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# Advocating Due Process at the Drafting Table: A Call for Preventive Reform

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## I. Introduction

463. This article explores the constitutional consequences of poorly drafted statutes, focusing on how legislative omissions can undermine procedural due process under the Fifth and Fourteenth Amendments. Using the Texas Uniform Foreign Country Money Judgments Recognition Act as a case study, it argues that the failure to embed procedural protections, such as notice and opportunity to be heard, not only leads to litigation inefficiency but also triggers constitutional invalidation. The article draws from federal and state jurisprudence to illustrate a broader pattern of judicial reluctance to salvage legislative gaps through interpretive reconstruction.

464. This article builds on a growing body of scholarship, including foundational insights by Hans Linde, Andrew Jensen Kerr, and David Dripps, framing legislative clarity as a constitutional obligation rather than a mere drafting best practice. Vagueness and omissions are treated not as technical defects but as structural violations of due process

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that courts cannot rescue without exceeding their role. Against this backdrop, the article proposes a constitutional and professional framework for legislative drafting rooted in ethical responsibility and institutional accountability. Its distinctive innovation is the Legislative Due Process Checklist, a preventive drafting tool designed to embed notice, hearing, and clarity requirements at the point of enactment. By integrating doctrine, ethics, and institutional reform, the checklist provides lawmakers, legislative counsel, and educators with a framework rooted in ethical responsibility and institutional accountability.

465. Enacted as part of a broader legislative effort to promote legal certainty and international comity, the Texas Uniform Foreign Country Money Judgments Recognition Act, codified at Texas Civil Practice & Remedies Code Chapter 36A, was intended to streamline the process for recognizing foreign money judgments. Modeled on the Uniform Act promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL), the Texas version was designed to simplify enforcement of international civil judgments in state courts, reduce litigation costs, and enhance reciprocity in cross-border disputes.[2] Yet, in a notable legal development, a Texas appellate court held that the statute, as drafted and applied, violated the Due Process Clause of the Fourteenth Amendment. The problem? The statute failed to guarantee a judgment debtor adequate procedural protections, namely, notice and an opportunity to contest enforcement, thus depriving parties of basic fairness.[3]

466. This episode underscores a broader, often underappreciated truth: the fidelity of statutes to due process standards reflects not only legal competence but also the ethical duties of lawmakers and legal drafters.[4] It is not enough to pursue clarity or policy coherence in isolation; legal professionals must ensure that every statute comports with the procedural and substantive boundaries set by the Constitution. Omitting or vaguely articulating the mechanisms through which a law operates, particularly when individual rights are implicated, risks rendering the statute not only legally unsound but ethically deficient. Indeed, constitutional litigation often arises not from what a statute asserts, but from what it fails, negligently or otherwise, to guarantee.[5]

467. Courts have repeatedly confirmed this constitutional mandate. In *Johnson v. United States*, the Supreme Court reaffirmed that laws must provide "sufficient definiteness," so that ordinary people understand what conduct is prohibited, and to avoid arbitrary

2 Russel J. Weintraub, International Litigation and Arbitration: Practice and Planning 299-304 (6th ed. 2011).

3 *Detamore v. Sullivan*, 731 S.W.2d 122, 123 (Tex. App., Houston [14th Dist.] 1987).

4 Abbie M. Gruwell, *Shaping the Legal Landscape: From Bill Drafting to Statutory Interpretation*, ABA (July 28, 2023).

5 Kushner, Government Discrimination: Equal Protection Law and Litigation, § 11:1 (2024-2025 ed. 2024).

enforcement. [6] This principle has been extended beyond criminal law, shaping how courts evaluate civil and administrative statutes that lack clarity or enforceable boundaries.[7] When legislative silence forces courts to guess at meaning or supply procedures by implication, statutes face not only inefficiency but judicial invalidation.

468. This Article builds on Linde's seminal framework, contending that legislative drafting is not a technocratic exercise but a constitutional and professional act, one imbued with normative and institutional responsibility. Just as due process governs judicial procedure, it also binds legislative form and function.[8] The failure to include clear procedures, define essential terms, or anticipate interpretive ambiguities can result in statutes that violate fundamental rights, particularly those enshrined in the Due Process Clauses of the Fifth and Fourteenth Amendments.[9] These risks are judicial invalidation on constitutional grounds.[10] It is also a core legal ethic, invoking the professional responsibilities of legal advisors, drafters, and legislative counsel. Rooted in Rule 1.1 (competence) and Rule 2.1 (independent judgment) of the ABA Model Rules of Professional Conduct, it argues that poorly drafted statutes constitute not only legal flaws but breaches of professional responsibility.[11] Legal scholarship has likewise extended professional competence obligations into the legislative sphere, emphasizing that lawyers serving as drafters or legislators bear heightened responsibility to ensure statutory clarity and constitutional fidelity.[12]

469. This article addresses a vital question: How does poor legislative drafting undermine due process and, by extension, the ethical architecture of justice? Using Texas's Uniform Foreign Country Money Judgments Recognition Act as a case study, the article examines how structural flaws in the law's language precipitated a constitutional challenge. But this inquiry is not limited to Texas. Across multiple jurisdictions, courts have struck down laws for vagueness, overbreadth, and procedural omissions.[13] These failures occur most acutely in areas involving criminal law, civil enforcement, and property rights,[14] where drafting imprecision collides with core legal protections.

470. Accordingly, this Article proceeds by situating Texas within a national pattern of drafting failures, offering a comparative review of legislative practices, and identifying

6 *Johnson v. United States*, 576 U.S. 591, 595 (2015); *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

7 *N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*, 730 F. Supp. 3d 185, 194–96 (M.D.N.C. 2024).

8 *Detamore v. Sullivan*, 731 S.W.2d 122, 123 (Tex. App., Houston [14th Dist.] 1987).

9 U.S. CONST. amend. V; U.S. CONST. amend. XIV.

10 *Londoner v. Denver*, 210 U.S. 373, 385–86 (1908).

11 *Model Rules of Pro. Conduct, Rule 1.1 & 2.1*, AM. BAR ASS'N (2020).

12 Elizabeth Garrett, *Legal Scholarship in the Age of Legislation*, 34 TULSA L.J. 679, 680–81 (1999).

13 *Hale v. Morgan*, 22 Cal. 3d 388, 397–403 (1978).

14 *Central Sav. Bank v. New York*, 279 N.Y. 266 (1939).

systemic reforms. It then advances a dual framework, constitutional and professional, for preventive drafting, grounded in due process fidelity, professional ethics, and institutional accountability. Its distinctive contribution is the introduction of a Legislative Due Process Checklist, a practical, doctrinally grounded tool for identifying and addressing constitutional risks at the drafting stage. Unlike judicial patchwork solutions, the checklist ensures that constitutional compliance begins at the drafting desk, not the courtroom.

## II. Case Study Background: The Texas Foreign Judgments Act and Its Constitutional Collapse

471. The Texas experience with the recognition of foreign country judgments provides a powerful illustration of how insufficient legislative drafting can undermine an otherwise well-intentioned statute.

472. Texas adopted the Uniform Foreign Country Money Judgments Recognition Act (UFCMJRA) in 1981, codified today in Chapter 36A of the Texas Civil Practice and Remedies Code. The adoption was part of a broader national movement initiated by the Uniform Law Commission (ULC), which aimed to facilitate interstate and international comity by establishing consistent rules for recognizing and enforcing foreign money judgments.[15]

473. The Texas version of the UFCMJRA was designed to bring order and predictability to transnational judgment enforcement.[16] Before its enactment, the recognition of foreign-country judgments in Texas relied on common law principles, which often produced inconsistent outcomes.[17] By codifying standards, the statute aligned Texas with international best practices and enhanced its commercial reliability as a forum for international litigation.[18]

474. Chapter 36A applies to foreign-country judgments that are final, conclusive, and enforceable in the originating jurisdiction and involve monetary awards.[19] However,

15 Russel J. Weintraub, International Litigation and Arbitration: Practice and Planning 308 (6th ed. 2011).

16 Yuliya Zeynalova, *The Law on Recognition and Enforcement of Foreign Judgments: Is It Broken and How Do We Fix It?*, 31 Berkeley J. Int'l L. 150, 156 (2013).

17 *Royal Bank of Can. v. Trentham Corp.*, 665 F.2d 515, 518 (5th Cir. 1981).

18 Russel J. Weintraub, International Litigation and Arbitration: Practice and Planning 308 (6th ed. 2011).

19 Tex. Civ. Prac. & Rem. Code Ann. § 36A.003(a)(1)– (2)(2017).

it explicitly excludes judgments concerning taxes, fines, penalties, and domestic relations.[20] The Act provides that once a judgment creditor meets the burden of establishing that the statute applies, the Texas court is obligated to recognize the judgment unless one of several statutory exceptions applies.[21] These include due process deficiencies in the foreign legal system, lack of jurisdiction, and conflicts with public policy or existing judgments.[22]

475. Yet, despite adopting the formal structure of the Uniform Law Commission's model, the Texas Legislature's version contained critical procedural omissions, omissions that would later unravel the statute's enforceability. To illustrate the procedural framework intended by the statute, Section 4 of the Act enumerates both mandatory and discretionary grounds for non-recognition, reproduced below for reference:

> §4. [Grounds for Non-recognition].
>
> (a) A foreign judgment is not conclusive if
>
> > (1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
> >
> > (2) The foreign court did not have personal jurisdiction over the defendant; or
> >
> > (3) The foreign court did not have jurisdiction over the subject matter.
>
> (b) A foreign judgment need not be recognized if
>
> > (1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
> >
> > (2) The judgment was obtained by fraud;
> >
> > (3) The [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state;
> >
> > (4) The judgment conflicts with another final and conclusive judgment;
> >
> > (5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

20 Tex. Civ. Prac. & Rem. Code Ann. § 36A.003(b) (2017).

21 Tex. Civ. Prac. & Rem. Code Ann. § 36A.004(a)(2017).

22 Tex. Civ. Prac. & Rem. Code Ann. § 36A.004(b)–(c)(2017).

> (6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.[23]

476. While the Act enumerated substantive defenses to the recognition of a foreign judgment, such as fraud, lack of personal jurisdiction, or systemic unfairness abroad, it failed to include a procedural framework ensuring that judgment debtors were provided notice and an opportunity to be heard before a foreign judgment was recognized and enforced in Texas courts. This procedural gap was explicitly recognized in *Detamore v. Sullivan*, which held that the statute's silence on procedural mechanisms rendered it constitutionally infirm under the Fourteenth Amendment's Due Process Clause.[24] This left the door open to serious constitutional concerns under the Fourteenth Amendment's Due Process Clause, which requires a meaningful opportunity for individuals to contest deprivations of property by the state.

477. This section outlines three pivotal judicial decisions that trace the constitutional unraveling of the Texas Recognition Act. Each case reflects a different stage of judicial engagement, interpretation, remediation, and finally, invalidation. Together, they reveal how procedural silence in legislation evolves from a doctrinal concern to a constitutional failure.

478. The evolution of judicial responses to this flaw, as seen in the following three key cases, demonstrates how the absence of procedural language in the statutory text produced mounting constitutional vulnerability that culminated in judicial invalidation.

## *A. The Silent Statute and a Late Legislative Fix:* Royal Bank of Canada v. Trentham Corp.

479. The constitutional unraveling of the Texas Recognition Act began not with a due process challenge, but with a challenge to the statute's treatment of reciprocity, a principle that holds foreign judgments should only be recognized if the originating jurisdiction would similarly recognize Texas judgments. In *Royal Bank of Canada v. Trentham Corp.*, the Royal Bank sought to enforce a Canadian default judgment in a Texas federal court. At the time, the statute was silent on whether reciprocity was required, and the district court, relying on common law and the trend among U.S. jurisdictions, held that Texas courts would not apply a reciprocity requirement.[25]

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23 Uniform Foreign Money Judgement Recognitions Act, 13 U.L.A. 7, § 4 (2005).

24 *Detamore v. Sullivan*, 731 S.W.2d 122 (Tex. App., Houston [14th Dist.] 1987); Uniform Foreign Money Judgement Recognitions Act, 13 U.L.A. 7, § 4 (2005).

25 *Royal Bank of Can. v. Trentham Corp.*, 665 F.2d 515, 518 (5th Cir. 1981); Tex. Civ. Prac. & Rem. Code Ann. § 36A.003(b) (1981).

480. The judgment at issue involved unpaid commercial debts, and the defendant, a Texas-based corporation, challenged enforcement on the ground that Canada did not reciprocally recognize Texas judgments. This presented the court with the interpretive dilemma of applying a statute that was completely silent on the issue of reciprocity.

481. However, as the case moved through the appellate process, the Texas Legislature enacted an amendment to the Recognition Act, Section 5(b)(7), which explicitly added nonreciprocity as a discretionary ground for nonrecognition. This change prompted the Fifth Circuit to vacate the district court's judgment and remand the case, instructing the trial court to reconsider the issue under the newly adopted statute.[26]

482. Importantly, the appellate court expressed concern over the lack of legislative guidance on how trial courts were to exercise this newly granted discretion.[27] While the amended statute gave judges the authority to deny recognition based on nonreciprocity, it did not articulate any criteria or procedural standards for doing so. This left lower courts without clear instructions, a problem symptomatic of the statute's broader drafting failure.[28] Although *Royal Bank* did not directly involve a constitutional challenge, it raised early alarms about the statutory ambiguity and procedural vacuum that would become the focus of future litigation.

## *B. Judicial Interpretation as a Stopgap:* Hennessy v. Marshall

483. The procedural silence of the Recognition Act came into sharper focus in *Hennessy v. Marshall*, where the Texas Court of Appeals directly confronted whether the statute afforded judgment debtors an adequate opportunity to contest recognition. In that case, an Irish judgment was brought for enforcement in Texas, and the debtor argued that the Act did not provide for a plenary hearing, a procedural necessity under due process jurisprudence.[29]

484. The underlying dispute involved a default judgment issued in Ireland concerning a breach of commercial contract. The debtor claimed no opportunity had been afforded to present defenses, such as fraud or lack of jurisdiction, under the Recognition Act. Despite acknowledging the statute's deficiencies, the court attempted to salvage its constitutionality through interpretation. It held that the statute should be read as implicitly requiring a plenary hearing and judicial recognition proceeding, even though the text

26 *Royal Bank of Can. v. Trentham Corp.*, 665 F.2d 515, 519(5th Cir. 1981); Tex. Civ. Prac. & Rem. Code Ann. § 36.005(b)(7) (1981).

27 *Royal Bank*, 665 F.2d at 520-21.

28 *Royal Bank of Can. v. Trentham Corp.*, 665 F.2d 520-21(5th Cir. 1981).

29 *Hennessy v. Marshall*, 682 S.W.2d 340, 342 (Tex. App., Dallas 1984).

was silent on that point.[30] In effect, the court inserted procedural protections into the statute to prevent due process violations.

485. This decision exemplified a pattern where courts, faced with poorly drafted statutes, attempted to "legislate from the bench" to maintain constitutional compliance. While *Hennessy* preserved the Act temporarily, it illustrated the second stage of judicial engagement: remedial interpretation, where courts are willing to "read in" due process protections to maintain the statute's constitutionality.[31] However, this approach strained the judiciary's interpretive role. The Court has signaled that statutes dealing with property rights and international enforcement cannot rely on implication alone to satisfy constitutional obligations.[32] The case underscored the unsustainability of judicial patchwork, where courts bear the burden of rescuing defective statutes rather than enforcing clear legislative standards.

## *C. Constitutional Collapse:* Detamore v. Sullivan

486. The tipping point came in *Detamore v. Sullivan*, where the court could no longer preserve the statute through judicial interpretation. In this case, a Canadian default judgment was filed and enforced in Texas without a hearing, and a turnover order was issued against the debtor. The debtor argued that he had never been allowed to raise defenses under Sections 4 and 5 of the Act, such as lack of personal jurisdiction or procedural unfairness in the foreign court.[33]

487. The facts were stark: Detamore had no notice of the foreign judgment being filed or enforced until after a turnover order was issued against his property. Unlike in *Hennessy*, there was no judicial effort to infer procedural protections; the deprivation was immediate, with no meaningful opportunity to be heard. In *Detamore*, the court found that the statute was facially unconstitutional. It held that the absence of any statutory procedure to assert defenses or contest recognition violated the fundamental requirements of due process.[34] The court concluded that recognition of a foreign judgment, an act that authorizes enforcement and can result in seizure of property, must be preceded by notice and a meaningful opportunity to be heard. The statute's failure to provide for that procedure rendered it constitutionally deficient.[35]

30 *Hennessy v. Marshall*, 682 S.W.2d 340 (Tex. App., Dallas 1984).

31 *Hennessy v. Marshall*, 682 S.W.2d 340, 342 (Tex. App., Dallas 1984).

32 *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018).

33 *Detamore v. Sullivan*, 731 S.W.2d 122 (Tex. App., Houston [14th Dist.] 1987); Abbie M. Gruwell, *Shaping the Legal Landscape: From Bill Drafting to Statutory Interpretation*, ABA (Jul 28, 2023).

34 Abbie M. Gruwell, *Shaping the Legal Landscape: From Bill Drafting to Statutory Interpretation*, ABA (Jul 28, 2023).

35 *Detamore v. Sullivan*, 731 S.W.2d 122 (Tex. App., Houston [14th Dist.] 1987); U.S. CONST. amend. XIV.

488. *Detamore* represents the final stage of constitutional unraveling, where interpretive leniency could no longer compensate for legislative silence. The court's invalidation of the statute confirmed that procedural clarity is not optional: when a law permits property deprivation without procedural safeguards, it directly violates the Fourteenth Amendment. Relying on *Mullane*,[36] the court's opinion made clear that legislative silence on essential procedural protections is not neutral; it is constitutionally dangerous. By omitting procedural mechanisms for judgment debtors, the Recognition Act allowed for potential deprivations of property without judicial safeguards, placing it in direct conflict with the Fourteenth Amendment.[37]

489. The case effectively compelled the Texas Legislature to amend the Recognition Act, reinforcing the principle that courts cannot invent safeguards where legislative inaction fails constitutional scrutiny.

## *D. Postscript: Legislative Reform and Constitutional Realignment*

490. The *Detamore* litigation is emblematic of procedural injustice triggered by legislative omission. The absence of any clear statutory provision for notice or a hearing rendered the statute constitutionally vulnerable, not only in a doctrinal sense, but as a structural barrier to access to justice.[38] The case illustrates how vague or incomplete laws disproportionately burden those without legal representation or procedural familiarity.

491. Following these cases, the Uniform Law Commission revised the model statute in 2005 to include Section 6, which explicitly requires that recognition of a foreign-country judgment be initiated through a formal lawsuit or affirmative pleading, thus ensuring judicial scrutiny and an opportunity for contest.[39] Texas eventually adopted similar reforms, bringing its statutory scheme closer to constitutional compliance.[40]

492. The revised Section 6 of the Uniform Act provides the following mandatory procedural framework:

> (a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign country judgment.

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36 *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

37 *Hennessy v. Marshall*, 682 S.W.2d 340, 342 (Tex. App., Dallas 1984).

38 Nora Freeman Engstrom, *The Lessons of Lone Pine*, 129 Yale L.J. 2, 91–92 (2019); *Detamore v. Sullivan*, 731 S.W.2d 122, 123 (Tex. App., Houston [14th Dist.] 1987).

39 Uniform Foreign Money Judgement Recognitions Act, 13 U.L.A. 7, § 6 (2005).

40 Russel J. Weintraub, International Litigation and Arbitration: Practice and Planning 299-304 (6th ed. 2011).

> (b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, crossclaim, or affirmative defense.

493. Still, the Texas experience serves as a powerful case study in how inadequate legislative drafting, particularly the omission of procedural details, can result in the invalidation of an entire statutory regime. When courts are forced to choose between upholding constitutional principles or filling legislative gaps, they will not hesitate to strike down flawed statutes.

# III. Comparative Jurisdictional Analysis: National Pattern of Drafting Failures

494. Across the United States, both federal and state courts have repeatedly invalidated laws that suffer from vagueness, ambiguity, or the absence of procedural safeguards necessary to satisfy due process. This section situates Texas's experience within a broader landscape, demonstrating how courts nationwide grapple with legislative drafting failures, particularly through the Void for Vagueness Doctrine, the Overbreadth Doctrine, and the evolving role of judicial interpretation.

## *A. Federal Framework: Due Process as a Limit on Statutory Ambiguity*

495. At the federal level, the Fifth Amendment's Due Process Clause requires that laws be written with "sufficient definiteness" so that individuals understand what conduct is prohibited and so that enforcement is not left to arbitrary discretion.[41] The leading modern expression of this principle is found in *Johnson v. United States*, where the Supreme Court struck down the residual clause of the Armed Career Criminal Act. The Court found that the provision left "grave uncertainty" about how to estimate the risk posed by a crime and thus failed to provide fair notice or establish enforceable boundaries.[42]

496. This decision not only reaffirmed the void-for-vagueness doctrine but extended its reach into penal sentencing structures, holding that even procedural components of criminal statutes must comply with constitutional standards of clarity. The implications of Johnson reverberated beyond criminal law, influencing courts assessing vague regulatory, civil, and administrative statutes.

41 U.S. CONST. amend. V.

42 *Johnson v. United States*, 576 U.S. 591, 595 (2015)*; Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

497. The principle was echoed in *N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*, where a North Carolina election law was challenged as impermissibly vague.[43] The court emphasized the constitutional necessity of explicit statutory standards to prevent discriminatory enforcement, particularly where political or civil rights are at stake. Similarly, in *Leapers, Inc. v. Trarms, Inc.*, the court noted that vagueness challenges may be sustained if a statute lacks guidance to either citizens or enforcers.[44] While the Indiana law at issue was upheld, the court reaffirmed that vague legislation invites constitutional scrutiny.

498. Even outside statutory text, the federal courts have addressed vagueness in judicially constructed legal tests. In *Wills v. Pszczolkowski*, the Fourth Circuit evaluated West Virginia's recidivist sentencing standard and decided that while statutory vagueness is subject to due process review, judicially crafted proportionality tests are not, thus preserving judicial discretion while distinguishing legislative failure.[45]

499. The scope of constitutional concern over vagueness and legislative ambiguity, particularly the denial of fair notice and risk of arbitrary enforcement, extends to areas such as abortion law,[46] sentencing discretion,[47] and even administrative program design, which mandates procedural due process protections (notice, hearing, neutral adjudicator) in federally funded crisis intervention programs.

500. What these cases show is that the core constitutional concern, lack of fair notice and risk of arbitrary enforcement, transcends jurisdictions and substantive areas of law. Texas's statutory silence on debtor rights under its foreign judgment recognition statute thus represents not just a state-level oversight but a paradigmatic failure recognized under the nation's most authoritative judicial precedents.

## *B. State Perspectives: Due Process Challenges Across Jurisdictions*

501. This section examines how various state courts, specifically in California, New York, and Florida, have interpreted and enforced due process constraints on legislative drafting. By analyzing these jurisdictions, we identify shared principles governing vagueness, proportionality, and procedural adequacy. Each subsection highlights a unique constitutional challenge arising from legislative omissions or ambiguities, reinforcing the national consensus that statutory clarity is a constitutional obligation.

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43 *N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*, 145 F.4th 245 (4th Cir. 2025); U.S. CONST. amend. V; U.S. CONST. amend. XIV.

44 *Leapers, Inc. v. Trarms, Inc.* 203 F. Supp. 3d 969, 975–77 (S.D. Ind. 2016).

45 *Wills v. Pszczolkowsk*i, 125 F.4th 534, 541–43 (4th Cir. 2025).

46 *Isaacson v. Mayes*, 84 F.4th 1089, 1097–99 (9th Cir. 2023).

47 *United States v. Walker*, 74 F.4th 1163, 1171–73 (10th Cir. 2023).

## California: Vagueness, Proportionality, and Civil Enforcement

502. California courts have consistently applied due process safeguards to prevent disproportionate penalties and vague statutory provisions, especially in civil enforcement contexts.

503. In *Hale v. Morgan*, the California Supreme Court reviewed a statute that permitted landlords to be fined $100 per day for each day they wrongfully terminated a tenant's utility services. The plaintiff in Hale had disconnected gas and electricity without a court order, prompting the tenant to sue under a California statute that provided automatic monetary penalties without judicial discretion or prior notice.[48]

504. The court acknowledged the legislature's intent to deter unlawful evictions but ultimately found the statute unconstitutional. It imposed no ceiling on cumulative penalties, required no hearing or notice, and allowed courts no discretion to reduce excessive fines. These features rendered the statute not only punitive but also procedurally deficient, violating due process guarantees under the California and U.S. Constitutions. The court emphasized that even well-intentioned civil enforcement laws must be crafted with procedural rigor and proportionality.[49]

505. More recently, in *Chavez Zepeda v. Superior Court*, the court upheld California's sentencing enhancements authorized under the state's revised criminal statutes. The defendant challenged the use of "aggravating circumstances" as unconstitutionally vague. However, the court distinguished these standards from the vague terms struck down in earlier rulings. It held that the new statute included judicial guidelines, illustrative factors, and appellate review standards, all of which provided sufficient clarity to guide sentencing decisions and avoid arbitrary outcomes.[50]

506. Together, these cases illustrate California's nuanced approach to procedural due process. While the courts demand specificity and proportionality in civil sanctions, they allow some interpretive leeway in criminal sentencing schemes, so long as those schemes contain bounded criteria and judicial oversight.

## New York: Good Character Clauses and Procedural Ambiguity

507. New York courts have long emphasized the constitutional necessity of defined standards and procedural clarity, especially where statutes delegate discretion in licensing or enforcement.

48 *Hale v. Morgan*, 22 Cal. 3d 388, 397–403 (1978).

49 *Hale v. Morgan*, 22 Cal. 3d 388, 397–403 (1978).

50 *Chavez Zepeda v. Superior Court*, 97 Cal. App. 5th 65, 78–80 (Cal. Ct. App. 2023).

508. In *164th Bronx Parking, LLC v. City of New York*, the New York Court of Appeals invalidated a statute that required applicants for commercial parking licenses to demonstrate “good character.” The city denied a license renewal application based on prior regulatory infractions, citing this vague standard without any clear criteria or opportunity to contest the characterization.[51]

509. The court held that the term “good character,” standing alone, was impermissibly vague, violating due process by failing to provide applicants with meaningful guidance or procedural avenues for redress. In the absence of statutory definitions or administrative rules, the phrase operated as an unrestricted moral judgment, enabling arbitrary or discriminatory denials. Importantly, the court emphasized that subjective moral standards cannot substitute for objective legal criteria, particularly where licenses are tied to the livelihood of individuals or businesses.[52]

510. Even earlier, in *Central Sav. Bank v. New York*, the court reviewed the constitutionality of N.Y. Mult. Dwell. Law § 309(6). That statute allowed the City to impose liens for the cost of building alterations, giving those liens priority over existing mortgages, even when the repairs were ordered at the request of the mortgagor and against the lender’s contractual rights. The mortgagees challenged the statute, arguing that it violated their vested lien interests without proper notice or opportunity to object.[53]

511. The court agreed, declaring the provision a violation of the Due Process Clauses of both the U.S. and New York Constitutions. It held that the statute effectuated a taking of property without procedural safeguards, since mortgagees had no reason to expect that city-initiated liens, incurred at the mortgagor’s behest, could displace their secured interests. By retroactively subordinating validly recorded mortgages to administrative assessments, the statute failed to provide fair notice, equitable procedures, or compensation, thereby undermining fundamental constitutional guarantees.[54]

512. Together, these cases illustrate the New York judiciary’s dual focus on procedural clarity and the protection of property rights. Whether in the realm of licensing or mortgage enforcement, courts demand that statutes explicitly articulate the standards, processes, and priorities governing state action. Legislative ambiguity, especially where it reallocates economic or legal entitlements, triggers heightened scrutiny under both federal and state due process doctrines.

51 *164th Bronx Parking, LLC v. City of New York*, 20 Misc. 3d 796, 802–04 (N.Y. Sup. Ct. 2008).

52 *164th Bronx Parking, LLC v. City of New York*, 20 Misc. 3d 796, 802–04 (N.Y. Sup. Ct. 2008).

53 *Central Sav. Bank v. New York*, 280 N.Y. 9, 17–18 (1939).

54 *Central Sav. Bank v. New York*, 280 N.Y. 9, 17–18 (1939).

## Florida: Proportionality, Notice, and Legislative Correction

513. Florida jurisprudence similarly reflects robust constitutional enforcement against procedurally deficient and disproportionately punitive statutes, especially in areas impacting private enterprise and individual liberty.

514. In *Smith Bros. v. Williams*, the Florida Supreme Court reviewed a statute that allowed municipalities to place liens on private property for improvements and assessments without first notifying mortgage holders or providing them an opportunity to contest the imposition. The City of Tampa had levied a lien for paving improvements that was given priority over existing mortgage liens without any statutory mechanism for notice or hearing. The mortgagees challenged the law on constitutional grounds.[55]

515. The court sided with the mortgagees, holding that such a statutory structure violated the Due Process Clause of both the Florida and U.S. Constitutions. It emphasized that no person can be deprived of property rights without notice and an opportunity to be heard. Furthermore, the court declared that even if the legislative intent was to promote public improvements, this could not be done at the cost of ignoring constitutional protections owed to property holders. Notably, the court also ruled that void statutes cannot be cured through retroactive legislative amendments, a warning highly relevant to Texas's post-Detamore attempts to amend its defective recognition statute.[56]

516. In *State v. Adkins*, the Florida Supreme Court upheld a drug statute that did not require proof of mens rea (intent) against a due process challenge. The court concluded that while the statute shifted the burden to defendants to prove lack of knowledge, it was not unconstitutionally vague because the prohibited conduct was clearly defined. The ruling demonstrated a distinction between procedural omissions and substantive clarity, affirming that vagueness challenges succeed where laws fail to inform or protect, not merely where they are stringent.[57]

517. These cases underscore Florida's dual concern with procedural integrity and proportional application. Courts have consistently held that retroactive legislative correction cannot rescue constitutionally defective statutes, and that fairness requires both clarity in substantive obligations and procedural opportunity for defense. Florida's approach mirrors national due process expectations and reinforces the broader argument that constitutional drafting must anticipate, not react to, judicial scrutiny.

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55 *Smith Bros. v. Williams*, 100 Fla. 667, 671–73 (Fla. 1930).

56 *Smith Bros. v. Williams*, 100 Fla. 667, 671–73 (Fla. 1930).

57 *State v. Adkins*, 96 So. 3d 412, 422–23 (Fla. 2012).

### *C. Themes Across Jurisdictions: Legislative Precision as Constitutional Duty*

518. From the federal courts to state supreme courts across California, New York, and Florida, the pattern is clear: legislative drafting must meet constitutional standards at the point of enactment, not through judicial construction after challenges arise.

519. Three themes emerge:

- Fair Notice is Fundamental: Courts consistently strike down laws that fail to provide individuals with clear guidance about their obligations or rights. Whether in licensing (*Bronx Parking*), criminal sentencing (*Johnson*), or property penalties (*Hale*), ambiguity equals unconstitutionality.[58]
- Procedural Protections Must Be Explicit: In both Texas and California, courts invalidated laws for failing to include adequate notice and opportunity to be heard requirements grounded in the procedural dimension of due process.
- Judicial Interpretation Has Limits: Courts may "rescue" unclear laws only when a narrowing construction is plausible. As reaffirmed by *Loper Bright*,[59] courts now must seek the best reading of the statutory text, not fill in legislative omissions. Judicial restraint thus places the burden of constitutional clarity squarely on lawmakers.

## IV. Constitutional Drafting: Doctrinal Foundations, Institutional Failures, and Paths to Reform

520. The invalidation of the Texas Foreign Country Money Judgments Recognition Act underscores a constitutional lesson of broader resonance: legislative drafting is not a mere procedural formality, it is a mechanism by which governments either honor or compromise due process, institutional integrity, and public trust. This chapter proceeds in five parts. Section 5.1 outlines the doctrinal stakes of poor drafting through the lens of vagueness and non-delegation. Section 5.2 addresses the institutional costs of legislative ambiguity for courts, agencies, and affected individuals. Sections 5.3 through 5.5 trace a continuum, from doctrinal vulnerabilities in model law adoption (5.3), to the structural and political drivers of these errors (5.4), and finally to concrete reforms that can institutionalize preventive constitutional review (5.5). Taken together, these sections argue that due process compliance in legislation is not a legal luxury, it is a structural necessity.

58 *164th Bronx Parking, LLC v. City of New York*, 20 Misc. 3d 796 (N.Y. Sup. Ct. 2008); *Johnson v. United States*, 576 U.S. 591(2015)*; Hale v. Morgan*, 22 Cal. 3d 388, 397–403 (1978).

59 *Loper Bright Enterprises, et al. v. Raimondo, Secretary of Commerce et al. v. Department of Commerce, et al.*, 144 S.Ct. 2244 (2024).

## A. The Constitutional Stakes of Poor Drafting

521. Poor drafting is not a benign defect. It frustrates adjudication of claims, erodes procedural safeguards, and violates foundational due process protections.[60] Under both the Fifth and Fourteenth Amendments, the Void for Vagueness Doctrine prohibits statutes that fail to give fair notice of prohibited conduct or that invite arbitrary enforcement.[61] In *Johnson*,[62] for example, the Supreme Court invalidated the residual clause of the Armed Career Criminal Act because it was "hopelessly vague," leaving courts to "guess at its meaning and differ as to its application."

522. Similarly, in *FCC v. Fox Television Stations*, the Court held that the FCC's indecency enforcement policy violated due process because broadcasters lacked fair notice that "fleeting expletives" would be actionable. The policy was retroactively applied and failed to provide clear standards for permissible conduct, illustrating how regulatory ambiguity can devolve into constitutional infirmity.[63]

523. These cases reveal a principle with special salience for all legislative bodies, including both state and federal lawmakers: clarity is not just good governance, it is a constitutional requirement. However, this mandate bears weight for state legislatures, which often operate with fewer institutional safeguards than Congress. Unlike the federal system, many state legislatures have shorter sessions, limited legal counsel, and more varied drafting standards, conditions that heighten the risk of procedural omissions and textual vagueness. When legislatures, such as Texas, enact statutes without procedural frameworks or textual guidance, especially where they implicate property rights, those laws risk failing the most basic due process tests.[64]

524. This article's argument could be further contextualized through reference to the non-delegation doctrine, which limits the discretionary powers that Congress or legislatures can confer on executive actors without clear guiding principles. This doctrine reinforces the need for legislative clarity by prohibiting lawmakers from abdicating their constitutional responsibility to define the scope of governmental authority.[65] Additionally, the discussion of judicial limits echoes themes in administrative constitutionalism, specifically the tension between statutory clarity and the flexibility required for effective

60 *Loper Bright Enterprises, et al. v. Raimondo, Secretary of Commerce et al. v. Department of Commerce, et al.,* 144 S.Ct. 2244 (2024).

61 U.S. CONST. amends. V & XIV; *United States v. Williams*, 553 U.S. 285, 304 (2008).

62 *Johnson v. United States*, 576 U.S. 591, 597–99 (2015).

63 *FCC v. Fox Television Stations*, 567 US 239, 253–54 (2012).

64 *Direct Communs. Cedar Valley, LLC v. FCC* (*In re FCC* 11-161), 753 F.3d 1015 (10th Cir. 2014).

65 *Gundy v. United States*, 139 S. Ct. 2116, 2131 (2019); *J.W. Hampton Jr. & Co. v. United States*, 276 U.S. 394, 409 (1928).

governance. Courts have increasingly signaled that agency adaptability cannot substitute for clear legislative direction, especially where rights or penalties are at stake.[66]

525. Textualist and originalist approaches would likewise insist that statutes must stand on their terms. These interpretive philosophies reject judicial supplementation of ambiguous statutes, arguing instead that legislative meaning must be found in the enacted text alone.[67] This reinforces the thesis that the responsibility for precision lies squarely with legislatures, not courts.[68] In this view, vague or incomplete statutes not only risk invalidation but represent a failure of democratic accountability.

526. Finally, the failure to embed constitutional safeguards and clarity into legislative drafting is not merely a technical lapse, it is a professional shortfall that implicates ethical duties. Under the ABA Model Rules of Professional Conduct, lawyers, including those advising legislatures, are required to exercise competence (Rule 1.1) and independent judgment (Rule 2.1).[69] These standards demand that attorneys identify statutory ambiguities likely to raise constitutional concerns. A failure to do so not only risk invalidation but also falls short of the ethical rigor the legal profession demands.

## *B. The Institutional Cost of Legislative Ambiguity*

527. The impact of poor drafting extends to the machinery of governance itself. Ambiguous statutes consume judicial and administrative resources, invite costly litigation, and destabilize areas of law meant to facilitate efficiency, such as foreign judgment recognition.[70] In *Londoner v. Denver*, the Supreme Court invalidated a special tax assessment on procedural due process grounds, reinforcing that affected parties must have notice and a meaningful opportunity to be heard. Procedural safeguards cannot be inferred post hoc; they must be written into the statute.[71]

528. Administrative agencies have echoed this concern. The FCC's Report on Process Reform emphasized that vague internal policies and rulemaking procedures impair not only legal compliance but also public trust in the regulatory process. Commissioner Michael O'Rielly similarly observed that regulatory ambiguity undermines the legitimacy and effectiveness of enforcement.[72] These reflections apply equally to legislative

66 Gillian E. Metzger, *Administrative Constitutionalism*, 91 Tex. L. Rev. 1897, 1901–03 (2013).

67 Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law 14–15 (1997).

68 Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 Yale L.J. 1750, 1825–27 (2010).

69 *Model Rules of Pro. Conduct Rules 1.1* & 2.1, Am. Bar Ass'n (2020).

70 Warren Belmar, *The Dangers of Poor Legislative Drafting, Voice of Experience*, ABA (Dec. 2015).

71 *Londoner v. Denver*, 210 U.S. 373, 385–86 (1908).

72 Federal Communications Commission, *Report on FCC Process Reform*, FCC (Feb. 14, 2014).

drafters: a statute that invites interpretation rather than compliance invites judicial correction rather than deference.

529. Moreover, Legislative ambiguity imposes burdens that fall disproportionately on the least legally empowered.[73] While courts may eventually resolve statutory vagueness through litigation, this mechanism assumes access to skilled counsel, familiarity with procedural norms, and the financial capacity to pursue relief, assumptions that often exclude marginalized individuals.[74] In this sense, ambiguous or incomplete statutes function as invisible gatekeepers, silently excluding those unable to interpret or challenge unclear legal obligations.[75]

530. As Professor Nora Freeman Engstrom has argued, procedural structures do not merely distribute burdens, they determine who gets through the courthouse door. Poor legislative drafting exacerbates this inequity by embedding legal uncertainty into the earliest phases of statutory interpretation, where laypersons and even lawyers may struggle to discern rights and obligations.[76] For individuals navigating issues like housing, family status, or public benefits, legal clarity is not an academic ideal, it is a condition of enforceable dignity.

531. Consider the *Detamore* case not only as a doctrinal lesson but as a human one: the absence of statutory notice and hearing procedures jeopardized the procedural rights of litigants seeking recognition of foreign judgments.[77] Had the litigants lacked legal expertise or access to appellate review, those rights might have been permanently extinguished. This illustrates a broader pattern: statutory vagueness systematically disables legal claims before they begin.

532. These justice costs are compounded in state systems, where pro se litigants are most common and access to legal aid is limited. The failure to draft clear, procedurally robust statutes is not only a constitutional risk; it is a mechanism of exclusion. In this respect, due process is not just a post-enactment concern, it is a front-end design obligation that legislators and their advisors must treat as a matter of equity as well as law.

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73 Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS 49, 52–53 (2019).

74 Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS 49, 52–53 (2019); Legal Servs. Corp., *The Justice Gap: The Unmet Civil Legal Needs of Low-Income Americans* LSC (2017).

75 Rebecca L. Sandefur, *Access to What?*, 148 DÆDALUS 49, 52–53 (2019).

76 Nora Freeman Engstrom, *The Lessons of Lone Pine*, 129 YALE L.J. 2, 30–31 (2019).

77 Abbie M. Gruwell, *Shaping the Legal Landscape: From Bill Drafting to Statutory Interpretation*, ABA (Jul. 28, 2023).

## *C. Legislative Fragmentation: Model Laws and the Dangers of Incomplete Adoption*

533. This section will focus specifically on model laws and partial adoptions, a doctrinal issue. We use the Texas recognition Act, Louisiana's refusal to incorporate Article 9 of the UCC, and finally, Tennessee's partial adoption of the Uniform Parentage Act.

534. The Texas Recognition Act also reveals the dangers of partial incorporation of model legislation. States frequently adopt Uniform Laws, such as those promulgated by the Uniform Law Commission (ULC), in efforts to standardize legal frameworks. However, when those adoptions are incomplete, such as by omitting procedural safeguards or altering discretionary provisions, courts are left to grapple with hybrid structures that neither reflect the original drafters' intent nor satisfy constitutional requirements.

535. For example, Texas's version of the Uniform Foreign Country Money Judgments Recognition Act initially lacked a mechanism for notice and hearing.[78] It was only after *Detamore*[79] and subsequent legislative amendments that the statute came into constitutional alignment. This practice of adopting model laws without scrutiny is not only doctrinally hazardous but systemically counterproductive: it sacrifices coherence for convenience and exposes laws to unnecessary judicial scrutiny.

536. This concern is not merely theoretical. In Louisiana, the state declined to fully adopt Article 9 of the Uniform Commercial Code (UCC) for several years, creating a legal vacuum in secured transactions that led to confusion over priority rules and left parties exposed to litigation risk in bankruptcy proceedings.Similarly, Tennessee's partial adoption of the Uniform Parentage Act excluded same-sex parents from parentage presumptions, leading to constitutional challenges under the Equal Protection Clause. Courts ultimately recognized the discriminatory effects of deviating from the model's inclusive presumptions.[80]

537. These examples demonstrate that partial legislative adoption of uniform or model codes, without comprehensive vetting and adaptation, can result in constitutional exposure, doctrinal inconsistency, and increased judicial burden. The Texas case is not an outlier; it is a microcosm of a broader pattern in American legislative practice. Even model-aligned laws must be thoroughly scrutinized for due process compliance. Model laws should serve as a foundation for principled tailoring, not as shortcuts to legislative expedience. Legislatures must resist the temptation to rewrite these frameworks without first evaluating their compatibility with local jurisprudence, constitutional mandates, and implementation realities. Otherwise, states risk enacting statutes that replicate the form of good governance while eroding its substance.

78 Tex. Civ. Prac. & Rem. Code Ann. § 36A.004–.005 (2017).

79 *Detamore v. Sullivan*, 731 S.W.2d 122, 123 (Tex. App., Houston [14th Dist.] 1987).

80 Courtney G. Joslin, *Federalism and Family Status*, 90 IND. L.J. 787, 803–04 (2015).

## D. Political Constraints, Legislative Overreach, and Drafting Failures

538. A central cause of poor drafting is structural: legislatures are often rushed, politically polarized, and insufficiently resourced, especially at the state level, in terms of legal review. Bills are frequently moved through the legislative pipeline with minimal scrutiny, driven by political mandates rather than constitutional compliance. In difficult policy areas, such as immigration, public safety, and economic regulation, where consensus is hard to achieve, Congress and state legislatures often resort to vague or broad language as a form of coalitional compromise.[81] These vague terms allow each political faction to claim interpretive victory, while shifting difficult policy decisions to the executive. A striking example is the use of the term "public charge" in immigration law,[82] which has allowed successive administrations to enforce the rule as narrowly or expansively as political priorities dictate. The term's inherent ambiguity, left undefined in major statutes, allowed the Trump administration to greatly expand the definition, and the Biden administration to later reverse course.[83] This back-and-forth underscores how legislative vagueness can serve as a mechanism of delegation, effectively delegating legislative discretion to the executive.

539. Legislators may also intentionally draft vague laws to avoid intra-party conflict, a strategy that ultimately invites judicial intervention, either through narrow constructions or invalidation.[84] As the Supreme Court has emphasized, courts are "not free to rewrite statutes to avoid constitutional problems," and judicial interpretation cannot replace legislative precision.[85]

540. Moreover, many states do not maintain full-time, nonpartisan legal drafting staff, resulting in statutes that are inconsistent with constitutional doctrine or internally incoherent. Lawyers serving in legislative functions are trustees of the legal system's coherence and democratic integrity. This institutional vulnerability has long been recognized.

541. The harms of vague or procedurally deficient drafting should be recognized as a form of systemic professional malpractice. Analogous to ethical lapses in courtroom advocacy or legal counseling, drafting failures compromise legal notice, impair enforcement consistency, and undermine democratic accountability.[86] These deficiencies point

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81 Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside, An Empirical Study of Congressional Drafting, Delegation, and the Canons*, 65 STAN. L. REV. 901, 944–45 (2013).

82 8 U.S.C. § 1182(a)(4) (2008).

83 *Department of Homeland Security v. New York*, 140 S. Ct. 599 (2020).

84 Nina A. Mendelson, *Disclosing "Political" Oversight of Agency Decision Making*, 108 MICH. L. REV. 1127, 1143–44 (2010).

85 *United States v. Stevens*, 559 U.S. 460, 481 (2010).

86 DAVID LUBAN, THE ETHICS OF WRONGFUL OBEDIENCE, IN LEGAL ETHICS AND HUMAN DIGNITY 237–58 (2000); *Model Rules of Pro. Conduct Rules 1.1* & 2.1, AM. BAR ASS'N (2020).

toward a more constructive path: a drafting framework that anticipates constitutional scrutiny and institutional failure points. What follows is a model for how such foresight might be operationalized.

## E. Institutionalizing Preventive Drafting: A Constitutional and Ethical Imperative

542. The doctrinal gaps identified in Section 4.3 and the institutional barriers outlined in Section 5.4 point to the need for a proactive legislative design strategy. This section proposes such a framework, grounded in preventive drafting. Preventive drafting is a forward-looking method that anticipates constitutional scrutiny and embeds procedural safeguards at the front end of the legislative process.

543. Legislative errors are not solely policy failures, they are lapses in professional judgment. Drafters and their legal advisors shoulder a duty not merely to facilitate the enactment of law, but to safeguard its constitutional and ethical legitimacy. The checklist that follows is designed to operationalize this professional ethic, ensuring that due process compliance is not an afterthought but an embedded design feature of all statutes that implicate individual rights.

544. To support this framework, the Appendix offers a "Legislative Due Process Checklist," a doctrinally grounded tool designed to help drafters identify common due process pitfalls. This checklist synthesizes constitutional case law, model code provisions, and documented statutory breakdowns in practice, such as the Texas Recognition Act, to provide a doctrinally grounded guide for statutory construction.

545. Preventive approach to legislative drafting is one rooted in constitutional fidelity, professional ethics, and institutional pragmatism.[87] This entails several reforms:

### Mandatory Constitutional Review of Draft Bills

546. To bridge the gap between theory and practice, legislatures might institutionalize constitutional review checklists during committee markup, ensuring that statutory clarity and procedural safeguards are not sacrificed to speed or politics. Legal review teams should assess all proposed statutes for facial vagueness, procedural omissions, and internal conflicts.[88]

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87 Elizabeth Garrett & Adrian Vermeule, *Institutional Design of a Thayerian Congress*, 50 Duke L.J. 1277 (2001).

88 Elizabeth Garrett & Adrian Vermeule, *Institutional Design of a Thayerian Congress*, 50 Duke L.J. 1277 (2001).

## Codification of Procedural Protections

547. Lawmakers operate under structural pressures, such as short sessions, partisan urgency, and limited drafting staff, that often make perfection an aspirational rather than achievable goal. However, when statutes that implicate property, liberty, or recognition rights are being passed in the legislature, great care must be taken to explicitly include provisions for notice, hearing, and judicial review.

## Model Code Integrity

548. While uniform statutes offer the promise of legal harmonization and administrative efficiency, they are not constitutional blueprints. Legislative bodies must engage in a deliberate process of vetting and tailoring these models to their legal systems. This includes evaluating whether the proposed uniform law aligns with existing constitutional norms, procedural safeguards, and interpretive canons. As the Texas experience with the Uniform Foreign-Country Money Judgments Recognition Act illustrates, even model statutes risk due process violations if adopted without proper scrutiny.

## Realpolitik and Institutional Reform in Legislative Drafting

549. While this article emphasizes the normative ideal of constitutional drafting discipline, it also recognizes the constraints of real-world legislative environments. Lawmakers often operate under intense political pressure, limited resources, and legislative calendars, which can lead to rushed or imprecise statutory language. Structural reforms, rather than mere exhortations, are necessary to elevate drafting quality. States should expand the capacity and influence of legislative counsel offices, ensuring that trained attorneys review all bills for constitutional coherence. Longer public comment windows and mandatory review by state or national bar associations, such as the American Bar Association (ABA), can catch ambiguities before enactment. Legislatures might also require independent procedural impact statements akin to fiscal notes, assessing whether proposed statutes meet due process standards.

550. Additionally, Legislative rules can mandate constitutional vetting of bills before floor introduction. Executive branches might condition bill signings on procedural impact statements. State bar associations could be given standing advisory roles in reviewing complex bills[89], and states might look to models such as Maryland's Department of Legislative Services[90] or Oregon's Office of Legislative Counsel[91] as institutional templates.

89 Am. Bar Ass'n, *Legislative Procedures and Recommendations for Legislative Review of Proposed Statutes*, ABA (ABA Gov't Affairs Office, 2011).

90 Md. Dep't of Legis. Servs., *About Us*, Maryland General Assembly (last visited May 18, 2025).

91 Or. Legis. Counsel, *Office Description*, Oregon State Legislature (last visited May 18, 2025).

551. These reforms can be institutionalized through rule amendments, executive mandates, bar association partnerships, or statutory mandates. Examples include California's statutory review mandate under Cal. Gov't Code § 10243, which tasks the Legislative Counsel with evaluating all proposed legislation for form and constitutionality before submission to the legislature, and the National Labor Relations Board's adoption of litigation risk minimization protocols under Executive Order 12778.[92] These modest reforms would not eliminate political constraints, but they would institutionalize a culture of professional excellence, reduce reliance on judicial repair, and promote the drafting of laws that both govern and endure.

552. These proposals echo the recommendations made in administrative law reform initiatives, including those by the Department of the Treasury and the Interstate Commerce Commission, which stress the importance of clarity, consistency, and procedural predictability.[93]

553. The Texas statute is emblematic of systemic drafting deficiencies that demand structural reform, not just judicial correction. Constitutional governance demands more than reactive litigation. It requires foresight, precision, and fidelity to due process at the legislative drafting stage.

554. This is not merely a matter of efficiency or jurisprudence; it is a moral imperative. As Chief Justice Warren E. Burger cautioned, "Judges cannot be architects of clarity in a fog of statutory vagueness." Legislators and their legal advisors have a duty not only to draft laws that survive judicial review but to uphold the constitutional integrity of democratic governance itself.[94] That standard is not optional; it is a cornerstone of our legal system and a test of our ethical integrity.

## *F. The Legislative Due Process Checklist: Operationalizing Preventive Drafting*

555. The doctrinal and institutional analysis in this Article demonstrates that excellence in legislative drafting is not merely aspirational but constitutionally required. To operationalize this principle, this Article introduces its distinctive innovation: the Legislative Due Process Checklist. Unlike most doctrinal scholarship, which identifies problems without providing tools for practice, this checklist is designed to embed constitutional safeguards at the point of enactment. It synthesizes case law, professional ethics, and model law experience into a preventive framework that legislative counsel and drafters can apply in real time.

92 Cal. Gov't Code § 10243 (2023).

93 Department of the Treasury, *Internal Enforcement Proposals*, FEDERAL REGISTER (July 1988); ICC Rule 98, 361 I.C.C. 591 (1979).

94 Warren E. Burger, *The Necessity for Civility*, 52 F.R.D. 211, 213 (1971).

556. The checklist operationalizes the Article's dual framework, constitutional and professional, by transforming principles of due process and ethical responsibility into concrete drafting steps. Consider two examples. First, the requirement of clarity and precision obliges drafters to define statutory terms with "sufficient definiteness" so that ordinary individuals can understand their obligations and prevent arbitrary enforcement.[95] Second, the guarantee of notice and hearing requires that statutes include explicit mechanisms for affected parties to contest deprivations before enforcement.[96] These are not stylistic improvements; they are constitutional necessities.

557. The full checklist appears below. Each item is keyed to doctrinal foundations and designed to mitigate recurring risks of vagueness, overbreadth, and procedural omission. By embedding this checklist in legislative drafting processes, lawmakers, counsel, and policy advisors can anticipate and prevent constitutional failure before it reaches the courts.

558. This checklist provides something rarer in academic literature: a practical, real-time guidance for legislators, drafters, and policy staff to avoid constitutional pitfalls in statutory drafting, with a focus on due process, clarity, and enforceability. Far from an academic afterthought, this checklist is meant to change how laws are written, embedding due process considerations at the earliest stages of legislative design. Each item aligns with key legal principles discussed in the article.

## Procedural Safeguards

559. Does the statute guarantee notice and a hearing before enforcement?

560. Are there clearly defined steps for contesting or challenging the statute's application?

## Clarity & Precision

561. Is the statutory language sufficiently precise to provide fair notice?

562. Are key terms clearly defined to avoid vagueness or discretionary abuse?

563. What principle guides enforcement?

## Avoiding Overbreadth

564. Does the statute restrict only constitutionally unprotected conduct or speech?

95 *Johnson v. United States*, 576 U.S. 591, 595 (2015).

96 *Londoner v. Denver*, 210 U.S. 373, 385–86 (1908).

565. Are any restrictions narrowly tailored to achieve a legitimate public interest?

### Consistency with Model Laws

566. If based on a Uniform Act, has the full procedural framework been faithfully adopted?

567. Have deviations from model language been legally vetted for due process implications?

### Judicial Review Preparedness

568. Would a court interpreting this statute under the void-for-vagueness doctrine find clear standards for both citizens and enforcers?

569. Is there a fallback mechanism (e.g., severability clause or administrative appeal) to mitigate constitutional failure?

### Drafting Integrity

570. Was legal counsel involved throughout the drafting process?

571. Was a constitutional impact or fiscal note prepared to identify legal and administrative risks?

572. Have stakeholders, including affected parties and experts, reviewed the draft for clarity and fairness?

## V. Conclusion

573. This Article has sought to demonstrate that legislative drafting must be reclaimed as a domain of ethical and constitutional seriousness. It bridges doctrinal analysis with professional responsibility, integrating procedural justice concerns and interpretive clarity into a unified framework for preventive reform. This reflects both the legal system's structural needs and its moral ambitions.

574. The constitutional demise of the Texas Foreign Country Money Judgments Recognition Act offers a sobering reminder that even amid practical limitations, lawmakers and legislative aides have a professional and constitutional duty to draft with clarity and foresight, particularly when statutes affect rights or enforcement mechanisms. Statutes serve as the framework through which the state wields coercive power. If those statutes are drafted without sufficient clarity, procedural safeguards, or adherence to constitutional norms, they are not just bad law; they are unconstitutional law. The Texas statute failed precisely because it lacked the procedural guarantees that the Due Process Clause of the Fourteenth Amendment requires: notice, an opportunity to be heard, and a fair process before enforcement of foreign judgments.

575. Texas's truncated version of the Recognition Act, missing essential procedural components later added in the 2005 model revision, illustrates how incomplete legislation invites constitutional risk.[97] This phenomenon is not limited to Texas: New York, Florida, and California have all grappled with the fallout from ambiguous or incomplete legislative texts that failed to meet due process thresholds.

576. The solution lies in institutional reform. Legislatures must adopt preventive drafting practices, including rigorous legal review, consultation with public stakeholders, and complete integration of Model Code frameworks when used. Policymakers must abandon the fiction that procedural details can be filled in later by agencies or courts. They cannot. Statutes that implicate life, liberty, or property must speak with constitutional clarity at the point of enactment. Chief Justice Warren E. Burger's admonition still resonates: the burden of legislative clarity lies upstream with those who write the law.

577. As demonstrated by the Legislative Due Process Checklist, constitutional accountability begins at the drafting desk, not the judicial bench. The checklist operationalizes preventive drafting by translating doctrine and professional ethics into concrete standards that lawmakers can apply in real time. It is designed to assist lawmakers, drafters, and policy advisors in identifying and mitigating constitutional risks at the drafting stage.

97 *Detamore v. Sullivan*, 731 S.W.2d 122, 123 (Tex. App., Houston [14th Dist.] 1987).