16A Am. Jur. 2d

16A Am. Jur. 2d § 174: "**A court cannot make unconstitutional provisions constitutional by forced constructions**, or by regarding form rather than substance; **a statute is constitutional or unconstitutional by reason of its scope and purpose and effect**, and it is tested by a realistic consideration of the **subject** which it encompasses, the **purpose** which it seeks to serve, and **the effect it will have** when put in operation. If there is no way of harmonizing a statute with the constitution, the statute must fall. **Where the language used in a statute is plain, the court cannot read words into it that are not found therein** either expressly or by fair implication, even to save its constitutionality, **because this would be legislation**, and not construction; and **the court cannot arbitrarily disregard language used by the legislature**.

16A Am. Jur. 2d § 175: "**Where the validity of a statute is assailed and there are two possible interpretations**, by one of which the statute would be unconstitutional and by the other of which it would be valid, a court should adopt the construction which will uphold it, even though the construction which is adopted does not appear to be as natural as the other. Thus, a reviewing court is barred from lightly choosing that reading of a statute's setting which will render it unconstitutional over that which will save it. Stated differently, the courts must give the force of law to an act of the legislature whenever it can be fairly so construed and applied as to avoid conflict with the constitution. However, **the construction that is given must be a plausible one, and it must be consistent with sound sense and wise policy, and with the legislative intent**. Thus, a court's duty to construe statutes so as to avoid constitutional problems does not require the court to adopt **a construction that renders a statute meaningless or nonsensical, nor does it require the court to interpret the statute in a manner clearly contrary to congressional intent**. The rule that a statute will be given that construction which will render it valid if it is susceptible of different constructions is, of course, also applicable to ordinances."

16A Am. Jur. 2d § 176: "**The duty of the courts** to construe a statute so as to save its constitutionality when it is reasonably susceptible of two constructions **includes** the duty of adopting **a construction that will not subject it to a succession of doubts** as to its constitutionality, for it is well settled that a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave or serious doubt upon that score. …"

16A Am. Jur. 2d

16A Am Jur 2d § 270: Limitations As Respects Legislative Branch; Encroachment; Judicial Legislation

"A fundamental principle, scrupulously observed by the courts, is that **the judiciary may not encroach upon the functions of the legislature or usurp its powers**. In the absence of limitations imposed by either the federal or state constitutions, a state legislature's power to legislate has been described as unlimited. **The federal lawmaking power is vested in the legislative, not the judicial, branch of government**, and federal courts are bound to apply laws enacted by Congress with respect to matters over which it has legislative power. **Unless a statute** implies a classification that is inherently invidious or that **impinges on fundamental rights, areas in which the judiciary then has a duty to intervene** …

In line with the general rule of impermissibility of judicial legislation, it is held that the courts, in performing their function of construing statutes, may not interpolate words which the legislature has omitted.

Thus, **courts cannot**, by an act of judicial legislation, **add words of limitation** to a statute expressed in general terms **in order to sustain it**, **where its operation on the subject matter embraced in its terms is unconstitutional**. Nor may they create exceptions to or substitutions in a legislative plan. By the same token, courts may not extend or enlarge a statute by interpretation. A federal court is not free to rewrite a statutory scheme in order to approximate what it thinks Congress might have wanted had it known that its enactment was beyond its authority; rather, that task is for Congress."

"Observation: The fact that Congress might have acted with greater clarity or foresight in a given situation does not give the courts a carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do, **nor is the judiciary licensed to attempt to soften the clear import of Congress' chosen words** whenever a court believes those words lead to a harsh result. The canon of construction that a court should strive to interpret a statute in a way that will avoid an unconstitutional construction is useful in close cases but is **not a license for the judiciary to rewrite language enacted by the legislature**. Federal courts do not sit as councils of revision, empowered to rewrite legislation in accord with their own concepts of prudent public policy, and only when a literal construction of a statute yields results so manifestly unreasonable that they could not fairly be attributed to congressional design will an exception to the statutory language be judicially implied."

16A Am. Jur. 2d

"Due respect for the decisions of a coordinate branch of Government demands that **the Supreme Court invalidate a congressional enactment** only **upon a plain showing that Congress has exceeded its constitutional bounds**." U.S. v. Morrison, 120 S. Ct. 1740, 146 L. Ed. 2d 658, 144 Ed. Law Rep. 28 (U.S. 2000).

"**The courts will not encroach upon the domain of a coordinate department of the government by abridgment, amendment, alteration, or repeal of legislative enactments**." MCI Telecommunications Corp. v. American Tel. & Tel. Co., 512 U.S. 218, 114 S. Ct. 2223, 129 L. Ed. 2d 182, 154 Pub. Util. Rep. 4th (PUR) 311 (1994).

"Courts have no authority to supplement or amend a statute enacted by the legislature. " State v. Bryant, 670 A.2d 776 (R.I. 1996).[FN69]. Seminole Tribe of Florida v. Florida, 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252, 34 Collier Bankr. Cas. 2d (MB) 1199, 42 Env't. Rep. Cas. (BNA) 1289, 67 Empl. Prac. Dec. (CCH) 43952 (1996).

"The Supreme Court strives to avoid remedies which require it to tamper with the text of a statute. " U.S. v. National Treasury Employees Union, 513 U.S. 454, 115 S. Ct. 1003, 130 L. Ed. 2d 964, 10 I.E.R. Cas. (BNA) 452 (1995).

*"**It is not the role or power of the judiciary to remedy an unconstitutional legislative statute by opinion.** "* Florida Hosp. Trust Fund v. C.I.R., 71 F.3d 808, 96-1 U.S. Tax Cas. (CCH) 50023, 77 A.F.T.R.2d (P-H) 96-342 (11th Cir. 1996).[FN70]. California Teachers Ass'n v. Governing Bd. of Rialto Unified School Dist., 14 Cal. 4th 627, 59 Cal. Rptr. 2d 671, 927 P.2d 1175, 114 Ed. Law Rep. 1195 (1997); Walker v. People, 932 P.2d 303 (Colo. 1997), reh'g denied, (Feb. 18, 1997) and cert. denied, 118 S. Ct. 212 (U.S. 1997); State v. Muhammad, 145 N.J. 23, 678 A.2d 164 (1996); In re Anderson, 932 P.2d 1110 (Okla. 1996), motion to amend denied, (Jan. 29, 1997); Paradis v. Heritage Loan and Inv. Co., 678 A.2d 440 (R.I. 1996); Salt Lake Child and Family Therapy Clinic, Inc. v. Frederick, 890 P.2d 1017 (Utah 1995); State v. Post, 197 Wis. 2d 279, 541 N.W.2d 115 (1995), cert. denied, 117 S. Ct. 2507, 138 L. Ed. 2d 1011 (U.S. 1997).[FN71]. Kopp v. Fair Political Practices Com'n, 11 Cal. 4th 607, 47 Cal. Rptr. 2d 108, 905 P.2d 1248 (1995).[FN72]. U.S. v. Locke, 471 U.S. 84, 105 S. Ct. 1785, 85 L. Ed. 2d 64 (1985).

*"**When Congress has spoken, it is the function of the courts to interpret and not to legislate**."* F.T.C. v. Simplicity Pattern Co., 360 U.S. 55, 79 S. Ct. 1005, 3 L. Ed. 2d 1079 (1959), reh'g denied, 361 U.S. 855, 80 S. Ct. 41, 4 L. Ed. 2d 93 (1959).

16A Am. Jur. 2d

16A Am Jur 2d § 271 - Judgments As To Wisdom, Underlying Motivation, Necessity, And Fairness Of Statutes

"**Courts do not sit to determine the wisdom of statutes, or fashion remedies that Congress has specifically chosen not to extend**. With questions of wisdom, propriety, appropriateness, necessity, policy, fairness, or expediency of legislation or regulations, the courts simply have no concern."

"Caution: A court's deference to Congress' factual findings **does not foreclose the court's independent judgment of the facts bearing on an issue of constitutional law.** The courts should similarly be unconcerned with questions of legislative motivation. Indeed, the factfinding process and motivation of legislative bodies is generally entitled to a presumption of regularity and deferential review by the judiciary. And in considering whether a particular expenditure is intended to serve general public purposes so as to be within Congress' spending power, the courts should defer substantially to the judgment of Congress."

16A Am Jur 2d § 273 - Interference With Legislative Function

"Only **when a statute or ordinance manifestly infringes upon a constitutional provision or violates the rights of the people** should the judicial branch impede its operation. The courts have no general supervisory authority over legislation; they are without power to review the exercise of legislative discretion; and during the process of legislation in any mode, the work of the lawmakers is not subject to judicial arrest or control or open to judicial inquiry."

16A Am Jur 2d § 276. Extent Of, And Limitations On, Power; Generally

"Congress may exercise only those powers enumerated in the Federal Constitution *; its power is not absolute."*

"While ***the General Assembly*** *is free to act upon its own judgment of its constitutional powers, it* ***cannot*** *annul, reverse, or modify a judgment of a court already rendered, nor* ***require the courts to treat as valid laws those which are unconstitutional*** *." State ex rel. Ohio Academy of Trial Lawyers v. Sheward, 86 Ohio St. 3d 451, 715 N.E.2d 1062 (1999)*