



## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

November 2, 2022

### MEMORANDUM

To: Office of the Legislative Counsel, United States House of Representatives  
Office of the Legislative Counsel, United States Senate  
Office of the Law Revision Counsel, United States House of Representatives

From: Conrad Dryland, Attorney Advisor & Special Counsel to the Chair,  
Administrative Conference of the United States

Subject: The Administrative Conference's Statutory Review Program

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In this memorandum, the Office of the Chairman of the Administrative Conference of the United States is transmitting three judicial opinions as part of its *Statutory Review Program*. Under the Program, ACUS shares decisions from the judicial branch and from executive agencies which identify technical problems in statutes.

With this memorandum, the Office of the Chairman concludes its periodic transmittal of these decisions. To view prior memoranda, please visit [www.acus.gov/research-projects/statutory-review-program](http://www.acus.gov/research-projects/statutory-review-program). The opinions are as follows:

- In *R.J. Reynolds Tobacco Co. v. County of L.A.*, 29 F.4th 542 (9th Cir. 2022), the court discussed similar technical errors found in two clauses of the Family Smoking Prevention and Tobacco Control Act regarding preservation and preemption of state and local authority. In 21 U.S.C. §§ 387p(a)(1) and 387p(a)(2)(B), the preposition “by” is used in the last prepositional phrase of the first sentence (“by individuals of any age”), even though the preposition does not apply to all objects in the series. As currently written, the statute refers to “advertising and promotion . . . by individuals of any age” rather than “to individuals of any age.” In its decision, the court accordingly replaced the word “by” with a bracketed “[to]” in subsequent quotations.
- In *United States v. Kempter*, 29 F.4th 960 (8th Cir. 2022), the court noted a technical error in the Abolish Human Trafficking Act of 2017 (AHTA). Codified at 18 U.S.C. § 2429(b)(3), the Act states, “[a]s used in this subsection, the term ‘full amount of the victim’s losses’ has the same meaning as provided in section 2259(b)(3).” However, no definition is found in that section. Instead, a definition of “full amount of the victim’s losses” is found one subsection later, in 18 U.S.C. § 2259(c)(2). The court noted that the AHTA had been amended but that the cross-reference to the definition was not also updated, and it used the definition found at § 2259(c)(2) for the purpose of applying § 2429(b)(1).

- In *Zachary v. Cal. Bank & Trust*, 811 F.3d 1191 (9th Cir. 2016), the court noted a potential scrivener’s error in 11 U.S.C. § 1129(b)(2)(B)(ii), which addresses a court’s acceptance of reorganization plans under Chapter 11 bankruptcy. Subsection (b)(2)(B)(ii)—which allows for a debtor individual to retain property in certain circumstances—makes a cross-reference to subsection (a)(14) (which addresses domestic support obligations). However, the court discussed prior cases and secondary sources which found that the appropriate and intended cross-reference should rather direct to subsection (a)(15), which concerns court acceptance of the plan by a debtor individual over objections by claim holders when the value of the property is sufficient. Yet, the *Zachary* court acknowledged it did not need to decide the issue in the case, and it noted another case in which it found that the cross-reference was conceivably intended as written.