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Legal Sidebar

"Notwithstanding Any Other Provision of Law": Does It Really Mean That No Other Provisions of Law Apply?

02/10/2016

This is the first in a series of Legal Sidebar postings that will address issues of statutory interpretation relevant to legislative drafting. In particular, this Sidebar focuses on the phrase "notwithstanding any other provision of law"—language which has been used over 600 times in bills introduced in the 114th Congress, 14 of which have been enacted (see, e.g., P.L. 114-4, P.L. 114-10, and P.L. 114-17). Does the presence of this phrase in an enactment really mean that no other statutes apply, as is sometimes suggested? The short answer is: not necessarily. Depending upon the context in which the phrase is used, courts may construe "notwithstanding any other provision of law" broadly as "supersed[ing] all other laws," or more narrowly as overriding only "previously enacted conflicting provisions." Determining which of these interpretations prevails in specific contexts generally involves consideration of other statutory language and principles of statutory interpretation.

Legislative drafters often resort to "notwithstanding" clauses when they are concerned that the application of existing statutes could, in some way, interfere with the new statutory rights or responsibilities they are creating. Drafting the bill so as to refer to the specific provisions that are of concern is one option, and Congress sometimes uses "notwithstanding" clauses that refer to particular statutes, rather than "any other provision of law." However, in other cases, the drafters may have difficulty in identifying or listing all current statutes whose application could impede implementation of the proposed legislation. In such cases, they may employ the phrase "notwithstanding any other provision of law" despite the view of some commentators that this phrase represents "sloppy" drafting since it leaves Congress's intent unclear.

Courts sometimes use sweeping language when construing statutes which use the phrase "notwithstanding any other provision of law," suggesting that a "clearer statement" of legislative intent to supersede all other laws "is difficult to imagine." In other cases, though, courts note that the phrase is "not always construed literally." Thus, merely noting the presence of the phrase "notwithstanding any other provision of law" is, in itself, generally insufficient to determine which of two (or more) statutory provisions is to be seen as controlling in particular circumstances. Instead, courts typically look for other indicia of legislative intent, such as other language in the statutes in question; similar language in other statutes; and statutory and legislative history, among other things. In so doing, they often apply general principles of statutory interpretation, including "[t]he cardinal rule ... that repeals by implication are not favored." A repeal by implication would occur if the provisions of a later enacted statute were seen to override those of a previously enacted statute without Congress expressly indicating its intention to repeal the earlier statute. The following examples illustrate the range of factors—beyond the presence of the phrase "notwithstanding any other provision of law"—that courts can consider when determining whether one enactment supersedes an earlier one.

In one 2007 decision, a federal appeals court quoted language from the Mandatory Victims Restitution Act (MVRA) which called for certain fines to be enforced against "all property or rights to property" of the person fined, nowithstanding any other provision of law, in finding that the Employment Retirement Income Security Act's (ERISA's) general prohibitions on the alienation of pensions did not preclude the government from garnishing an individual's pensions under the MVRA. However, the court also looked beyond the "notwithstanding" clause to consider the "overall context" of the MVRA; other language used in the statute; and language in a "parallel statute," which the court noted had previously been construed to permit the levying of pensions covered by ERISA. The court

found the prior interpretation of the parallel statute, in particular, significant, given a general principle of statutory interpretation which presumes that Congress is aware of preexisting judicial interpretations of statutory language it replicates in later statutes, and seeks to import those interpretations into the new statute. Other factors—beyond language providing that the "settlement of a claim under [this section] is final and conclusive," notwithstanding any other provision of law—similarly factored into a 1994 decision by another federal appeals court finding that the provisions of the Military Claims Act (MCA) barred judicial, as well as administrative, review of the denial of plaintiffs' negligence claim. In particular, the court noted the statutory history of the MCA, and Congress's deletion of the words "for all purposes" after "final and conclusive" in an earlier version of the statute on the grounds that it was "surplusage."

In other cases, courts have relied upon similar factors in finding that statutes which use the phrase "notwithstanding any other provision of law" do not, in fact, supersede certain other statutes. For example, in one 1996 decision, a federal appeals court found that language stating that, "notwithstanding any other law, ... the Secretary concerned shall expeditiously prepare, offer, and award [certain] timber sale contracts" was "best interpreted" as requiring the disregard only of "environmental laws." In so finding, the court noted other language in the statute regarding the standard of review for legal challenges to timber sale contracts that would have been "nugatory" if the "notwithstanding" clause had been construed to supersede all other laws, something that would be contrary to the general principle that "sections of a statute should be read to give effect, if possible, to every clause." The court also noted "parallel language" in other subsections of the statute which encompassed only environmental laws," and concluded "there was no reason to believe that Congress intended" the "notwithstanding" clause to be interpreted differently in the different subsections of the statute. Similarly, in a 1971 decision finding that language in a highway bill requiring that construction of a bridge to be "undertaken as soon as possible," notwithstanding any other provision of law, did not supersede certain historic preservation requirements, another federal appeals court noted that Congress's intent in enacting the "notwithstanding" clause was to "free the bridge from further planning under ... local statutes," and not to "render inapplicable" federal laws affecting historic sites.

As these examples suggest, courts may consider a range of factors in determining the interplay between various statutory provisions. For more information about the principles of statutory interpretation noted in this Sidebar, see CRS Report 97-589, *Statutory Interpretation: General Principles and Recent Trends*.

Posted at 02/10/2016 09:54 AM