careers in transportation can be particularly challenging.

### Transportation Infrastructure – Wide Definition

#### A wide definition of infrastructure would explode limits

**B**uilding **A**merica’s **F**uture **Ed**ucational **Fund**, (Building America’s Future: Falling Apart and Falling Behind, Transportation Infrastructure Report 2011)

Building America’s Future Educational Fund (BAF Ed Fund) is a bipartisan coalition of elected officials dedicated to bringing about a new era of U.S. investment in infrastructure that enhances our nation’s prosperity and quality of life. Founded by former Governor Edward Rendell of Pennsylvania, former Governor Arnold Schwarzenegger of California, and Mayor Michael Bloomberg of New York, BAF Ed Fund boasts a politically diverse membership of state and local elected officials from across the nation. BAF Ed Fund seeks to advance a new national vision for infrastructure investment that strengthens our cities and rural communities, and focuses on economic growth, global competitiveness, job creation, and environmental sustainability. In addition, we embrace a **wide definition** of infrastructure—from roads and bridges to water and sewer systems, energy systems, buses, trains, ports, airports, levees, dams, schools, and housing.

### Transportation Investment – Excludes Cars/Planes/Railroad Cars

#### Transportation investment excludes vehicles used for transportation

**R**esearch and **I**nnovative **T**echnology **A**dministration **2004** (Introduction, Bureau of Transportation Statistics, p. http://www.bts.gov/publications/research\_papers/transportation\_investment\_and\_gdp/2004/html/introduction.html)

Transportation investment is defined as additions to transportation fixed assets. Transportation fixed assets refers to structures, motor vehicles, and other machinery and equipment, which are used in the provision of transportation services for more than one year. Due to data limitations, we exclude other machinery and equipment that are used in transportation by non-transportation-entities. Our definition thus reflects a combination of asset type and business characteristics of investors. Therefore, our list of transportation fixed assets includes all fixed assets within transportation industries and fixed assets that are transportation-specific and acquired by entities outside transportation industries. A fixed asset is transportation-specific when its only use is in transportation. For example, a pickup truck is transportation-specific whether or not it is used by a transportation entity, while a computer is not transportation-specific even if it is used by a trucking company. Therefore, our list includes all pickup trucks but only the computers used by transportation industries. Our extended definition of transportation assets and the related investment measures better serve transportation analysis purposes than measures of investment on a pure asset basis or industry basis. Many public policy questions focus on infrastructure, and there is interest in the levels and patterns of investment in infrastructure. The data in this paper address infrastructure, but they also cover the transportation equipment (aircraft, railroad cars, trucks) that use the infrastructure. Many issues relating to the impact of transportation investment on the economy, such as impact on aggregate demand and employment, relate just as much to equipment as to infrastructure. Infrastructure investment can leverage equipment investment, by improving equipment turn times, and can impact directly on equipment maintenance costs. On the other hand inadequate equipment investment can constrain the transportation system even if infrastructure is adequate. By providing total investment data, but breaking out infrastructure investment, we provide data that can be used to address these issues. In this way we also provide data that is comparable to investment data in national account statistics and in the Government Transportation Financial Statistics reports.

### Investment – Not Numerical

#### Investments cannot be simply measured and added --- they are too complicated

**Guerrero**, 7/23/**2001** (Peter – director of Physical Infrastructure Issues at the United States General Accounting Office, U.S. Infrastructure: Funding Trends and Federal Agencies’ Investment Estimates, p. 14)

Overall Comments About the Estimates Some perspective is called for in reviewing the investment estimates by the seven agencies. First, the investment estimates encompass major areas of public infrastructure, but they cannot be easily compared or **simply “added up**” to produce a national estimate of all infrastructure investment needs because they were developed using different methods and were for different time periods. A fundamental reason that the estimates were prepared differently and lack comparability is that they are developed and used for different purposes. Some agencies use the information to determine the financial resources needed to manage and/or repair their own assets, while other agencies develop estimates at the request of the Congress to provide general information to decisionmakers or to help direct federal funding to states, localities, and other parties.

### Investment – Money

#### Investment requires spending money

**Collins English Dictionary 2009**

1. a. the act of investing money

 b. the amount invested

 c. an enterprise, asset, etc, in which money is or can be invested

2. a. the act of investing effort, resources, etc

 b. the amount invested

3. economics the amount by which the stock of capital (plant, machinery, materials, etc) in an enterprise or economy changes

4. biology the outer layer or covering of an organ, part, or organism

5. a less common word for investiture

6. the act of investing or state of being invested, as with an official robe, a specific quality, etc

7. rare the act of besieging with military forces, works, etc

### Investment – Profitable Money

#### Investment must place money in exchange for revenue

**Ballentine’s Law Dictionary** **2010** p. Lexis

1. The act of placing money where it will yield an income or revenue. Savings Bank of San Diego County v Barrett, 126 Cal 413, 58 P 914; Drake v Crane, 127 Mo 85, 29 SW 990. The laying out of money in such a manner that it may produce a revenue, whether the particular method be a loan, or the purchase of stocks, securities or other property. Putting money on interest, either by way of loan, or the purchase of income-producing property. Drake v Crane, 127 Mo 85, 29 SW 990. A note, bond, or share of stock purchased for income.

#### Investment requires the intent for profitable returns

**Random House Dictionary 2012**

1. the investing of money or capital in order to gain profitable returns, as interest, income, or appreciation in value.

2. a particular instance or mode of investing.

3. a thing invested in, as a business, a quantity of shares of stock, etc.

4. something that is invested; sum invested.

5. the act or fact of investing or state of being invested, as with a garment.

#### Investment requires money for profit

**The People’s Law Dictionary 2012**

(http://dictionary.law.com/Default.aspx?selected=1024)

n. the money put into use for profit, or the property or business interest purchased for profit.

## Substantially

### Substantially – Numerical Definitions

#### Substantial is 2%

**Word and Phrases 1960**

 'Substantial" means "of real worth and importance; of considerable value; valuable." Bequest to charitable institution, making 1/48 of expenditures in state, held exempt from taxation; such expenditures constituting "substantial" part of its activities. Tax Commission of Ohio v. American Humane Education Soc., 181 N.E. 557, 42 Ohio App.

#### Substantial is twenty percent

**Words & Phrases 1960**

"Substantial" number of tenants engaged In production of goods for commerce means that at least 20 per cent. of building be occupied by tenants so engaged. Ullo v. Smith, D.C.N.Y., 62 F.Supp. 757, 760.

#### It’s 90%

**Words & Phrases 2000**

N.H. 1949. -The Word "substantially" as used in provision of Unemployment Compensation Act that experience rating of an employer may transferred to' an employing unit which acquires the organization, -trade, or business, or "substantially" all of the assets thereof, is 'an elastic term which does not include a. definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but cannot be **less than 90 per cent** in the ordinary situation. R.L c. 218, § 6, subd. F, as added by Laws 1945, c. 138, § 16.-Auclair Transp. v. Riley, 69 A.2d 861, 96 N.H. l.-Tax347.1.

### Substantially – AT: Can’t Measure

#### Substantial is a relative term of worth

**Words and Phrases 64** (Vol. 40, p. 816)

The word “substantially” is a **relative term** and should be interpreted **in accordance with the context** of claim in which it is used. Moss v. Patterson Ballagh Corp. D.C.Cal., 80 P.Supp. C10, 637.

### Substantially – Firm

#### Substantial means firm

**Merriam-Webster** **2007**, http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=substantial

4 : firmly constructed : STURDY <a substantial house>

### Substantially – Large Amount

#### Substantially increase means by a large amount

**NRC 3** (Office of Nuclear Material Safety and Safeguards Policy and Procedures, April 2003,) <http://www.fontana.org/main/dev_serv/planning/ventana_eir/appendix_e.pdf>

“Substantial increase” means “important or significant in a large amount, extent, or degree,” and not resulting in insignificant or small benefit to the public health and safety, common defense and security, or the environment, regardless of costs. However, this standard is not intended to be interpreted in a way that would result in disapproval of worthwhile safety or security improvements with justifiable costs.2

### Substantially – Considerable

#### "Substantial" means of real worth or considerable value --- this is the usual and customary meaning of the term

**Words and Phrases 2** (Volume 40A, p. 458)

D.S.C. 1966. The word “substantial” within Civil Rights Act providing that a place is a public accommodation if a “substantial” portion of food which is served has moved in commerce must be construed in light of its usual and customary meaning, that is, something of real worth and importance; of considerable value; valuable, something worthwhile as distinguished from something without value or merely nominal

####  “Substantial” means considerable or to a large degree --- this common meaning is preferable because the word is not a term of art

Arkush 2 (David, JD Candidate – Harvard University, “Preserving "Catalyst" Attorneys' Fees Under the Freedom of Information Act in the Wake of Buckhannon Board and Care Home v. West Virginia Department of Health and Human Resources”, Harvard Civil Rights-Civil Liberties Law Review, Winter,
37 Harv. C.R.-C.L. L. Rev. 131)

Plaintiffs should argue that the term "substantially prevail" is not a term of art because if considered a term of art, resort to Black's 7th produces a definition of "prevail" that could be interpreted adversely to plaintiffs. [99](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n99) It is commonly accepted that words that are not legal terms of art should be accorded their ordinary, not their legal, meaning, [100](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n100) and ordinary-usage dictionaries provide FOIA fee claimants with helpful arguments. The Supreme Court has already found favorable, temporally relevant definitions of the word "substantially" in ordinary dictionaries: "Substantially" suggests "considerable" or "specified to a large degree." See Webster's Third New International Dictionary 2280 (1976) (defining "substantially" as "in a substantial manner" and "substantial" as "considerable in amount, value, or worth" and "being that specified to a large degree or in the main"); see also 17 Oxford English Dictionary 66-67 (2d ed. 1989) ("substantial": "relating to or proceeding from the essence of a thing; essential"; "of ample or considerable amount, quantity or dimensions"). [101](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=16&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all#n101)

#### Substantial means “of considerable amount” --- not some contrived percentage

**Prost 4** (Judge – United States Court of Appeals for the Federal Circuit, “Committee For Fairly Traded Venezuelan Cement v. United States”, 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C).  In fact, they merely suggest, without disqualifying other alternatives, a “clearly higher/substantial proportion” approach.  Indeed, the SAA specifically mentions that no “precise mathematical formula” or “‘benchmark’ proportion” is to be used for a dumping concentration analysis.  SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30.  Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a “case-by-case basis.”  SAA at 860.  Finally, the definition of the word “substantial” undercuts the CFTVC’s argument.  The word “substantial” generally means “considerable in amount, value or worth.”  Webster’s Third New International Dictionary 2280 (1993).  It does not imply a specific number or cut-off.  What may be substantial in one situation may not be in another situation.  The very breadth of the term “substantial” undercuts the CFTVC’s argument that Congress spoke clearly in establishing a standard for the Commission’s regional antidumping and countervailing duty analyses.  It therefore supports the conclusion that the Commission is owed deference in its interpretation of “substantial proportion.”  The Commission clearly embarked on its analysis having been given considerable leeway to interpret a particularly broad term.

### Substantially – Real

#### "Substantial" means actually existing, real, or belonging to substance

**Words and Phrases 2** (Volume 40A) p. 460

Ala. 1909. “Substantial” means “belonging to substance; actually existing; real; \*\*\* not seeming or imaginary; not elusive; real; solid; true; veritable

#### "Substantial" means having substance or considerable

**Ballentine's 95** (Legal Dictionary and Thesaurus, p. 644)

having substance; considerable

### Substantially – In the Main

#### "Substantial" means in the main

**Words and Phrases 2** (Volume 40A, p. 469)

Ill.App.2 Dist. 1923 “Substantial” means in substance, in the main, essential, including material or essential parts

### Substantially – Without Material Qualification

#### “Substantially” is without material qualification

Black’s Law 91 (Dictionary, p. 1024)

Substantially - means essentially; without material qualification

### Substantially – Durable

#### “Substantially” means durable

Ballantine’s 94 (Thesaurus for Legal Research and Writing, p. 173)

substantial [sub . *stan* . shel] *adj*. abundant, consequential, durable, extraordinary, heavyweight, plentiful (“a substantial supply”); actual, concrete, existent, physical, righteous, sensible, tangible (“substantial problem”); affluent, comfortable, easy, opulent, prosperous, solvent.

### Substantially is Context Dependent

#### Substantial should be judged by its context

**Devinsky 2** (Paul, “Is Claim "Substantially" Definite?  Ask Person of Skill in the Art”, IP Update, 5(11), November, http://www.mwe.com/index.cfm/fuseaction/publications.nldetail/object\_id/c2c73bdb-9b1a-42bf-a2b7-075812dc0e2d.cfm)

In reversing a summary judgment of invalidity, the U.S. Court of Appeals for the Federal Circuit found that the district court, by failing to look beyond the intrinsic claim construction evidence to consider what a person of skill in the art would understand in a "technologic context," **erroneously concluded** the term "substantially" made a claim fatally indefinite.  Verve, LLC v. Crane Cams, Inc., Case No. 01-1417 (Fed. Cir. November 14, 2002). The patent in suit related to an improved push rod for an internal combustion engine.  The patent claims a hollow push rod whose overall diameter is larger at the middle than at the ends and has "substantially constant wall thickness" throughout the rod and rounded seats at the tips.  The district court found that the expression "substantially constant wall thickness" was not supported in the specification and prosecution history by a sufficiently clear definition of "substantially" and was, therefore, indefinite.  The district court recognized that the use of the term "substantially" may be definite in some cases but ruled that in this case it was indefinite because it was not further defined. The Federal Circuit reversed, concluding that the district court erred in requiring that the meaning of the term "substantially" in a particular "technologic context" be found solely in intrinsic evidence:  "While reference to intrinsic evidence is primary in interpreting claims, the criterion is the meaning of words as they would be understood by persons in the field of the invention."  Thus, the Federal Circuit instructed that "resolution of any ambiguity arising from the claims and specification may be aided by extrinsic evidence of usage and meaning of a term in the context of the invention."  The Federal Circuit remanded the case to the district court with instruction that "[t]he question is not whether the word 'substantially' has a fixed meaning as applied to 'constant wall thickness,' but how the phrase would be understood by persons experienced in this field of mechanics, upon reading the patent documents."

### Substantially – AT: Means Considerable

#### Defining substantial as “considerable” is arbitrary and meaningless

**Stark 97** (Stephen J., “Key Words And Tricky Phrases: An Analysis Of Patent Drafter's Attempts To Circumvent The Language Of 35 U.S.C.”, Journal of Intellectual Property Law, Fall, 5 J. Intell. Prop. L. 365, Lexis)

1. Ordinary Meaning. First, words in a patent are to be given their ordinary meaning unless otherwise defined. [30](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all" \l "n30" \t "_self) However, what if a particular word has multiple meanings? For example, consider the word "substantial." The Webster dictionary gives eleven different definitions of the word substantial. [31](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all" \l "n31" \t "_self) Additionally, there are another two definitions specifically provided for the adverb "substantially." [32](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all" \l "n32" \t "_self) Thus, the "ordinary meaning" is not clear. The first definition of the word "substantial" given by the Webster's Dictionary is "of ample or considerable amount, quantity, size, etc." [33](http://www.lexis.com/research/retrieve?_m=1421887dc00d6c0b78bddb20857a69fa&docnum=20&_fmtstr=FULL&_startdoc=1&wchp=dGLbVzW-zSkAz&_md5=3f3ffe65eadff46b38ea49c40cb1037e&focBudTerms=definition%20of%20the%20term%21%20substantial%21%20or%20definition%20of%20the%20word%20substantial%21&focBudSel=all" \l "n33" \t "_self) Supposing that this is the precise definition that the drafter had in mind when drafting the patent, the meaning of "ample or considerable amount" appears **amorphous**. This could have one of at least the following interpretations: (1) almost all, (2) more than half, or (3) barely enough to do the job. Therefore, the use of a term, such as "substantial," which usually has a **very ambiguous** meaning, makes the scope of protection **particularly hard to determine**.

### Substantially – AT: Reasonability

#### Reject reasonability in the context of “substantial” debates

**Brennan 88** (Justice, Pierce v. Underwood (Supreme Court Decision), 487 U.S. 552, http://socsec.law. cornell.edu/cgi-bin/foliocgi.exe/socsec\_case\_full/query=%5Bjump!3A!27487+u!2Es!2E+552+opinion+n1!2 7%5D/doc/%7B@ 825%7D?)

The underlying problem with the Court's methodology is that it uses words or terms with similar, but not identical, meanings as a substitute standard, rather than as an aid in choosing among the assertedly different meanings of the statutory language. Thus, instead of relying on the **legislative history** and **other tools of interpretation** to help resolve the ambiguity in the word "substantial," the Court uses those tools essentially to jettison the phrase crafted by Congress. This point is well illustrated by the Government's position in this case. Not content with the term "substantially justified," the Government asks us to hold that it may avoid fees if its position was "reasonable." Not satisfied even with that substitution, we are asked to hold that a position is "reasonable" if "it has some substance and a fair possibility of success." Brief for Petitioner 13. While each of the Government's successive definitions may not stray too far from the one before, the end product is significantly removed from "substantially justified." I believe that Congress intended the EAJA to do more than award fees where the Government's position was one having no substance, or only a slight possibility of success; I would hope that the Government rarely engages in litigation fitting that definition, and surely not often enough to warrant the $ 100 million in attorney's fees Congress expected to spend over the original EAJA's 5-year life. My view that "substantially justified" **means more** than merely reasonable, aside from conforming to the words Congress actually chose, is bolstered by the EAJA's legislative history. The phrase "substantially justified" was a congressional attempt to fashion a "middle ground" between an earlier, unsuccessful proposal to award fees in all cases in which the Government did not prevail, and the Department of Justice's proposal to award fees only when the Government's position was "arbitrary, frivolous, unreasonable, or groundless." S. Rep., at 2-3. Far from occupying the middle ground, "the test of reasonableness" is firmly encamped near the position espoused by the Justice Department. Moreover, the 1985 House Committee Report pertaining to the EAJA's reenactment expressly states that "substantially justified" means more than "mere reasonableness." H. R. Rep. No. 99-120, p. 9 (1985). Although I agree with the Court that this Report is not dispositive, the Committee's unequivocal rejection of a pure "reasonableness" standard in the course of considering the bill reenacting the EAJA is deserving of some weight. Finally, however lopsided the weight of authority in the lower courts over the meaning of "substantially justified" might once have been, lower court opinions are no longer nearly unanimous. The District of Columbia, Third, Eighth, and Federal Circuits have all adopted a standard higher than mere reasonableness, and the Sixth Circuit is considering the question en banc. See Riddle v. Secretary of Health and Human Services, [817 F.2d 1238](http://socsec.law.cornell.edu/cgi-bin/foliocgi.exe/socsec_case_full/query%3D%5BJUMP%3A%27817%2BF%212E2d%2B1238%27%5D/doc/%7B%401%7D?firsthit) (CA6) (adopting a higher standard), vacated for rehearing en banc, 823 F.2d 164 (1987); Lee v. Johnson, 799 F.2d 31 (CA3 1986); United States v. 1,378.65 Acres of Land, 794 F.2d 1313 (CA8 1986); Gavette v. OPM, 785 F.2d 1568 (CA Fed. 1986) (en banc); Spencer v. NLRB, 229 U. S. App. D. C. 225, 712 F.2d 539 (1983). In sum, the Court's journey from "substantially justified" to "reasonable basis both in law and fact" to "the test of reasonableness" does not crystallize the law, nor is it true to Congress' intent. Instead, it allows the Government to **creep the standard** towards "having some substance and a fair possibility of success," a position I believe Congress intentionally avoided. In my view, we should hold that the Government can avoid fees only where it makes a clear showing that its position had a solid basis (as opposed to a marginal basis or a not unreasonable basis) in both law and fact. That it may be less "anchored" than "the test of reasonableness," a debatable proposition, is **no excuse** to **abandon the test** Congress enacted. [n2](http://socsec.law.cornell.edu/cgi-bin/foliocgi.exe/socsec_case_full/query%3D%5BJUMP%3A%27487%2BU%212ES%212E%2B552%2BCONCUR%2Bn2%27%5D/doc/%7B%401%7D?firsthit)

## Increase

### Increase – Make Greater

#### Increase means to make greater

**AHD 11** (American Heritage Dictionary, “increase”, <http://education.yahoo.com/reference/dictionary/entry/increase>)

in·crease  (n-krs) [KEY](http://education.yahoo.com/reference/dictionary/pronunciation_key)
VERB: in·creased, in·creas·ing, in·creas·es
VERB: intr.

To become greater or larger.

To multiply; reproduce.

VERB: tr.

To make greater or larger.

#### This includes size, amount, number, or intensity

Webster’s 11 (Merriam-Webster’s Unabridged Dictionary, “increase”, <http://www.merriam-webster.com/dictionary/increase>)

to become progressively greater (as in size, amount, number, or intensity)

#### Increase doesn’t require pre-existence

**Reinhardt 5** (U.S. Judge for the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (Stephen, JASON RAY REYNOLDS; MATTHEW RAUSCH, Plaintiffs-Appellants, v. HARTFORD FINANCIAL SERVICES GROUP, INC.; HARTFORD FIRE INSURANCE COMPANY, Defendants-Appellees., lexis)

Specifically, we must decide whether charging a higher price for initial insurance than the insured would otherwise have been charged because of information in a consumer credit report constitutes an "increase in any charge" within the meaning of FCRA. First, we examine the definitions of "increase" and "charge." Hartford Fire contends that, limited to their ordinary definitions, these words apply only when a consumer has previously been charged for insurance and that charge has thereafter been increased by the insurer. The phrase, "has previously been charged," as used by Hartford, refers not only to a rate that the consumer has previously paid for insurance but also to a rate that the consumer has previously been quoted, even if that rate was increased [\*\*23] before the consumer made any payment. Reynolds disagrees, asserting that, under [\*1091] the ordinary definition of the term, an increase in a charge also occurs whenever an insurer charges a higher rate than it would otherwise have charged because of any factor--such as adverse credit information, age, or driving record 8 --regardless of whether the customer was previously charged some other rate. According to Reynolds, he was charged an increased rate because of his credit rating when he was compelled to pay a rate higher than the premium rate because he failed to obtain a high insurance score. Thus, he argues, the definitions of "increase" and "charge" encompass the insurance companies' practice. Reynolds is correct.

 “Increase" means to make something greater. See, e.g., OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("The action, process, or fact of becoming or making greater; augmentation, growth, enlargement, extension."); WEBSTER'S NEW WORLD DICTIONARY OF AMERICAN ENGLISH (3d college ed. 1988) (defining "increase" as "growth, enlargement, etc[.]"). "Charge" means the price demanded for goods or services. See, e.g., OXFORD ENGLISH DICTIONARY (2d ed. 1989) ("The price required or demanded for service rendered, or (less usually) for goods supplied."); WEBSTER'S NEW WORLD DICTIONARY OF AMERICAN ENGLISH (3d college ed. 1988) ("The cost or price of an article, service, etc."). Nothing in the definition of these words implies that the term "increase in any charge for" should be limited to cases in which a company raises the rate that an individual has previously been charged.

#### Increase includes an extension of duration

**Word and Phrases 8** (vol. 20B, p. 265)

Me. 1922. Within Workmen’s Compensation Act, § 36, providing for review of any agreement, award, findings, or decree, and that member of Commission may increase, diminish, or discontinue compensation, an “increase” may include an extension of the time of the award. –Graney’s Case, 118 A. 369, 121 Me.500.—Work Comp 2049.

### Increase – Mandate

#### Increase must be a mandate

**HEFC 4** (Higher Education Funding Council for England, “Joint Committee on the Draft Charities Bill Written Evidence”, June, http://www.publications.parliament.uk/pa/jt200304/jtselect/jtchar/167/167we98.htm)

9.1 The Draft Bill creates an obligation on the principal regulator to do all that it "reasonably can to meet the compliance objective in relation to the charity".[45] The Draft Bill defines the compliance objective as "to increase compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity".[46] 9.2 Although the word "increase" is used in relation to the functions of a number of statutory bodies,[47] such examples demonstrate that "increase" is used in relation to considerations to be taken into account in the exercise of a function, rather than an objective in itself. 9.3 HEFCE is concerned that an obligation on principal regulators to "increase" compliance per se is unworkable, in so far as it does not adequately define the limits or nature of the statutory duty. Indeed, the obligation could be considered to be ever-increasing.

### Increase – Net Greater

#### Increase requires a net increase over the status quo

Judge **Rogers**, June 24, **2005**, US Court of Appeals for the DC Circuit, State of New York, et al., Petitioners v. US Environmental Protection Agency, 367 U.S. App. D.C. 3; 413 F.3d 3, 2005 U.S. App. LEXIS 12378, \*\*; 60 ERC (BNA) 1791, p. Lexis

[\*\*48] Statutory Interpretation. HN16Go to the description of this Headnote.While the CAA defines a "modification" as any physical or operational change that "increases" emissions, it is silent on how to calculate such "increases" in emissions. 42 U.S.C. § 7411(a)(4). According to government petitioners, the lack of a statutory definition does not render the term "increases" ambiguous, but merely compels the court to give the term its "ordinary meaning." See Engine Mfrs.Ass'nv.S.Coast AirQualityMgmt.Dist., 541 U.S. 246, 124 S. Ct. 1756, 1761, 158 L. Ed. 2d 529(2004); Bluewater Network, 370 F.3d at 13; Am. Fed'n of Gov't Employees v. Glickman, 342 U.S. App. D.C. 7, 215 F.3d 7, 10 [\*23] (D.C. Cir. 2000). Relying on two "real world" analogies, government petitioners contend that the ordinary meaning of "increases" requires the **baseline to be calculated** from a period immediately preceding the change. They maintain, for example, that in determining whether a high-pressure weather system "increases" the local temperature, the relevant baseline is the temperature immediately preceding the arrival of the weather system, not the temperature five or ten years ago. Similarly, [\*\*49] in determining whether a new engine "increases" the value of a car, the relevant baseline is the value of the car immediately preceding the replacement of the engine, not the value of the car five or ten years ago when the engine was in perfect condition.

### Increase – Excludes Create

#### Increase requires making an already program greater --- the Aff creates something new

**Buckley 6** (Jeremiah, Attorney, Amicus Curiae Brief, Safeco Ins. Co. of America et al v. Charles Burr et al, <http://supreme.lp.findlaw.com/supreme_court/briefs/06-84/06-84.mer.ami.mica.pdf>)

First, the court said that the ordinary meaning of the word “increase” is “to make something greater,” which it believed should not “be limited to cases in which a company raises the rate that an individual has previously been charged.” 435 F.3d at 1091. Yet the definition offered by the Ninth Circuit compels the opposite conclusion. Because “increase” means “to make something greater,” there must necessarily have been an existing premium, to which Edo’s actual premium may be compared, to determine whether an “increase” occurred. Congress could have provided that “ad-verse action” in the insurance context means charging an amount greater than the optimal premium, but instead chose to define adverse action in terms of an “increase.” That def-initional choice must be respected, not ignored. See Colautti v. Franklin, 439 U.S. 379, 392-93 n.10 (1979) (“[a] defin-ition which declares what a term ‘means’ . . . excludes any meaning that is not stated”). Next, the Ninth Circuit reasoned that because the Insurance Prong includes the words “existing or applied for,” Congress intended that an “increase in any charge” for insurance must “apply to all insurance transactions – from an initial policy of insurance to a renewal of a long-held policy.” 435 F.3d at 1091. This interpretation reads the words “exist-ing or applied for” in isolation. Other types of adverse action described in the Insurance Prong apply only to situations where a consumer had an existing policy of insurance, such as a “cancellation,” “reduction,” or “change” in insurance. Each of these forms of adverse action presupposes an already-existing policy, and under usual canons of statutory construction the term “increase” also should be construed to apply to increases of an already-existing policy. See Hibbs v. Winn, 542 U.S. 88, 101 (2004) (“a phrase gathers meaning from the words around it”) (citation omitted).

#### Increase requires pre-existence

**Brown 3** (US Federal Judge – District Court of Oregon (Elena Mark and Paul Gustafson, Plaintiffs, v. Valley Insurance Company and Valley Property and Casualty, Defendants, 7-17, Lexis)

FCRA does not define the term "increase." The plain and ordinary meaning of the verb "to increase" is to make something greater or larger. 4 Merriam-Webster's [\*\*22] Collegiate Dictionary 589 (10th ed. 1998). The "something" that is increased in the statute is the "charge for any insurance." The plain and common meaning of the noun "charge" is "the price demanded for something." Id. at 192. Thus, the statute plainly means an insurer takes adverse action if the insurer makes greater (i.e., larger) the price demanded for insurance.

An insurer cannot "make greater" something that did not exist previously. The statutory definition of adverse action, therefore, clearly anticipates an insurer must have made an initial charge or demand for payment before the insurer can increase that charge. In other words, an insurer cannot increase the charge for insurance unless the insurer previously set and demanded payment of the premium for that insured's insurance [\*\*23] coverage at a lower price.

## Generic

### Resolved

#### ‘Resolved’ means to enact a policy by law

Words and Phrases 64 (Permanent Edition)

Definition of the word “resolve,” given by Webster is “to express an opinion or determination by resolution or vote; as ‘it was resolved by the legislature;” It is of similar force to the word “enact,” which is defined by Bouvier as meaning “to establish by law”.

#### Determination reached by voting

Webster’s 98 (Revised Unabridged, Dictionary.com)

Resolved: 5. To express, as an opinion or determination, by resolution and vote; to declare or decide by a formal vote; -- followed by a clause; as, the house resolved (or, it was resolved by the house) that no money should be apropriated (or, to appropriate no money).

#### Firm decision

AHD 6 (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

Resolve TRANSITIVE VERB:1. To make a firm decision about. 2. To cause (a person) to reach a decision. See synonyms at decide. 3. To decide or express by formal vote.

#### Specific course of action

AHD 6 (American Heritage Dictionary, http://dictionary.reference.com/browse/resolved)

INTRANSITIVE VERB:1. To reach a decision or make a determination: resolve on a course of action. 2. To become separated or reduced to constituents. 3. Music To undergo resolution.

#### Resolved implies immediacy

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/resolve)

re·solve  [Audio Help](http://dictionary.reference.com/help/audio.html)   /rɪˈzɒlv/ Pronunciation Key - Show Spelled Pronunciation[ri-zolv] Pronunciation Key - Show IPA Pronunciation verb, -solved, -solv·ing, noun

–verb (used with object)

1. to come to a definite or earnest decision about; determine (to do something): I have resolved that I shall live to the full.

### The

####  “The” indicates reference to a noun as a whole

Webster’s 5 (Merriam Webster’s Online Dictionary, http://www.m-w.com/cgi-bin/dictionary)

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### Requires specification

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used, esp. before a noun, with a specifying or particularizing effect, as opposed to the indefinite or generalizing force of the indefinite article *a* or *an*): the book you gave me; Come into the house.

#### Indicates a proper noun

Random House 6 (Unabridged Dictionary, http://dictionary.reference.com/browse/the)

(used to mark a proper noun, natural phenomenon, ship, building, time, point of the compass, branch of endeavor, or field of study as something well-known or unique): the sun; the Alps; the Queen Elizabeth; the past; the West.

#### “The” means all parts

Encarta 9 (World English Dictionary, “The”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861719495)

2. indicating generic class: used to refer to a person or thing considered generically or universally
Exercise is good for the heart.
She played the violin.
The dog is a loyal pet.

### United States

#### “United States” means United States of North America

Webster’s 61 (Third New International Dictionary, p. 2501)

Of or from the United States of North America

#### “United States” means the federal government

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

the federal government

#### "United States" means the sovereign state called the "United States"

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

a sovereign nation or sovereign state called the “United States”

#### "United States" means the territory over which the sovereign nation of the "United States" exercises sovereign power

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 689)

the territory over which this sovereign nation called the “United States” exercises sovereign power

#### “United States” is the USA

Encarta 7 (Dictionary Online, “United States”, http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861708119)

U·nit·ed States [ [y ntəd stáyts](http://encarta.msn.com/encnet/features/dictionary/Pronounce.aspx?search=United+States) ] country in central North America, consisting of 50 states.
Languages: English.
Currency: dollar.
Capital: Washington, D.C..
Population: 290,342,550 (2001).
Area: 9,629,047 sq km (3,717,796 sq mi.)
Official name  United States of America

### Federal Government

#### “Federal Government” means the United States government

Black’s Law 99 (Dictionary, Seventh Edition, p.703)

The U.S. government—also termed national government

#### "Federal Government" means the national government, not the states or localities

Black’s Law 99 (Dictionary, Seventh Edition, p.703)

A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the right to participate in national political matters

#### “Federal Government” means the government of the United States of America

Ballentine's 95 (Legal Dictionary and Thesaurus, p. 245)

the government of the United States of America

#### “Federal” means the political unit created by the states, not the states themselves

**OED 89** (Oxford English Dictionary, 2ed. XIX, p. 795)

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

#### “Federal” is the central government not the states

**AHD 92** (American Heritage Dictionary of the English Language, p. 647)

federal—3. Of or relating to the central government of a federation as distinct from the governments of its member units.

#### “Government” is all three branches

Black’s Law 90 (Dictionary, p. 695)

“[*Government*] In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, includes the federal government and all its agencies and bureaus, state and county governments, and city and township governments.”

### Should – Desirable

#### “Should” means desirable --- this does not have to be a mandate

**Atlas Collaboration 99** (“Use of Shall, Should, May Can,” http://rd13doc.cern.ch/Atlas/DaqSoft/sde/inspect/shall.html)

shall

'shall' describes something that is mandatory. If a requirement uses 'shall', then that requirement \_will\_ be satisfied without fail. Noncompliance is not allowed. Failure to comply with one single 'shall' is sufficient reason to reject the entire product. Indeed, it must be rejected under these circumstances. Examples: # "Requirements shall make use of the word 'shall' only where compliance is mandatory." This is a good example. # "C++ code shall have comments every 5th line." This is a bad example. Using 'shall' here is too strong.

should

'should' is weaker. It describes something that might not be satisfied in the final product, but that is desirable enough that any noncompliance shall be explicitly justified. Any use of 'should' should be examined carefully, as it probably means that something is not being stated clearly. If a 'should' can be replaced by a 'shall', or can be discarded entirely, so much the better. Examples: # "C++ code should be ANSI compliant." A good example. It may not be possible to be ANSI compliant on all platforms, but we should try. # "Code should be tested thoroughly." Bad example. This 'should' shall be replaced with 'shall' if this requirement is to be stated anywhere (to say nothing of defining what 'thoroughly' means).

#### “Should” doesn’t require certainty

**Black’s Law 79** (Black’s Law Dictionary – Fifth Edition, p. 1237)

Should. The past tense of shall; ordinarily implying duty or obligation; although usually no more than an obligation of propriety or expediency, or a moral obligation, thereby distinguishing it from “ought.” It is not normally synonymous with “may,” and although often interchangeable with the word “would,” it does not ordinarily express certainty as “will” sometimes does.

### Should – Mandatory

#### “Should” means must – its mandatory

Foresi 32 (Remo Foresi v. Hudson Coal Co., Superior Court of Pennsylvania, 106 Pa. Super. 307; 161 A. 910; 1932 Pa. Super. LEXIS 239, 7-14, Lexis)

As regards the mandatory character of the rule, the word 'should' is not only an auxiliary verb, it is also the preterite of the verb, 'shall' and has for one of its meanings as defined in the Century Dictionary: "Obliged or compelled (to); would have (to); must; ought (to); used with an infinitive (without to) to express obligation, necessity or duty in connection with some act yet to be carried out." We think it clear that it is in that sense that the word 'should' is used in this rule, not merely advisory. When the judge in charging the jury tells them that, unless they find from all the evidence, beyond a reasonable doubt, that the defendant is guilty of the offense charged, they should acquit, the word 'should' is not used in an advisory sense but has the force or meaning of 'must', or 'ought to' and carries [\*\*\*8] with it the sense of [\*313] obligation and duty equivalent to compulsion. A natural sense of sympathy for a few unfortunate claimants who have been injured while doing something in direct violation of law must not be so indulged as to fritter away, or nullify, provisions which have been enacted to safeguard and protect the welfare of thousands who are engaged in the hazardous occupation of mining.

### Its – Solely U.S.

#### ‘Its’ is possessive

English Grammar 5 (Glossary of English Grammar Terms, <http://www.usingenglish.com/glossary/possessive-pronoun.html>)

Mine, yours, his, hers, its, ours, theirs are the possessive [pronouns](http://www.usingenglish.com/glossary/pronoun.html) used to substitute a [noun](http://www.usingenglish.com/glossary/noun.html) and to show possession or ownership. EG. This is your disk and that's mine. (Mine substitutes the word disk and shows that it belongs to me.)

#### Grammatically, this refers solely to the U.S.

**Manderino 73** (Justice – Supreme Court of Pennsylvania, “Sigal, Appellant, v. Manufacturers Light and Heat Co”., No. 26, Jan. T., 1972, Supreme Court of Pennsylvania, 450 Pa. 228; 299 A.2d 646; 1973 Pa. LEXIS 600; 44 Oil & Gas Rep. 214, Lexis)

On its face, the written instrument granting easement rights in this case is ambiguous. The same sentence which refers to the right to lay a 14 inch pipeline (singular) has a later reference to "said lines" (plural). The use of the plural "lines" makes no sense because the only previous reference has been to a "line" (singular). The writing is additionally ambiguous because other key words which are "also may change the size of its pipes" are dangling in that the possessive pronoun "its" before the word "pipes" does not have any subject preceding, to which the possessive pronoun refers. The dangling phrase is the beginning of a sentence, the first word of which does not begin with a capital letter as is customary in normal English [\*\*\*10]  usage. Immediately preceding the "sentence" which does not begin with a capital letter, there appears a dangling  [\*236]  semicolon which makes no sense at the beginning of a sentence and can hardly relate to the preceding sentence which is already properly punctuated by a closing period. The above deviations from accepted grammatical usage make difficult, if not impossible, a clear understanding of the words used or the intention of the parties. This is particularly true concerning the meaning of a disputed phrase in the instrument which states that the grantee is to pay damages from ". . . the relaying, maintaining and operating said pipeline. . . ." The instrument is ambiguous as to what the words ". . . relaying . . . said pipeline . . ." were intended to mean.

#### And --- its a term of exclusion

**Frey 28** (Judge – Supreme Court of Missouri, Supreme Court of Missouri,

320 Mo. 1058; 10 S.W.2d 47; 1928 Mo. LEXIS 834, Lexis)

In support of this contention appellant again argues that when any ambiguity exists in a will it is the duty of the court to construe the will under guidance of the presumption that the testatrix intended her property to go to her next of kin, unless there is a strong intention to the contrary. Again we say, there is intrinsic proof of a  [\*1074]  strong intention to the contrary. In the first place, testatrix only named two of her blood relatives in the will and had she desired [\*\*\*37]  them to take the residuary estate she doubtless would have mentioned them by name in the residuary clause. In the second place, if she used the word "heirs" in the sense of blood relatives she certainly would have dispelled all ambiguity by stating whose blood relatives were intended. Not only had  [\*\*53]  she taken pains in the will to identify her own two blood relatives but she had also identified certain blood relatives of her deceased husband. Had it been her intention to vest the residuary estate in her blood relatives solely, she would certainly have used the possessive pronoun "my" instead of the indefinite article "the" in the clause, "the above heirs."its is geographical

### In – Within the Limits

#### “In” indicates within a place or limits

**Random House Dictionary 2012**

1. (used to indicate inclusion within space, a place, or limits): walking in the park.

2. (used to indicate inclusion within something abstract or immaterial): in politics; in the autumn.

3. (used to indicate inclusion within or occurrence during a period or limit of time): in ancient times; a task done in ten minutes.

4. (used to indicate limitation or qualification, as of situation, condition, relation, manner, action, etc.): to speak in a whisper; to be similar in appearance.

5. (used to indicate means): sketched in ink; spoken in French.

6. (used to indicate motion or direction from outside to a point within) into: Let's go in the house.

7. (used to indicate transition from one state to another): to break in half.

8. (used to indicate object or purpose): speaking in honor of the event.

#### “In” indicates a position within the limits or boundaries

**Merriam-Webster Dictionary 2012** (http://www.merriam-webster.com/dictionary/in)

1 a —used as a function word to indicate inclusion, location, or position within limits <in the lake> <wounded in the leg> <in the summer>

b : into 1 <went in the house>

## Limits Good

### Limits Good – Research

#### Limits are key to research and participation

**Rowland 84** (Robert C., Debate Coach – Baylor University, “Topic Selection in Debate”, American Forensics in Perspective, Ed. Parson, p. 53-54)

The first major problem identified by the work group as relating to topic selection is the decline in participation in the National Debate Tournament (NDT) policy debate. As Boman notes: There is a growing dissatisfaction with academic debate that utilizes a policy proposition. Programs which are oriented toward debating the national policy debate proposition, so-called “NDT” programs, are diminishing in scope and size.4 This decline in policy debate is tied, many in the work group believe, to excessively broad topics. The most obvious characteristic of some recent policy debate topics is extreme breath. A resolution calling for regulation of land use literally and figuratively covers a lot of ground. Naitonal debate topics have not always been so broad. Before the late 1960s the topic often specified a particular policy change.5 The move from narrow to broad topics has had, according to some, the effect of limiting the number of students who participate in policy debate. First, the breadth of the topics has all but destroyed novice debate. Paul Gaske argues that because the stock issues of policy debate are clearly defined, it is superior to value debate as a means of introducing students to the debate process.6 Despite this advantage of policy debate, Gaske belives that NDT debate is not the best vehicle for teaching beginners. The problem is that broad policy topics terrify novice debaters, especially those who lack high school debate experience. They are unable to cope with the breadth of the topic and experience “negophobia,”7 the fear of debating negative. As a consequence, the educational advantages associated with teaching novices through policy debate are lost: “Yet all of these benefits fly out the window as rookies in their formative stage quickly experience humiliation at being caugh without evidence or substantive awareness of the issues that confront them at a tournament.”8 The ultimate result is that fewer novices participate in NDT, thus lessening the educational value of the activity and limiting the number of debaters or eventually participate in more advanced divisions of policy debate. In addition to noting the effect on novices, participants argued that broad topics also discourage experienced debaters from continued participation in policy debate. Here, the claim is that it takes so much times and effort to be competitive on a broad topic that students who are concerned with doing more than just debate are forced out of the activity.9 Gaske notes, that “broad topics discourage participation because of insufficient time to do requisite research.”10 The final effect may be that **entire programs** either **cease functioning** or shift to value debate as a way to avoid unreasonable research burdens. Boman supports this point: “It is this expanding necessity of evidence, and thereby research, which has created a competitive imbalance between institutions that participate in academic debate.”11 In this view, it is the competitive imbalance resulting from the use of broad topics that has led some small schools to cancel their programs.

### Precision Good – Limits

#### Precise limits is the only way to achieve consistency and prevents deviation

**Ehrlich and Posner 74** (Issac, Assistant Professor of Business Economics, University of Chicago, and Richard A., Professor of Law, University of Chicago, “An Economic Analysis of Legal Rulemaking,” : The Journal of Legal Studies, Vol. 3, No. 1 (Jan., 1974), pp. 257-286)

It does this by increasing the (subjective) probabilities that the undesirable activity is punishable and that the desirable is not. The cost of an activity includes any expected punishment costs. The expected punishment cost of engaging in an activity is the product of (1) the subjective probability of the participant's being apprehended and convicted and (2) the cost to him of the penalty that will be imposed if he is convicted. The probability of apprehension and conviction, in turn, is the product of (1) the probability that the activity in which the person is engaged will be deemed illegal and (2) the probability that, if so, he will be charged and convicted for his participation in it. **The more** (efficiently) **precise and detailed the** applicable substantive **standard or rule is**, the higher is the probability that the activity will be deemed illegal if it is in fact undesirable (the kind of activity the legislature wanted to prevent) and the lower is the probability that the activity will be deemed illegal if it is in fact desirable. Thus the expected punishment cost of undesirable activity is increased and that of desirable activity reduced. Although this conclusion is independent of individuals' attitudes toward risk, its implications are particularly striking under certain plausible assumptions about those attitudes. Suppose that most people who engage in socially undesirable activities (criminals, tortfeasors, and other violators) are risk preferring while most people who engage in socially desirable activities are risk averse. Then **an increase in specificity**, by reducing the variance in outcomes associated with engaging in a particular activity, would tend to have a disproportionately deterrent effect on undesirable activity and a disproportionately encouraging effect on desirable activity. This is because people who like risk may invest in risky activities resources greater than the expected gain, while people who dislike risk may invest in the avoidance of risky activities resources greater than the expected cost of these activities, and the elimination of risk discourages both kinds of investment.