SUPREME COURT OF THE UNITED STATES

No. 03–377

KOONS BUICK PONTIAC GMC, INC., PETITIONER *v.* BRADLEY NIGH

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[November 30, 2004]

JUSTICE STEVENS, with whom JUSTICE BREYER joins, concurring.

If an unambiguous text describing a plausible policy decision were a sufficient basis for determining the meaning of a statute, we would have to affirm the judgment of the Court of Appeals. The ordinary reader would think that §1640(a)(2)(A) is a paragraph including three subparagraphs identified as (i), (ii), and (iii). There is nothing implausible about a scheme that uses a formula to measure the maximum recovery under (i) without designating a ceiling or floor. Thus we cannot escape this unambiguous statutory command by proclaiming that it would produce an absurd result.

We can, however, escape by using common sense. The history of the provision makes it perfectly clear that Congress did not intend its 1995 amendment adding (iii) to repeal the pre-existing interpretation of (i) as being limited by the ceiling contained in (ii). Thus, the Court unquestionably decides this case correctly. It has demonstrated that a busy Congress is fully capable of enacting a scrivener's error into law.

In recent years the Court has suggested that we should only look at legislative history for the purpose of resolving textual ambiguities or to avoid absurdities. It would be wiser to acknowledge that it is always appropriate to

consider all available evidence of Congress' true intent when interpreting its work product.[1] Common sense is often more reliable than rote repetition of canons of statutory construction.[2] It is unfortunate that wooden reliance on those canons has led to unjust results from time to time.[3] Fortunately, today the Court has provided us with a lucid opinion that reflects the sound application of common sense.

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[1] See *Wisconsin Public Intervenor* v. *Mortier,* 501 U. S. 597, 611, n. 4 (1991) ("[C]ommon sense suggests that inquiry benefits from reviewing additional information rather than from ignoring it"); *United States* v. *American Trucking Assns., Inc.,* 310 U. S. 534, 543–544 (1940) ("When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination'" (footnote omitted)); *United States* v. *Fisher,* 2 Cranch 358, 386 (1805) (Marshall, C. J.) ("Where the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived"). We execute our duty as judges most faithfully when we arrive at an interpretation only after "seek[ing] guidance from every reliable source." A. Barak, Judicial Discretion 62 (Y. Kaufmann transl. 1989).

[2] See Stevens, The Shakespeare Canon of Statutory Construction, 140 U. Pa. L. Rev. 1373, 1383 (1992).

[3] See, *e.g.*, *Barnhart* v. *Sigmon Coal Co.,* 534 U. S. 438 (2002); *United States* v. *James*, 478 U. S. 597 (1986); *United States* v. *Locke*, 471 U. S. 84 (1985).