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REFINING TERMS FOR SMALL REFINERIES: THE EXTENSION OF HARDSHIP THROUGH STATUTORY INTERPRETATION

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Introduction

The conflict between protecting the nation's economy and preserving the global environment is a constant force in the creation and implementation of federal law. In the context of statutory interpretation, the meanings that words carry have significant consequences for how courts apply the law. How an agency or court interprets a single word in a statute can determine the implementation of the statute. When the government does not request that a court defer to the interpretation of the agency in charge of implementing the statute, the court should examine the statute's terms as well as objectives to determine the meaning that Congress likely intended the statutory language to convey. In cases of ambiguous statutory language, discovering the statute's purpose based on its context enables the court to decide whether to construe the language narrowly or broadly to achieve that purpose.

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The power of statutory interpretation is evident in the Supreme Court's recent decision in *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association*, in which six justices formed the majority and three justices formed the dissent.¹ The majority opinion's interpretation of Congress's use of the term "extension" in 42 U.S.C. §7545(o)(9), a provision of the Clean Air Act's renewable fuel standards, increases the number of small oil refineries that are able to seek exemptions from the statute's requirements. The Supreme Court's recent decision implicates the potential environmental consequences of statutory interpretation based on a "permissible construction" rather than the "ordinary meaning" of a single term in the federal statute mandating the incorporation of renewable fuels in refineries' production of transportation fuels. As Earth's supply of nonrenewable resources continues to diminish, the holding in *Hollyfrontier* encourages small refineries to rely on the chance that they will be unable to comply with statutory requirements in certain years, rather than adapt to economic changes, which could spell disaster for future energy production. Furthermore, the Court's reliance on a permissible construction of a term in a federal statute may create a precedent for future cases that affect the global environment as well as the national economy.

The deference that a court gives to the interpretation of the language of a statute by the federal agency that implements the legislation may result in a continuation of implementation that defeats the goals of the statute. The Supreme Court created a precedent for such deference more than thirty years ago in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*² By granting certiorari in 2021 for *Hollyfrontier*, the Court acquired the opportunity to interpret a statute that promotes renewable fuel production differently than the federal agency in charge of implementing the statute.³ The Court declined to take advantage of this opportunity and instead appeared to defer to the EPA's interpretation—which may conflict with the legislation's ultimate environmental and economic objectives—due to the absence of a single adjective from the statute. As a result, the Court may have enabled such an omission of a superfluous word to change the course of environmental history by reducing the pressure on small refineries to incorporate renewable resources in the production of fuels.

Section I of this Note will explore three historical precedents the Supreme Court has created through canons of statutory interpretation in

1. 141 S. Ct. 2172 (2021).

2. 467 U.S. 837, 843 (1984).

3. See *Hollyfrontier*, 141 S. Ct. at 2180.

order to arrive at a comprehensive guide for the contemporary construction of statutory language to which courts should adhere. These three precedents are the ordinary meaning, permissible construction, and fair reading rules of statutory interpretation. Section II will explain the history of congressional statutes that resulted in the need for the Supreme Court to interpret the meaning of the statutory language at issue in *Hollyfrontier Cheyenne Refining, LLC v. Renewable Fuels Association*. Furthermore, Section II will examine the goals of those statutes in order to analyze whether the Court interpreted the statutory language in accordance with such goals. Section III will evaluate the Supreme Court's decision in *Hollyfrontier* through a brief outline of the facts and procedural history of the case, followed by the holding and ruling of the case as well as an analysis of the Court's rationale. After a discussion of the majority opinion, Section III will cover the dissenting opinion and its rationale. Finally, Section IV will discuss the adverse effects that the Supreme Court's decision in *Hollyfrontier* may create for the environment and the creation of legislation.

I. Statutory Interpretation Precedents

The Supreme Court has established rules for statutory interpretation in previous cases. It has based a variety of decisions on the ordinary meaning canon of statutory interpretation.⁴ In contrast, regarding decisions of the EPA and other federal agencies when implementing federal statutes, the Court has previously adhered to the permissible construction canon of statutory interpretation.⁵ When a statutory exception is at issue, rather than compelling itself and other courts to construe a statutory exemption narrowly, the Court has stated that it has “no license to give the exemption anything but a fair reading.”⁶ In *HollyFrontier*, the Court implicitly utilized the permissible construction and fair reading precedential rules of statutory interpretation while appearing to ignore—despite claiming to follow—the ordinary meaning rule when determining the significance of Congress's use of the term “extension” regarding exemptions in 42 U.S.C. §7545(o)(9).⁷

4. See, e.g., *Minor v. Mechanics' Bank of Alexandria*, 26 U.S. 46, 64 (1928); *Banks v. Chi. Grain Trimmers*, 390 U.S. 459, 465 (1968); *Burns v. Alcalá*, 420 U.S. 575, 580–581 (1975); *Perrin v. United States*, 444 U.S. 37, 42 (1979); *Smith v. United States*, 508 U.S. 223, 228 (1993); *FDIC v. Meyer*, 510 U.S. 471, 476 (1994).

5. See, e.g., *Chevron*, 467 U.S. at 843 (1984); *Encino Motorcars, LLC v. Navarro*, 138 S.Ct. 1134, 1142 (2018).

6. *Encino*, 138 at 1142.

7. See 141 S. Ct. 2172.

A. The Ordinary Meaning Canon

One of the most fundamental rules of statutory interpretation is to consider the ordinary meaning of a word or phrase in a statute. In 1828, the Supreme Court expressed this canon of statutory construction in *Minor v. Mechanics' Bank of Alexandria*: “[t]he ordinary meaning of the language, must be presumed to be intended, unless it would manifestly defeat the object of the provisions.”⁸ Since then, the Court has reiterated this canon in numerous cases and has elaborated on what it considers to be an “ordinary meaning”⁹ by adding other qualifiers such as “natural meaning”¹⁰ and “contemporary, common meaning.”¹¹ The Court has also clarified that it will look to such meanings when the statute itself does not define the language in question.¹² Unless there are “persuasive reasons to the contrary,” the Court should construe statutory language in accordance with its ordinary meaning.¹³

While a term may have a different meaning in one context than in another, the Supreme Court has previously considered a term’s meaning in the legal context to determine its ordinary meaning for purposes of statutory interpretation.¹⁴ In 1994, the Supreme Court adhered to the ordinary meaning canon of statutory construction while considering the meaning of the term “cognizable” in the legal context to determine term’s meaning in a federal statute in *FDIC v. Meyer*.¹⁵ John H. Meyer was a senior officer of Fidelity Savings and Loan Association (“Fidelity”) whose employment the Federal Savings and Loan Insurance Corporation (“FSLIC”) terminated while attempting to restore the solvency of Fidelity as its receiver.¹⁶ Meyer sued FSLIC and Robert L. Pattullo, the special representative through whom FSLIC terminated Meyer’s employment, under the claim that “his summary discharge deprived him of a property right (his right to continued employment under California law) without due process of law in violation of the Fifth Amendment.”¹⁷ In the United States District Court for the

8. 26 U.S. at 64.

9. See, e.g., *Smith*, 508 U.S. at 228; *Perrin*, 444 U.S. at 42.

10. *Smith*, 508 U.S. at 228.

11. *Perrin*, 444 U.S. at 42.

12. See, e.g., *id.*; *Smith*, 508 U.S. at 228; *FDIC v. Meyer*, 510 U.S. 471, 476 (1994).

13. *Banks v. Chi. Grain Trimmers*, 390 U.S. 459, 465 (1968); *Burns v. Alcala*, 420 U.S. 575, 580–81 (1975).

14. *Meyer*, 510 U.S. at 476.

15. *Id.*

16. *Id.* at 473.

17. *Id.* at 473–74.

Northern District of California, “[t]he jury returned a \$130,000 verdict against FSLIC, but found in favor of Pattullo on qualified immunity grounds.”¹⁸ The United States Court of Appeals for the Ninth Circuit affirmed the district court’s ruling after the Federal Deposit Insurance Corporation (“FDIC”) appealed as FLSIC’s statutory successor.¹⁹ After granting certiorari, the Supreme Court of the United States considered the meaning of the term “cognizable” in the Federal Tort Claims Act (“FTCA”) since, “if a suit is ‘cognizable’ under § 1346(b) of the FTCA, the FTCA remedy is ‘exclusive’ and the federal agency cannot be sued ‘in its own name.’”²⁰ The Court explicitly employed Black’s Law Dictionary’s definition of “cognizable” to determine the ordinary meaning of the term.²¹ It concluded that Meyer properly sued the FSLIC “‘in its own name’” as the Federal Tort Claims Act (FTCA) did not provide the exclusive remedy for the claim “because Meyer’s constitutional tort claim is not cognizable under § 1346(b)” of the FTCA.²² However, the Court reversed the lower court’s judgment on other grounds.²³ While the ultimate ruling did not turn on the ordinary meaning of a statutory term, the Court relied on the ordinary meaning canon of statutory construction in its analysis of the Federal Tort Claims Act’s waiver of sovereign immunity for federal agencies.

When construing the significance of any ambiguous statutory word or phrase that the statute itself does not define, the Court should adhere to the long-standing precedent that it has set by considering the ordinary meaning of such language. As long as the circumstances of the case before the Court do not persuade it to interpret the word or phrase in accordance with an extraordinary meaning,²⁴ the Court can assume that Congress intended the significance of the statutory language to match its “natural”²⁵ or “contemporary, common”²⁶ definition. The Court may rely on the Black’s Law Dictionary definition of the word or phrase, as it did in *FDIC v.*

18. *Id.* at 474.

19. *Id.*

20. *Id.* at 478.

21. *Id.* at 476.

22. *Id.*

23. *Id.* at 486.

24. See *Banks v. Chi. Grain Trimmers*, 390 U.S. 459, 465 (1968); *Burns v. Alcala*, 420 U.S. 575, 580–81 (1975).

25. *Smith v. United States*, 508 U.S. 223, 228 (1993).

26. *Perrin v. United States*, 444 U.S. 37, 42 (1979).

Meyer,²⁷ in order to determine its ordinary meaning. Nevertheless, courts should avoid a construction of statutory language that conflicts with the goals of the statute.²⁸ The ordinary meaning canon of construction encourages predictability of statutory interpretation by guiding courts to construe statutory language in accordance with the same significance as such language has in ordinary communication.

B. The Permissible Construction Canon

In contrast to the ordinary meaning canon, the permissible construction canon of statutory interpretation enables courts to defer to the implementing agency's definition of a word or phrase in a statute, at least regarding EPA decisions.²⁹ Thus, even if the agency does not define the statutory language in accordance with its ordinary meaning, the agency's definition controls if a court determines that it is "permissible." Nevertheless, the permissible construction canon imposes the same restrictions regarding statutory goals upon such definitions as the ordinary construction canon does.³⁰

In 1984, the Supreme Court articulated the permissible construction canon for the review of the EPA's construction of a statute in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.* According to the Court, "if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute."³¹ However, the Court also noted that "[t]he judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent."³² In fact, the Court recognized "[i]f a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect."³³ Similarly, in more recent cases, the Court has acknowledged that an agency's construction of a statute must be "within the bounds of reasonable interpretation."³⁴

27. *Meyer*, 510 U.S. at 476.

28. See *Minor v. Mechanics' Bank of Alexandria*, 26 U.S. 46, 64 (1928).

29. *Chevron U. S. A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984).

30. See *id.* n.9 (citations omitted); *Minor*, 26 U.S. at 64.

31. *Chevron*, 467 U.S. at 843.

32. *Id.* n.9 (citations omitted).

33. *Id.*

34. E.g., *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 296 (2013); *Util. Air Regul. Grp. V. E.P.A.*, 573 U.S. 302, 321 (2014) (citation omitted); *Michigan v. E.P.A.*, 576 U.S. 743, 751 (2015) (citation omitted).

In *Chevron*, after the United States Court of Appeals for the District of Columbia Circuit vacated EPA regulations allowing States to define the term “stationary source” on a plantwide basis, the Supreme Court granted certiorari to determine whether such a definition was a reasonable construction of the amended Clean Air Act’s use of the term in its permit program.³⁵ In 1977, Congress amended the Clean Air Act to require states that failed to meet the EPA’s national air quality standards to regulate “new or modified major stationary sources” of air pollution through a permit program.³⁶ In determining whether Congress expressed its intent for the EPA to narrowly or flexibly construe “stationary source” in the amended Clean Air Act, the Court explained that “[t]he legislative history . . . does not contain any specific comment on . . . the question whether a plantwide definition of a stationary source is permissible under the permit program.”³⁷ Nevertheless, the Court noted that the legislative history “does, however, plainly disclose that in the permit program Congress sought to accommodate the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality.”³⁸ The Court reversed the appellate court’s judgment and held that the EPA’s interpretation of “stationary source” was a permissible construction that intended to promote Congress’s dual objectives of economic growth and environmental protection.³⁹ Since Congress never expressed any disapproval of the EPA’s flexible statutory construction that allowed states to treat an entire plant as a stationary source, the Court deferred to the agency’s interpretation of the statutory term in its implementation of the amended Clean Air Act.⁴⁰ As the relevant statute did not explicitly construe the term at issue in *Chevron*, the Supreme Court deferred to the EPA’s permissible definition of statutory language while ensuring that the agency’s definition adhered to the statutory goals.

C. The Fair Reading Rule

Courts may utilize multiple rules of statutory interpretation simultaneously to arrive at a construction of statutory language. Along with canons such as the ordinary meaning rule of statutory interpretation, a court

35. *Chevron*, 467 U.S. at 840–42.

36. *Id.* at 840.

37. *Id.* at 851.

38. *Id.*

39. *Id.* at 866.

40. *Id.* at 864.

should determine whether it must interpret statutory language broadly or narrowly. For example, the Supreme Court considered whether to interpret a statutory exemption narrowly in *Encino Motorcars, LLC v. Navarro*.⁴¹ Service advisors for a Mercedes-Benz dealership sued their employer for backpay based on the Department of Labor's 2011 regulation that excluded service advisors from its interpretation of the term "salesman" in the Fair Labor Standards Act, which did not require overtime pay for a "salesman." The Court of Appeals for the Ninth Circuit reversed the District Court's dismissal of the complaint due to its deference, as required under *Chevron* when legislative text and history is ambiguous, to the Department of Labor's construction of the statutory term.⁴² However, the Supreme Court vacated the appellate court's judgment based on the inability of courts to defer to interpretations of statutory language in agency regulations that are procedurally defective, as was the 2011 Department of Labor regulation.⁴³ The Court remanded to the appellate court the issue of whether the Fair Labor Standards Act's exemption of a "salesman" from its overtime pay requirements included service advisors.⁴⁴ The appellate court held that the Fair Labor Standards Act did not exempt service advisors from its overtime pay requirements because Congress did not intend for it to do so and because courts should construe such exemptions narrowly.⁴⁵

Nevertheless, in 2018, the Supreme Court reversed the appellate court's ruling based at least partially on its conclusion that a service advisor is a "salesman" according to the ordinary meaning of the term.⁴⁶ The Court interpreted the exemption in accordance with a fair reading "[b]ecause the FLSA gives no 'textual indication' that its exemptions should be construed narrowly."⁴⁷ Thus, a few years ago, the Supreme Court established a precedent for construing terms in a statutory exemption on the basis of their ordinary meaning as well as a fair reading rather than a narrow interpretation. Therefore, the Court's decision in *HollyFrontier* regarding the statutory exemption from the renewable fuel program requirements should have incorporated both the ordinary meaning canon and fair reading rule of statutory construction.

41. 138 S. Ct. 1134, 1142 (2018).

42. *Id.* at 1139.

43. *Id.*

44. *Id.*

45. *Id.* at 1139–40.

46. *Id.* at 1140.

47. *Id.* at 1142.

II. History and Purpose of Relevant Environmental Legislation

When Congress amended the Clean Air Act by passing the Energy Policy Act of 2005, it established the renewable fuel program to reduce the use of fossil fuels in the production of motor vehicle fuels.⁴⁸ Congress declared in the Energy Policy Act of 2005 that the Energy Policy Act's ultimate objective is to "ensure jobs for our future with secure, affordable, and reliable energy."⁴⁹ As the nation's supply of nonrenewable resources diminishes, fossil fuels become less reliable as energy sources. This lack of reliability threatens jobs in the energy sector whose existence depends on the supply of fuel sources. To prevent continuous reliance on fossil fuels, the renewable fuel program promotes the use of renewable biomass, including "grain, starch, oilseeds, vegetable, animal, or fish materials," in the production of fuel for motor vehicles.⁵⁰ Such materials are renewable because they regenerate in a relatively short amount of time, especially compared to fossil fuels. Due to the ability to quickly produce these materials, their potential for depletion is not a significant concern. Therefore, renewable resources provide a "secure, affordable, and reliable"⁵¹ source of energy that can achieve Congress's goal of protecting future jobs, particularly those in the energy sector.

Within the Energy Policy Act of 2005, Congress included the Energy Research, Development, Demonstration, and Commercial Application Act of 2005, which expressed the following "general goals":

- (1) increasing the efficiency of all energy intensive sectors through conservation and improved technologies;
- (2) promoting diversity of energy supply;
- (3) decreasing the dependence of the United States on foreign energy supplies;
- (4) improving the energy security of the United States; and
- (5) decreasing the environmental impact of energy-related activities.⁵²

48. Energy Policy Act, Pub. L. No. 109-58, 119 Stat 594 (2005).

49. *Id.*

50. *Id.* § 1501(a)(2).

51. Energy Policy Act.

52. *Id.*, § 902(a).

The renewable fuel program promotes these goals by discouraging reliance on fossil fuels.⁵³ As research and knowledge of renewable fuel sources improves, federal laws that promote the use of such resources result in the overall conservation of natural resources and, as a consequence, increases the nation's energy diversity and efficiency. The diversification of energy sources decreases the potentially detrimental reliance on resources that are susceptible to depletion. As the United States depletes its supply of fossil fuels, it must import an increasing amount of such fuels from abroad unless the country successfully promotes the incorporation of renewable resources into its fuel production. Such diversification also reduces the energy sector's environmental impact by limiting the amount of pollution that energy-related activities contribute to the atmosphere.⁵⁴ Environmental concerns clearly blended with economic considerations in the creation and purpose of the Energy Policy Act. The encouragement of the use of renewable resources allows Congress to pursue its objective of diversifying energy sources, which in turn achieves Congress's other goals of energy efficiency, security, and independence, to protect the national economy by preserving environmental resources.⁵⁵

In order to achieve its energy goals, by codifying the renewable fuel program, Congress established requirements for fuel refineries to incorporate renewable fuels into their production of motor vehicle fuels.⁵⁶ The renewable fuel program became effective in 2009.⁵⁷ Congress expressed concern, however, for small refineries that were likely to face economic hardship due to these requirements. By applying a temporary exemption to the requirements for small refineries, the renewable fuel program provided an adjustment period for these businesses until at least 2011.⁵⁸ The statute defines a "small refinery" as "a refinery for which the average aggregate daily crude oil throughput for a calendar year . . . does not exceed 75,000 barrels."⁵⁹ The amount of a refinery's fuel production thus determined whether it automatically received an initial temporary exemption from the requirements of the renewable fuel program. At least during the initial years of the program's existence, Congress's concern for the economic hardship of small refineries apparently outweighed its

53. *See* 42 U.S.C.A § 7545(o)(1)(A).

54. *See* 2005 U.S.C.C.A.N. S17, S22.

55. *See id.*

56. *See* 42 U.S.C.A § 7545(o)(2).

57. 42 U.S.C.A § 7545.

58. *Id.* § 7545(o)(9)(A)(i).

59. *Id.* § 7545(o)(1)(K).

concern for the environmental and nationwide economic impacts of nonrenewable fuels.

Even after 2011, Congress continued to permit exemptions for small refineries despite its interest in increasing the incorporation of renewable resources in refineries' production of fuels. If the Secretary of Energy determined that a small refinery would disproportionately face economic hardship under the renewable fuel program's requirements, Congress provided for an extension of the exemption for the refinery for at least two years past 2011.⁶⁰ This provision did not explain whether such an extension must be immediately consecutive without any lapse in the application of the exemption.⁶¹ Even if the Secretary of Energy did not determine that a small refinery would face economic hardship sufficient to receive an extension, however, Congress provided that "at any time" the refinery may "petition the Administrator for an extension of the exemption . . . for the reason of disproportionate economic hardship."⁶² Congress left the meaning of "at any time" unclear as the statute does not explicitly state whether a small refinery can receive an extension after its initial exemption has lapsed.⁶³ The ability of small refineries, such as Hollyfrontier Cheyenne Refining, LLC, to comply with the requirements of the renewable fuel program after their initial exemptions had lapsed resulted in litigation to determine whether those refineries could receive nonconsecutive exemptions during later years in which they are unable to comply with the program's requirements.⁶⁴

III. HollyFrontier

The litigation against Hollyfrontier Cheyenne Refining, LLC, and other small refineries who attempted to receive exemptions from the requirements of the renewable fuel program after allowing their initial exemptions to lapse began in the United States Court of Appeals for the Tenth Circuit as a review of an EPA decision in January 2020.⁶⁵ Upon writ of certiorari, litigation continued when the parties argued the case in front

60. *Id.* § 7545(o)(9)(A)(ii)(II).

61. *See id.*

62. *Id.* § 7545(o)(9)(B)(i).

63. *See id.*

64. *See HollyFrontier Cheyenne Refin., LLC v. Renewable Fuels Ass'n*, 141 S. Ct. 2172, 2175 (2021).

65. *Renewable Fuels Ass'n v. U.S. Env't Prot. Agency*, 948 F.3d 1206 (10th Cir. 2020), *cert. granted*, 141 S. Ct. 974, 208 L. Ed. 2d 510 (2021) *and rev'd*, 141 S. Ct. 2172, 210 L. Ed. 2d 547 (2021) *and aff'd*, 854 Fed. Appx. 983 (10th Cir. (2021)).

of the Supreme Court on April 27, 2021, and the Court decided the case of *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association* on June 25, 2021, with three justices dissenting.⁶⁶ The litigation ended on July 29, 2021, when the Circuit Court vacated its previous judgment in accordance with the Supreme Court's decision.⁶⁷

A. Facts and Procedural History

Even after their initial exemptions had lapsed, the EPA granted “extensions” to exempt HollyFrontier Cheyenne Refining, LLC, and two other small refineries from a renewable fuel program standard.⁶⁸ The standard requires the incorporation of renewable fuels into refineries’ production of transportation fuels.⁶⁹ Renewable fuel producers petitioned the Tenth Circuit Court to review whether the EPA had statutory authority to grant these extensions.⁷⁰ The Circuit Court held allowing the initial exemption to lapse resulted in a refinery’s ineligibility for an extension to exemption from the renewable fuel program’s mandates, therefore vacating the EPA’s grants of extensions to the three refineries.⁷¹

B. The Supreme Court’s Decision

After the small refineries petitioned the Supreme Court for a writ of certiorari, to determine whether a small refinery is eligible to apply for an extension to exemption from the renewable fuel program’s mandates after allowing its initial exemption to lapse due to its temporary ability to comply,⁷² the Court held the EPA has statutory authority to grant a small refinery an extension of exemption from renewable fuel mandates despite a previous lapse in exemption.⁷³ The Court reversed the Tenth Circuit’s judgment vacating the EPA’s decision to grant extensions of the exemption from the renewable fuel mandates to the three refineries.⁷⁴ It reasoned the text of 42 U.S.C. §7545(o)(9) supports interpreting the term “extension” as creating a “safety valve” for small refineries that are able to comply with the renewable fuel mandate in certain years but not in all subsequent years

66. *HollyFrontier*, 141 S. Ct. 2172.

67. *Renewable Fuels Ass’n v. U.S. Env’t Prot. Agency*, 854 Fed.Appx. 983 (Mem).

68. *HollyFrontier*, 141 S. Ct. at 2176.

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* at 2175.

73. *Id.* at 2183.

74. *Id.*

due to changes in the market.⁷⁵ Since Congress did not include an adjective that would explicitly require that an extension of an exemption from the statutory requirements be continuous, the majority opinion opted to construe “extension” as permitting a lapse in effect.⁷⁶ The Court’s interpretation of the statutory language and subsequent ruling enables the EPA to extend the exemptions from the mandates of the Clean Air Act’s renewable fuel program from small refineries whose previous exemptions have lapsed. Therefore, the Court’s decision reflects Congress’s concern for the economic hardship of small refineries while disregarding Congress’s concern for national environmental and economic hardship that failing to comply with the requirements of the renewable fuel program will inevitably cause.

C. *The Dissenting Opinion*

Justices Sotomayor and Kagan joined Justice Barrett’s dissent from the majority’s opinion.⁷⁷ These justices disagreed with the majority’s interpretation of the statutory language at issue.⁷⁸ The dissent argues that the construction that the majority of the Court imposes on the term “extend” is an “outlier meaning” that does not adhere to the rules of statutory interpretation.⁷⁹ According to the dissent, the interpretation of the term “extension” that Hollyfrontier Cheyenne Refining, LLC, proposes, and which the majority accepts, “strays [far] from the term’s ordinary meaning.”⁸⁰ Thus, the dissenting opinion reveals the majority opinion’s focus on a permissible construction of the statutory language rather than on an ordinary meaning of the language. The dissenting justices equated “extension” with “continuation,”⁸¹ which indicates the absence of any lapse in effect. These three justices, therefore, agree with the Tenth Circuit Court that the “‘ordinary definitions of ‘extension,’ along with common sense, dictate that the subject of an extension must be in existence before it can be extended.’”⁸² If the EPA implemented the Clean Air Act’s renewable fuel program in accordance with the dissenting opinion’s interpretation of the

75. *See id.* at 2182.

76. *See id.* at 2179.

77. *Id.* at 2183 (Barrett, J., dissenting).

78. *Id.* (Barrett, J., dissenting).

79. *Id.* (Barrett, J., dissenting).

80. *Id.* at 2185 (Barrett, J., dissenting).

81. *Id.* at 2183–84 (Barrett, J., dissenting).

82. *Id.* at 2184 (Barrett, J., dissenting) (quoting *Renewable Fuels Assn. v. EPA*, 948 F.3d 1206, 1245 (2020)).

term “extension,” the small refineries that allowed their exemptions from the program’s mandates to lapse would no longer receive any exemption. Such a construction thus encourages these refineries to continuously strive to incorporate renewable fuel into their production rather than depend on economic fluctuation to determine whether they are able to comply with the program’s mandates each year.

IV. Analysis of the Court’s Use of Statutory Interpretation Precedents

The majority opinion’s interpretation of the statutory language at issue closely resembled the precedent of deference to the EPA’s permissible construction that the Court established in *Chevron*. Although *Hollyfrontier* and *Chevron* shared similarities regarding the EPA’s broad construction of language in environmental statutes that implicate competing goals of environmental preservation and economic development,⁸³ the Court attempted to distinguish the two cases by claiming not to defer to the EPA’s interpretation of statutory language when the EPA has not invoked *Chevron*.⁸⁴ Unlike in *Chevron*, since the EPA did not request the Court to defer to its construction of the statute at issue, the majority in *Hollyfrontier* asserted that it “decline[d] to consider whether any deference might be due its regulation.”⁸⁵ In fact, the majority opinion acknowledges that the federal respondent’s brief declares that “the government is not invoking *Chevron*.”⁸⁶ Therefore, the Court implies that the permissible construction canon of statutory interpretation does not apply when the government, or the federal agency in charge of implementing the statute, does not request deference to its construction of statutory language. The majority did not explicitly utilize the permissible construction canon and even denied that the Court “rule[d] for HollyFrontier because it has advanced a permissible reading.”⁸⁷ The dissent recognized that “[t]he Court avoids *express* reliance on” a permissible construction argument.⁸⁸ Nevertheless, the Court appeared to defer to the EPA’s broad construction of the statutory language at issue by implicitly utilizing the permissible construction canon of statutory interpretation as its interpretation of the term “extension” relates

83. See *HollyFrontier*, 141 S. Ct. at 2180; *Chevron U. S. A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 840, 847 (1984).

84. See *HollyFrontier*, 141 S. Ct. at 2180.

85. *Id.*

86. *Id.* (citation omitted).

87. *Id.* at 2181 n.3.

88. *Id.* at 2184 n.1 (Barrett, J., dissenting) (emphasis added).

more closely to a permissible meaning than to the ordinary meaning of the term.

Still, the majority opinion claimed to adhere to the ordinary meaning canon and fair reading rule of statutory interpretation when construing the use of the term “extension” in 42 U.S.C. §7545(o)(9).⁸⁹ As it did in *FDIC v. Meyer*, the Court referred to Black’s Law Dictionary to determine the ordinary meaning of “extension.”⁹⁰ It acknowledged that the tenth edition of Black’s Law Dictionary defines “extension” as “[t]he continuation of the same contract for a specified period.”⁹¹ However, the decision noted that even a “continuation” may allow a temporary lapse, according to other renown dictionaries.⁹² The majority opinion relied on Black’s Law Dictionary’s definition of “extension” but did not refer to Black’s Law Dictionary’s definition of “continuation” or similar terms. While the tenth edition defines “continuation” only in the context of patent continuation applications,⁹³ it defines “continuing” as “[u]ninterrupted.”⁹⁴ The Court failed to maintain consistency in its consideration of the ordinary meaning of the term “extension” by relying on various dictionaries to serve its construction of the statutory language rather than consistently referring to Black’s Law Dictionary’s definitions of relevant terms. The Court utilized the fair reading rule of statutory construction to conclude that, since the statutory exemption does not explicitly require continuity, “[a] small refinery can apply for (if not always receive) a hardship extension ‘at any time,’” including after the exemption has lapsed.⁹⁵ Although the Court appeared to incorporate both the ordinary meaning canon and fair reading rule in its construction of the statutory language, the decision more closely reflects the Court’s utilization of the permissible construction canon combined with the fair reading rule as the majority opinion neglected applicable definitions that did not serve its preferred interpretation.

Furthermore, the Court did not refer to any previous editions of Black’s Law Dictionary, which shed light on the ordinary meaning of the term “extension” based on its historical legal definition. For example, the fifth edition generally defines the term “extension” as “[a]n increase in length of time” and notes that it “*ordinarily* implies the existence of something to be

89. *See id.* at 2176–77, 2181.

90. *See id.* at 2177–78.

91. *Id.* (quoting Black’s Law Dictionary 703 (10th ed. 2014)).

92. *Id.* at 2178.

93. Black’s Law Dictionary (10th ed. 2014).

94. *Id.*

95. *HollyFrontier*, 141 S. Ct. at 2181.

extended.”⁹⁶ In contrast to the majority opinion, the dissent adheres to such an ordinary meaning of the term “extension” by agreeing with the Tenth Circuit Court that an exemption must currently exist in order for the EPA to be able to extend it.⁹⁷

Moreover, the majority opinion failed to acknowledge the Black’s Law Dictionary’s signal to compare the definition of “extension” with the definition of “renewal,”⁹⁸ which the tenth edition defines as “[t]he act of restoring or reestablishing.”⁹⁹ The dissenting opinion, on the other hand, contrasted the two terms by referring to their opposing definitions in Black’s Law Dictionary.¹⁰⁰ The majority opinion’s initial utilization of Black’s Law Dictionary and subsequent failure to follow its guidance reveals the Court’s devotion to a construction of statutory language that allows it to implicitly defer to the EPA’s interpretation, even when the government does not request such deference, rather than arrive at a more reasonable construction that would adhere to both a legal dictionary’s definition and to ordinary usage of the term “extension.”

V. Potential Consequences of the Court’s Decision

The Court’s decision in *Hollyfrontier* turns on the absence of a single word in the statute. Rather than requiring a small refinery to continuously apply for an extension each year in order to seek an extension the subsequent year, the Court construes “extension” to permit a lapse, based on what the majority opinion claims to be the term’s ordinary usage, since the statute does not state that extensions must be “consecutive” or “successive.”¹⁰¹ Since the government did not ask the Court to defer to the EPA’s interpretation of “extension” by invoking *Chevron*, the Court claimed to decline to give such deference.¹⁰² Nevertheless, the Court appears to invoke *Chevron* itself and defer to the EPA’s interpretation of “extension” as permitting a lapse in continuity as such an interpretation reflects a permissible construction of the statute rather than the ordinary meaning of the term. In contrast, the dissenting opinion’s interpretation of

96. Black’s Law Dictionary 523 (5th ed. 1979) (citing *State v. Graves*, 182 S.W.2d 46, 51) (emphasis added).

97. See *HollyFrontier*, 141 S. Ct. at 2184 (Barrett, J., dissenting) (quoting *Renewable Fuels Assn. v. EPA*, 948 F.3d 1206, 1245 (2020)).

98. See Black’s Law Dictionary 703 (10th ed. 2014).

99. *Id.*

100. *HollyFrontier*, 141 S. Ct. at 2185 (Barrett, J., dissenting).

101. *Id.* at 2177; see *id.* at 2179.

102. *Id.* at 2180.

the statute relies on a construction of the term “extension” that more accurately reflects its ordinary meaning.¹⁰³ In 42 U.S.C. § 7545(o)(9), the omission of language indicating that extensions must be “consecutive” or “successive” is irrelevant if the ordinary meaning of “extension” implies that lapses in effect are prohibited. The Court’s apparent deference to the EPA may encourage lower courts to defer to permissible interpretations of statutes rather than construing terms and phrases in such statutes in accordance with their ordinary meaning, which may in turn encourage Congress to continue to use ambiguous language in its legislation. Ambiguous language and deference to permissible interpretations diminishes predictability of the implementation of statutory provisions and increases litigation such as the case at issue. By deciding this case in favor of the small refineries based on a permissible interpretation of the term “extension,” the Court missed its opportunity to encourage Congress to include more explicit language in statutes.

If Congress intended to allow small refineries to be eligible for extensions of exemption even after they had allowed their initial exemption to lapse, then Congress should have used the term “renewal” rather than “extension” in order to prevent ambiguity. The dissenting opinion contrasts the two terms to demonstrate that the ordinary meaning of the latter term requires the continuous existence of the subject of extension.¹⁰⁴ “Renewal” is a more appropriate word for a statutory provision that permits exemptions from the statute’s mandates as its ordinary meaning does not require continuity. The absence of the term “renewal” in the statute implies that Congress did not intend to allow refineries that did not continuously seek an exemption from the statute’s mandates to later receive one.

By refusing to interpret “extension” as requiring continuity, the Court’s decision enables an unlimited number of small refineries to deplete nonrenewable resources. Interpreting the statute as requiring continuity would instead encourage adaptation rather than dependence on the market structure. Furthermore, such an interpretation would limit the number of refineries that are exempt from the requirements of the renewable fuel program and therefore promote the goals of the Energy Policy Act of 2005 by reducing reliance on fossil fuels. Recent environmental changes serve as a constant reminder that survival of the fittest requires adaptation to survive both economic and environmental hardship. Unless small refineries learn to adapt to the requirements of the renewable fuel program, their overuse of

103. *See id.* at 2185 (Barrett, J., dissenting).

104. *See id.* (Barrett, J., dissenting).

fossil fuels will eventually result in their demise due to the depletion of nonrenewable energy sources. While the majority of the Court correctly advises that the dissent's reading encourages continuous noncompliance,¹⁰⁵ the EPA still has the discretion regarding whether to grant the extension based on its assessment of actual hardship.¹⁰⁶

VI. Conclusion

In *HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association*, the Supreme Court opted for a permissible interpretation of the term “extension” in 42 U.S.C. §7545(o)(9) based on a fair reading of the statute to allow a small refinery to seek exemption from renewable fuel mandates after a lapse in the continuity of the refinery’s initial exemption. By failing to construe the term as requiring continuity in accordance with its ordinary meaning, the Court declined the opportunity to reduce the depletion of nonrenewable fuels in the production of transportation fuels. As a result of the Supreme Court’s June 2021 ruling, the Tenth Circuit vacated its previous judgment that vacated the EPA’s grants of exemptions to the three refineries.¹⁰⁷ The Supreme Court’s decision thus removed temporal limits on the ability of small refineries to avoid compliance with the renewable fuel program’s requirements.

105. *Id.* at 2182.

106. See 42 U.S.C.A § 7545(o)(9)(B)(ii).

107. *Renewable Fuels Association v. United States Environmental Protection Agency*, 854 Fed. Appx. 983 (10th Cir. 2021) (mem.).