February 2026
MPT-1 Item

Otto v. Nolan

Otto v. Nolan

FILE

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Law Offices of Stapleton & Garcia LLP
400 Central Avenue, Suite 505
Frankfurt City, Franklin 33122

MEMORANDUM

To: Examinee
From: Beverly Garcia
Date: February 24, 2026
Re: Kari Otto matter

Our client Kari Otto wants to obtain a divorce from her husband, Eric Nolan. The parties' separation has been amicable, and they want to work together to reach a fair outcome in their divorce. I met with Kari last week. Eric, who intends to proceed pro se, consented to meet with me a few days after that. Kari and Eric are hoping to reach an agreement regarding their property before they initiate divorce proceedings. The parties do not have children.

The pivotal issue in this divorce is the question of when the parties were married. Kari believes that they were married in 2006. Eric believes that they were not married until 2019.

I would like you to prepare a memorandum to me analyzing the following:

1. Was the parties' marriage created in 2006 or 2019?
2. If the parties' marriage was created in 2006, which property is marital property and which is Eric's or Kari's separate property?
3. If the parties' marriage was created in 2019, what effect, if any, would that have on the characterization of property?

For each issue, be sure to explain your analysis, cite the relevant legal authority, and state your conclusion. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis.

Do not address what percentage of the marital property should be awarded to Eric and what percentage of the marital property should be awarded to Kari. Also do not discuss any business interests of the parties.

Law Offices of Stapleton & Garcia LLP

FILE MEMORANDUM

From: Beverly Garcia
Date: February 16, 2026
Re: Kari Otto file—client interview notes

Today I met with client Kari Otto, who wants to divorce her husband, Eric Nolan.

Kari and Eric met in 2004 at a farmers' market. Kari was selling flowers at one booth, and Eric was selling his photographs at a neighboring booth. At that time, Eric was a burgeoning photographer who sold his photographs at farmers' markets, art fairs, and local galleries. Since before they met, Kari has been growing flowers on an acre of land that she owns located 20 miles outside Frankfurt City in Frankfurt Acres. On weekends, she sells her flowers at farmers' markets and to local grocery stores. During the week, she is an employee at a plant nursery.

Kari and Eric dated for about a year and then, in January 2005, began living together in the bungalow that Eric was renting at 1505 Clark Street in a vibrant part of Frankfurt City. Kari and Eric were content with their relationship. They regularly socialized with a small group of friends who got together for potluck dinners, parties, and hiking outings. Kari continued working at the plant nursery and selling flowers while Eric's photography career took off. Well-known magazines started commissioning Eric's work. His earnings greatly increased, and he bought $50,000 worth of photography equipment in December 2005.

In August 2006, Eric gave Kari a diamond ring and asked her to marry him. Kari was very excited and said yes. On September 19, 2006, Eric and Kari obtained a marriage license. That night, they went out to a formal dinner with a few close friends to celebrate obtaining the marriage license. Shortly thereafter, Eric started referring to Kari as his "wife." While both Eric and Kari were excited about the marriage license, they did not have a wedding ceremony before the marriage license expired, nor did they file a marriage certificate with the county clerk's office. Nevertheless, Eric and Kari told their friends that they had gotten married, and their friends started referring to them as a married couple.

On September 19, 2007, Eric gave Kari an anniversary card, a copy of which is attached to this memorandum.

In January 2008, the landlord told Eric that he was going to put the bungalow on the market. Eric asked the landlord to sell the bungalow to him, and after negotiating a price of $400,000, purchased it in February 2008. Using money that he had earned as a photographer, Eric made a 20% down payment on the house. He took out a 15-year mortgage in his name alone for the remaining purchase price.

In late May 2019, Kari told Eric that she was disappointed that they had not had a wedding ceremony back in 2006. As a result, they went to the county clerk's office and obtained a new marriage license. They then had a small wedding ceremony with a few close friends on June 8, 2019, on Kari's land in Frankfurt Acres. Kari wore a wedding gown, and Eric wore a tuxedo. A wedding photographer took pictures at the ceremony. The day after the wedding, Kari and Eric filed a marriage certificate with the county clerk.

In 2022, Kari made significant improvements to the land in Frankfurt Acres. With funds she had received as a gift from her mother, Kari hired a local contractor to build a large gardening shed so that she could store equipment.

Kari and Eric have grown apart and have decided to divorce. She says that she believes that they became married in 2006. Kari is upset that Eric is alleging that they were not married until 2019. She describes the ring that Eric gave her as an "engagement ring."

Kari reports that friends and family also believe that they were married in 2006. She showed me a cross-stitch wall hanging that Eric's grandmother had hand-stitched and given to her. The cross-stitch depicts a man and a woman, bears the names "Eric" and "Kari," and includes the words "United in Love" and the date "September 19, 2006." The woman depicted is wearing a wedding gown and veil and is holding a bouquet of flowers. The man is formally dressed. Kari said that Eric's mother and grandmother were upset because they felt that Kari and Eric had deprived them of being there for the wedding in 2006.

Kari and Eric still have a joint bank account that they opened in December 2006, to which they both have contributed funds and from which they have paid their bills, including the mortgage on the bungalow, since 2006. They filed joint tax returns every year starting in 2007. They also sent annual Christmas cards with their photos that were signed "Love, Mr. and Mrs. Nolan."

Kari describes the wedding ceremony on June 8, 2019, as a renewal of vows and an opportunity for her to finally wear a wedding dress. However, apart from the Christmas cards, she has never used Eric's last name and only began using "Otto-Nolan" as her last name after the 2019 wedding ceremony.

Transcript of Meeting with Eric Nolan
February 19, 2026

Att'y Garcia: Thanks for agreeing to meet with me today. Just to confirm, I am representing Kari Otto-Nolan in this matter. I am not your attorney, and it is my understanding that you are currently unrepresented and are agreeing to meet with me without an attorney present.

Eric Nolan: That's right. Kari and I want to resolve this as peacefully and easily as we can.

Garcia: Great. We are trying to figure out when you and Kari got married, so I'm going to ask you some questions about that. Did you ask Kari to marry you in September 2006?

Nolan: I did. We were in love, and it seemed like the right thing to do.

Garcia: And what did she say when you asked her to marry you?

Nolan: She said yes. I was thrilled.

Garcia: And did you give her a ring in September 2006?

Nolan: Yeah, but it was just a promise ring. It wasn't an engagement ring or anything.

Garcia: So why didn't you and Kari have a marriage ceremony after you asked her to marry you?

Nolan: I guess I was nervous about making a lifelong commitment.

Garcia: Were you intending to officially marry Kari in September 2006 when you asked her to marry you?

Nolan: Yeah, I intended to marry her, but we just didn't get around to it until 2019. We were already living together, so there wasn't a lot of pressure for us to get married.

Garcia: But did you begin calling Kari your wife after September 2006?

Nolan: Yes, I did that. But only once in a while.

Garcia: So why did you end up having the marriage ceremony in June 2019?

Nolan: We had been going through some problems. Kari always wanted a wedding ceremony—a white dress and all that. I thought that having a ceremony would make the relationship stronger.

. . .

Garcia: What property are you hoping to keep in the divorce?

Nolan: Well, of course I want to keep the house. I also want to keep all my photography equipment. Kari can keep her acreage, but she should pay me for my share of the shed on that property.

Garcia: What kind of camera equipment do you have?

Nolan: I have a lot of it. I bought about 10 cameras the year we moved in together—probably worth about $50,000. I've probably acquired another $150,000 in photography equipment since then. Some of it has depreciated in value.

*   *   *

Happy Anniversary to My Love

Dear Kari,

Happy First Anniversary! This has been such a wonderful year together. Thanks for all your patience with me as I have learned to be a good husband to you. To many more happy times.

Love,

Eric

Assets and Debts Worksheet

Asset	Date Acquired	Value
House at 1505 Clark Street	2/2008	$400,000 (in 2008) $800,000 (in 2026)
Tract of land in Frankfurt Acres	9/2001	$ 70,000 (in 2001) $150,000 (in 2026)
Photography equipment Additional photography equipment (reflecting depreciation from initial purchase price of $150,000)	12/2005 10/2006–2025	$ 50,000 (in 2005) $120,000 (in 2026)
2024 Toyota Tundra pickup truck (Kari's vehicle; paid off)	5/2024	$ 40,000 (in 2024) $ 32,000 (in 2026)
2024 Nissan Altima sedan (Eric's vehicle; paid off)	1/2024	$ 30,000 (in 2024) $ 22,000 (in 2026)
Bank Accounts		
First Bank joint checking account in the name of Kari Otto-Nolan and Eric Nolan	12/2006	$120,000 (in 2026)

Debts & Liabilities

Credit card debt: none

Balance on mortgage for 1505 Clark Street: $50,000

Retirement Accounts or Pension Plans

None

Excerpts from Franklin Family Code

§ 200 Definitions

. . .

(c) The term "marital property" shall mean all property acquired by either or both spouses during the marriage except as specified in subsection (d) . . . .

(d) The term "separate property" shall mean

(1) property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse;

(2) compensation for personal injuries;

(3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse;

(4) property described as separate property by written agreement.

§ 211 Common-law marriage

(a) A common-law marriage shall be recognized as a valid marriage in this state. . . .

. . .

§ 215 Disposition of property in divorce actions

(a) Except when the parties have a valid prenuptial or postnuptial agreement resolving all issues related to the parties, the court shall determine the respective rights of the parties in their separate or marital property.

(1) Separate property shall remain such.

(2) Marital property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective parties.

(3) In determining an equitable disposition of property under paragraph (2), the court shall consider [factors omitted].

Schwartz v. Darrow

Franklin Court of Appeal (2022)

When Robert Cohn died intestate, his ex-wife, Susan Schwartz, was appointed personal representative of his estate. Teresa Darrow sought Schwartz's removal, asserting that she (Darrow) should have had priority for that appointment as Cohn's common-law wife. A probate court magistrate found that although Cohn and Darrow cohabited for eight years and held themselves out to their community as married, other factors weighed against a finding of common-law marriage, including the facts that the couple did not file joint tax returns, own joint property or accounts, or share a last name. Darrow appealed.

At a hearing to determine whether a common-law marriage existed between Cohn and Darrow, Darrow testified that six years before his death, Cohn presented her with a wedding ring and told her they could be husband and wife if she agreed; that she did agree; and that after that day she wore the ring and the couple held themselves out as married. The magistrate also considered testimony from Schwartz and from many of Darrow's and Cohn's family members, friends, acquaintances, neighbors, and coworkers. Except for Cohn's father and Schwartz, all witnesses stated that they thought Cohn and Darrow were spouses, and some said that they were surprised by this litigation. Some witnesses testified that the couple wore what the witnesses assumed were wedding rings.

The magistrate found that "Cohn and Darrow agreed to and did hold themselves out to be married to the community of their coworkers, friends, and neighbors. However, their family members knew they were not ceremonially married." The magistrate concluded that the evidence weighed against a finding that a common-law marriage existed. For example, although the couple paid bills jointly, they maintained separate bank accounts. There was no evidence that the couple had joint ownership of any vehicles, real estate, or credit accounts. Notably, the magistrate "gave tremendous weight" to the fact that Cohn and Darrow had filed their taxes separately in every year of their purported common-law marriage, despite the fact that the Internal Revenue Service permits common-law spouses to file jointly. Ultimately, the magistrate concluded that Darrow had not proven that a common-law marriage existed.

We review the magistrate's factual findings for clear error and his common-law marriage finding for an abuse of discretion.

A common-law marriage may be established by clear and convincing evidence showing the mutual agreement of the couple to enter the legal and social institution of marriage, followed by conduct manifesting that mutual agreement, often referred to as "holding out." *Howard v. Howard* (Fr. Sup. Ct. 2015). The burden of proving common-law marriage lies with the person claiming its existence. *Id*.

The key question is whether the parties mutually intended to enter a *marital* relationship—that is, to share a life together as spouses in a committed, intimate relationship of mutual support and mutual obligation. *Id.* Ultimately, a common-law marriage finding depends on the totality of the circumstances. Relevant conduct includes, but is not limited to, cohabitation; reputation in the community as spouses; maintenance of joint banking and credit accounts; purchase and joint ownership of property; filing of joint tax returns; evidence of shared financial responsibility, such as leases in both parties' names, joint bills, or other payment records; evidence of joint estate planning, including wills, powers of attorney, and beneficiary designations; symbols of commitment, such as ceremonies, anniversaries, cards, and gifts; and the couple's references to or labels for one another.

Thus, in *Ridley v. Brooks* (Fr. Ct. App. 2008) there was no common-law marriage even though the parties lived together, shared living expenses, and indicated that they were husband and wife on a health insurance form and their apartment lease. The evidence established that the health insurance designation was done as a convenience to save money on premiums, and Brooks, who had been through an acrimonious divorce years before, often stated to friends that she had no intention to remarry.

Here, based on the hearing testimony, the magistrate found that Cohn and Darrow "*agreed to and did hold themselves out to be married* to the community of their coworkers, friends, and neighbors. However, their family members knew they were not ceremonially married." (Emphasis added.) It is unclear from this phrasing whether the magistrate separately concluded that Cohn and Darrow agreed to *be* married. On remand, the district court must determine whether Cohn and Darrow in fact agreed to be married.

Darrow's testimony that Cohn asked her to be his wife, that she accepted, and that he provided her with a ring could be evidence of the couple's express agreement to marry even without a formal ceremony or the presence of some of the other supporting factors. Although a couple's decision to maintain separate finances remains relevant, it is not necessarily indicative of the lack of the parties' intent to be married.

We vacate the order appointing Schwartz as the personal representative and remand to the probate court with instructions to reconsider whether a common-law marriage existed.

Jones v. Cardiff
Franklin Supreme Court (2023)

Samuel Cardiff and Megan Jones were married in May 2018 and have one child. When they married, both spouses were working attorneys. Megan stopped working outside the home when their son was three years old. Samuel was an associate at a law firm from 2012 until 2018 and has been a partner at that law firm since 2018.

Prior to the marriage, Samuel acquired a house situated on 20 acres of land in Cottonwood, Franklin. During the marriage, the parties spent approximately $500,000 to renovate and improve the property. While Samuel played a larger role in these improvements, Megan also participated in some of the project's details.

In March 2021, Megan filed for divorce. A trial ensued on the issues of equitable distribution, maintenance, and child support. The district court recognized that the Cottonwood property was Samuel's separate property but held that funds spent on renovations were marital property subject to equitable distribution. The court awarded 50% of the appreciation of the Cottonwood estate to Megan. The Franklin Court of Appeal modified the judgment on both the law and the facts by, among other things, reducing Megan's share of the enhanced value of the Cottonwood property to 25%.

Separate property is defined to include an increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse. *See* FR. FAM. CODE § 200(d)(3). Thus, any appreciation in the value of separate property due to the contributions or efforts of the nontitled spouse will be considered marital property. *Price v. Price* (Fr. Sup. Ct. 2001). This includes any direct contributions to the appreciation, such as when the nontitled spouse makes financial contributions to the property, as well as when the nontitled spouse makes direct nonfinancial contributions, such as by personally maintaining, making improvements to, or renovating a marital residence. *Id*.

Here, the district court properly held that the improvements were marital property because the increase in the property's value was a result of both parties' efforts. We find that the court of appeal did not abuse its discretion in reducing the award to Megan from 50% to 25% of the property appreciation. Samuel's income was the sole source of the funds expended on the property, and his involvement in the renovations was far more extensive than Megan's.

Affirmed.

Bower v. Bower
Franklin Court of Appeal (2014)

The parties were married on May 16, 1998. Soon after the marriage, they purchased and moved to Happy Dairy Farm. The husband brought 32 head of cattle and farming equipment to Happy Dairy Farm from Fairdale Dairy, a dairy farm that he had been operating but sold right before the marriage. For the first two years of the marriage, the wife actively assisted on the Happy Dairy Farm but thereafter was devoted almost exclusively to raising the parties' children and household responsibilities. In 2013, the wife filed for divorce.

Following a bench trial, the district court found that the farm was marital property subject to equitable distribution. The parties stipulated that the total value of the marital property, including marital property not at issue on appeal, was $2 million. Of this amount, the court awarded $800,000 to the wife, representing 40% of the parties' marital property. The court found that the husband's separate property included 107 head of cattle valued at $80,000 and related equipment worth $500,000. The wife appealed.

We conclude that several errors were committed in the district court's disposition of the parties' property. First, the record was insufficient to support the finding that the value of the present 107 head of cattle and farm equipment constituted the husband's separate property. Undeniably, the cattle and equipment in question were either produced or purchased *during* the marriage, and thus fell squarely within the statutory definition of marital property. *See* FR. FAMILY CODE § 200(c). Moreover, since the cattle and equipment did not predate the marriage and were not acquired by gift or inheritance, they could not be excluded from equitable distribution under the statutory definition of separate property in § 200(d). Rather, the court determined that the cattle and equipment were the husband's separate property because they were "an outgrowth of the cattle and equipment owned by the husband before the marriage" and therefore were covered by the statutory definition of separate property as "property acquired in exchange for or the increase in value of separate property" under § 200(d)(3).

However, we note that the husband testified that the productive life and marketable value of the 32 cattle he brought to the marriage in 1998 had been totally dissipated within a relatively short period of time, coinciding with the period of the wife's active participation in the farming operations. Likewise, the equipment owned by the husband before marriage had worn out and had been replaced by other equipment, paid for with postmarital profits or loans that the wife cosigned. The size of the present herd demonstrates that the farm experienced a manifold expansion beyond the initial cattle and equipment. These facts render inappropriate any equating of the entire current herd and equipment with "property acquired in exchange for or the increase in value of" the comparatively modest assets the husband brought to the marriage.

Defining separate property to include acquisitions during the marriage in *exchange* for the premarital or gift property of one of the spouses or an *appreciation* in the value of such property would generally presume some rough equivalency in value at the time between the premarital property and that which was acquired in exchange. That is not the situation presented here, where depreciated premarital property (i.e., the original 32 head of cattle and related equipment) was *replaced* by property greater in quantity and value (i.e., the current, larger herd of cattle and equipment) that was largely produced or paid for through the activities of the marital economic partnership. Nor could the district court properly exclude the wife from sharing in the current herd and equipment by deeming these items merely an increase in value of the husband's original separate property. The significant expansion in the farming operation here was not due to unrelated market factors or inflation. Instead, prosperity and growth occurred through the parties' mutual marital efforts, during which the wife initially directly benefited the business, pledged her personal credit for its debts, and contributed indirectly to its success through her services as a homemaker and mother. Certainly, if the parties' dairy farm had been started *after* the parties married and the wife only indirectly contributed to it, she still would have been entitled to some share of the appreciation of the dairy farm's value. *See Litman v. Litman* (Fr. Ct. App. 2010) (spouse entitled to appreciation of other spouse's separate property asset even if spouse's contributions were indirect).

While it was improper for the district court to have excluded the total value of the present herd and equipment from equitable distribution, we think the husband is entitled to be credited with the value of his initial contribution of his premarital cattle and equipment. A further determination must be made of the value of the original 32 head of cattle and equipment when the parties married in 1998.

Reversed and remanded.

February 2026
MPT-2 Item

In re Franklin Defenders of the Earth

In re Franklin Defenders of the Earth

FILE

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CITY OF WHITNEY

OFFICE OF THE CITY ATTORNEY
Municipal Building Annex
130 W. Fifth Street
Whitney, Franklin 33875

MEMORANDUM

To: Examinee
From: Maria Delatorre, City Attorney
Date: February 24, 2026
Re: Measure 15

The City Council has requested our opinion as to whether it must adopt a new city ordinance that was approved by a ballot initiative.

As you know, the City of Whitney maintains three flagpoles on the City Hall building itself; the flagpole in the center is 30 feet high, and the two on either side of it are 20 feet high. The flag of the United States is always flown on the center (highest) flagpole. The flags of the State of Franklin and of the City of Whitney are flown on the lower flagpoles.

Franklin Defenders of the Earth (FDE) is a not-for-profit organization that is devoted to ecology and the well-being of the planet. Last year, they submitted an application for a permit to hold an event on City Hall Plaza on the upcoming April 22, "Earth Day," celebrating the day. City Hall Plaza is an open space in front of the City Hall building that the City makes available to the public for events. The City routinely allows such events, treating the Plaza as a public forum, subject to standard regulations and safety and security measures. The permit was granted.

FDE then notified the City that, as part of its event, it would hoist the "Earth Flag," symbolizing Earth Day and FDE's political viewpoint, above the United States flag on the center flagpole atop the City Hall building itself. The City Services Administration, the agency that grants such permits, informed FDE that it would not allow any flag to be flown above the United States flag.

FDE then launched a ballot initiative ("Measure 15") by which the City's electorate would be asked to vote to approve its request and require the City Council to adopt a local ordinance requiring the City to fly the Earth Flag above the national flag; the initiative met all local requirements. The City's voters approved Measure 15 by a vote of 55% to 45%.

Given the passage of Measure 15, the City Council has now requested our opinion as to whether it must adopt the ordinance as described in the ballot initiative.

Please prepare a memorandum for me separately analyzing the issues noted below, even if you believe that one or more is dispositive. For each issue, state and explain your conclusion as to that specific issue. After you have analyzed each issue separately, state and explain your overall conclusion of what advice to give to the City Council as to whether it must adopt the ordinance. Note that the relevant governmental action by the City to be considered in your analysis is its initial denial of FDE's request.

(1) Does the United States Flag Code bar the flying of the Earth Flag above the United States flag?

(2) Does Franklin state law bar the flying of the Earth Flag above the United States flag? Is Measure 15 enforceable under Franklin state law?

(3) Does the First Amendment to the United States Constitution require that FDE be allowed to fly the Earth Flag above the United States flag?

Do not include a restatement of the facts in your memorandum, but you should refer to relevant facts in presenting your analysis.

CITY SERVICES ADMINISTRATION

CITY OF WHITNEY

Rules and Regulations – Events on City Hall Plaza

[Rules regarding permissible events, permit requirements, security and safety issues, etc., omitted]

4.0 Displays

4.1 Permit holders may temporarily erect kiosks and displays, including posters, statues, product demonstrations, and the like, on City Hall Plaza for the duration of the event, subject to conformity with the City fire code and safety and security concerns.

4.2 No event activities shall occur on or in City Hall itself. . . . City Hall is not part of City Hall Plaza.

FULL TEXT OF MEASURE 15

Purpose of Measure 15
The voters of the City of Whitney require that the Whitney City Council enact an ordinance stating that it shall be the official policy and practice of the City of Whitney on Earth Day (April 22) to fly the Earth Flag at the top of the tallest city-owned flagpole on City Hall, above the flag of the United States of America, the Franklin flag, the City flag, and any other flags that the City may choose to display.

The reasons for the proposed action are as follows:

Logic and Symbolism
The American flag flies at the top of the highest flagpole on the City Hall building. But isn't the well-being of the entire Earth more important than merely national considerations? Flying the Earth Flag above all others—including the United States flag—will recognize the importance of our planet's health above all other considerations. We should at least do so on the one day a year when the primacy of the Earth is celebrated—Earth Day.

Patriotism
It is not unpatriotic to fly the Earth Flag above the United States flag. After all, our country is part of the iconic image reproduced on the Earth Flag—the "Blue Marble" photograph of the Earth taken December 7, 1972, by the Apollo 17 spacecraft crew. And taking this action will show how our country values the well-being of the Earth.

Priorities
Our world is threatened by challenges such as climate change and nuclear war. Our focus should be shifted from narrow national interests to the safety and health of the entire planet. Flying the Earth Flag above all others will demonstrate our commitment to meeting these challenges.

Stabilizing the climate and advancing peace require that we meet in good faith with other nations and develop a positive plan of action. We can proudly negotiate as Americans, but we must prioritize the overall well-being of our planet and be willing to make political and economic concessions.

Ordinance to be Adopted by the City Council

The people of the City of Whitney do ordain as follows:

> On every Earth Day (April 22), it shall be the official policy and practice of the City of Whitney to fly the Earth Flag at the top of the tallest city-owned flagpole on City Hall, above the flag of the United States of America and any other flags that the City may choose to display.

For the purpose of this measure, the Earth Flag shall be defined as the flag featuring the "Blue Marble" image of Earth, photographed from the Apollo 17 spacecraft in 1972.

§ 201 Principles of Statutory Interpretation

. . .

(h) The use of terms such as "shall" or "must," and similar terms, make the action set forth in the legislation mandatory. The use of terms such as "should" or "may," and similar terms, sometimes called "precatory" terms, make the action set forth in the legislation permissive, but not mandatory.

UNITED STATES FLAG CODE

4 U.S.C. § 1 *et seq.*

§ 7 Position and manner of display

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

. . .

(c) No other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. . . .

. . .

(e) The flag of the United States of America should be at the center and at the highest point of the group when a number of flags of States or localities or pennants of societies are grouped and displayed from staffs.

(f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard [*] with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the United States flag's right.

[* Halyard: a rope or line for hoisting and lowering something (such as a sail or flag)].

FRANKLIN STATE GOVERNMENT CODE

TITLE 1 - GENERAL
DIVISION 2 - STATE SEAL, FLAG, AND EMBLEMS
CHAPTER 3 - Display of Flags

. . .

§ 436 Where the national and state flags are displayed, they shall be of the same size. If only one flagpole is used, the national flag shall be above the state flag and the state flag shall be hung in such manner as not to interfere with any part of the national flag. At all times the national flag shall be placed in the position of first honor.

FRANKLIN MILITARY AND VETERANS' CODE

. . .

§ 617 No other flag or pennant shall be placed above, or if on the same level, to the right of, the flag of the United States of America, except during church services, when the church flag may be flown.

FRANKLIN STATE CONSTITUTION

. . .

Article 4, section 1. The legislative power of this State is vested in the Franklin Legislature, which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.

Mastai v. Ross
Franklin Court of Appeal (2004)

In 2003, defendant and appellee Emily Ross won reelection to a third consecutive term on the Lakeville City Council. A city ordinance limits council members to two consecutive terms. Plaintiff and appellant Warren Mastai contested the election, seeking declaratory and injunctive relief to invalidate Ross's election. The trial court ruled that the ordinance was invalid as preempted by state law. Mastai appeals. We affirm.

DISCUSSION

A local ordinance is preempted by state law if "the subject matter has been so fully covered by general law as to clearly indicate that it has become exclusively a matter of state concern," *In re Hubbell* (Fr. Sup. Ct. 1964), or if "the subject matter has been partially covered by general law couched in such terms as to indicate a paramount state concern [that] will not tolerate further . . . local action." *Jefferson School Board v. County of Jefferson* (Fr. Sup. Ct. 1980).

Lakeville's local ordinance limits a person's eligibility for city council to two successive terms. The city's voters adopted the ordinance by ballot initiative after several years of debate over the efficacy of term limits. We note, however, that numerous Franklin State Government Code provisions also affect eligibility for local offices in a city such as Lakeville. For example, Franklin state law provides that a person is not eligible to hold office as council member unless he or she is an elector at the time of assuming office and was a registered voter of the city at the time nomination papers were issued to the candidate. [Citation omitted.] We must determine whether, by adopting these State Government Code provisions, the State Legislature has either fully occupied the field or so fully covered it as to indicate a paramount state concern. *In re Hubbell, supra; Jefferson School Board, supra.*

A similar statute relating to eligibility of county elected officers has been held to constitute evidence of the Legislature's intent to exercise *statewide* control over the qualifications of elected county officers. *Elder v. Board of Supervisors* (Fr. Sup. Ct. 1979). To support his argument that the ordinance is not preempted by state law, Mastai attempts to distinguish *Elder* on the ground that the local governmental entity in *Elder* was a county and Lakeville is a city. This distinction is not pertinent in this case. The State Government Code establishes that the Legislature intends to preempt *all* local regulation of eligibility for election to local governing bodies, whether they are counties or cities.

Mastai also contends that the city is a distinct, individual entity and is not a political subdivision of the state. He is incorrect. "Cities are simply creatures of the state and as such are parts of the machinery by which the state conducts its governmental affairs. . . . [Voters] have the right to pass upon the composition of their local government *only within the legal framework established by the constitution of the state and the laws enacted by the Legislature.*" *Mancini v. City of Greenwich* (Fr. Sup. Ct. 1965) (emphasis added). Indeed, local governments do not possess even federal constitutional rights against the state that created them. *E.g., Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907).

Finally, Mastai argues that the local ordinance must prevail, as it was adopted by ballot initiative as referenced in Article 4, section 1 of the Franklin State Constitution. But, as *Mancini* teaches, no matter the source of the *local* regulation, whether by initiative in a city or county, it cannot be contrary to the laws adopted by the *state* legislature.

The trial court correctly found that the city ordinance was preempted by state law. Affirmed.

Shurtleff v. City of Boston
596 U.S. 243 (2022)

[Just outside the entrance to Boston City Hall, on City Hall Plaza, stand three flagpoles. Boston flies the United States flag from the flagpole on the right (on the left as an observer regards them), the Massachusetts state flag on the second, and, usually, the Boston city flag on the third. In 2017, Harold Shurtleff, the director of an organization known as Camp Constitution, asked to hold an event at which the "Christian" flag (a blue field with a red cross) would be hoisted. The city, concerned that this would violate the Establishment Clause of the First Amendment to the Constitution, refused to give permission. This litigation ensued.]

Justice Breyer delivered the opinion of the Court.

When the government encourages diverse expression—say, by creating a forum for debate—the First Amendment prevents it from discriminating against speakers based on their viewpoint. [Citation omitted.] But when the government speaks for itself, the First Amendment does not demand airtime for all views.

. . .

Boston makes City Hall Plaza available to the public for events. Boston acknowledges that this means the plaza is a "public forum." For years, since at least 2005, the city has allowed groups to hold their flag-raising ceremonies on the plaza. . . . Boston has no record of refusing a request to [hoist a flag] before the events that gave rise to this case.

. . .

The first and basic question we must answer is whether Boston's flag-raising program constitutes government speech. If so, Boston may refuse flags based on viewpoint.

The First Amendment's Free Speech Clause does not prevent the government from declining to express a view. [Citation omitted.] When the government wishes to state an opinion, to speak for the community, to formulate policies, or to implement programs, it naturally chooses what to say and what not to say. [Citation omitted.] That must be true for the government to work.

The boundary between government speech and private expression can blur when, as here, a government invites the people to participate in a program. In those situations, when does government-public engagement transmit the government's own message? And when does it instead create a forum for the expression of private speakers' views?

In answering these questions, we conduct a holistic inquiry designed to determine whether the government intends to speak for itself or to regulate private expression. Our review is not mechanical; it is driven by a case's context rather than the rote application of rigid factors. Our past cases have looked to several types of evidence to guide the analysis, including the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression. [Citation omitted.]

Considering these indicia in *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), we held that the messages of permanent monuments in a public park constituted government speech, even when the monuments were privately funded and donated. In *Walker v. Texas Div.*, *Sons of Confederate Veterans*, *Inc.*, 576 U.S. 200 (2015), we explained that license plate designs proposed by private groups also amounted to government speech because, among other reasons, the State that issued the plates "maintain[ed] direct control over the messages conveyed" by actively reviewing designs and rejecting over a dozen proposals.

[Applying these factors to the case at hand, the Court noted that for many years, Boston has allowed groups to hold ceremonies on the Plaza, during which they hoisted a flag of their own choosing in place of the city flag. The Court stated that, as far as the history of the expression at issue is concerned, while the flags flying on the Plaza usually represent the nation, state, and city, this is not always the case. Thus, as far as the public perception is concerned, the flag at issue would not be perceived as a government speech, as it would be associated with Shurtleff's group. And, as to the extent the city actively controlled the flag raisings and the messages the flags sent, the answer is not at all. The Court concluded that Boston was not speaking for itself in allowing private flags to be flown, noting that it could have made clear that it wished to speak for itself. As to the Establishment Clause argument,] [w]hen a government does not speak for itself, it may not exclude speech based on "religious viewpoint"; doing so "constitutes impermissible viewpoint discrimination." [Citation omitted.]

For the foregoing reasons, we conclude that Boston's flag-raising program does not express government speech. As a result, the city's refusal to let Shurtleff and Camp Constitution fly their flag based on its religious viewpoint violated the Free Speech Clause of the First Amendment.

[Concurring opinions omitted.]

February 2026
MEE
Questions

MEE Question 1

In 2022, a mother conveyed by deed a house she owned to her three children, Alonzo, Barbara, and Carla, "as joint tenants with right of survivorship and not as tenants in common."

In 2023, without either Alonzo's or Barbara's knowledge or consent, Carla validly leased the house as a residence for a two-year term to a tenant for monthly rent of $1,200. The lease began on January 1, 2023.

On December 10, 2023, the tenant emailed Carla: "I need to relocate to another city for work. I will move out of the house at the end of this month and won't ever return." Carla immediately replied, "Thank you for letting me know. To confirm our arrangement, however, you still owe me rent for the remaining 12 months of our two-year lease." The tenant did not reply to Carla's email and vacated the house three weeks later, on December 31, 2023.

The day after the tenant vacated the house, Carla advertised it for rent for $1,200 monthly. Within a week she had received rental applications from three qualified potential tenants. After reviewing the applications, Carla decided that she no longer wanted the burden of being a landlord, and so she told the potential tenants that the house was off the market. The house then sat vacant for the one year remaining of the tenant's lease term. During that one-year period, Carla entered the house only to inspect and clean it.

Immediately after the tenant's term ended on December 31, 2024, Carla moved into the house. During the time of Carla's possession, the fair rental value of the house was $1,500 per month.

Last month, Carla died. In her will she devised her interest in the house to her son.

Ignore any statute of limitations issues.

1. With respect to the two-year lease between Carla and the tenant:

   (a) Was Carla entitled to receive 12 months of unpaid rent from the tenant at the end of the lease term? Explain.

   (b) Were Alonzo and Barbara entitled to a share of the rental income payable to Carla under the lease? Explain.

2. Were Alonzo and Barbara entitled to any of the house's fair rental value from Carla during the time of her possession of the house after the tenant's two-year lease expired? Explain.

3. What effect, if any, did Carla's leasing the house to the tenant have on the ownership interests in the house following her death? Explain.

MEE Question 2

Angie developed an application ("app") for cell phones for herself and her friends to organize their large wardrobes better than any currently available commercial app.

In March, while discussing her app with her best friend, Basra, Angie wondered aloud whether she could earn money with her app by hiring a software developer to refine it so that she could make it available to the general public. Although Angie said nothing about starting a business at that time, Basra told her that he thought her idea was great, that he believed it would make a lot of money, and that he would be willing to invest $5,000 if Angie started a business. Basra also offered to introduce Angie to Clyde, a software developer Basra had known for some time.

On April 1, Angie started a new business, which she called XYZ, to license and market her app, thinking that in a couple of months she would incorporate the business. On April 10, Basra put Angie in contact with Clyde. Angie, in the name of XYZ, and Clyde entered into a written agreement under which Clyde would make the app usable by the general public and XYZ would pay Clyde $10,000 upon the signing of the agreement and $15,000 when he completed and delivered the app. As soon as they signed the agreement, Angie paid Clyde $10,000.

In June, Angie completed the paperwork to form a corporation to market the app and filed the paperwork with the appropriate state agency. The articles of incorporation named Angie as the sole initial director of the corporation. Acting as the director, Angie approved the corporation's issuance of 10,000 shares of stock to herself in exchange for her contribution to the corporation of all her intellectual property rights in the app. She also approached Basra, reminding him of their earlier conversation and offering him 2,500 shares for an investment of $5,000 in the corporation. Basra agreed, and the corporation properly issued Basra 2,500 shares of stock in exchange for $5,000.

In July, Angie realized that she would not be able to raise the additional capital necessary to refine the app for public use. She immediately told Clyde to stop work. Clyde responded that he had completed the work. He then sent her a bill for $15,000 and delivered the fully usable app to her.

The corporation never took any formal action with respect to the agreement with Clyde.

Assume that the contract with Clyde was valid and that Clyde fully performed all his obligations.

1. May Clyde recover the unpaid contract price from Angie? Explain.

2. May Clyde recover the unpaid contract price from Basra,
   (a) on the theory that Basra is a partner of Angie? Explain.
   (b) on the theory that Basra is a shareholder of the corporation? Explain.

3. May Clyde recover the unpaid contract price from the corporation, on the theory that it adopted the contract? Explain.

MEE Question 3

A state prosecutor has charged James, age 35, with theft of comic books, in violation of the following State A statute:

> A person commits the offense of theft by unlawfully taking and carrying away, or appropriating, any property of another person with the intent to permanently deprive the other person of the property.

The charges are based on the following facts:

> James and his two sons, ages 10 and 13, collect comic books. They frequently visit their favorite comic-book store. As a result of the frequent visits and the amount spent monthly in the store, James and his sons are all on a first-name basis with the store owner.
>
> On January 2, James and his sons were browsing in the store. After half an hour, James went to the counter to pay for several comic books while the boys continued looking through the shelves. James completed his purchase and told the boys that he was ready to leave. They all politely said "Thank you" and "Good-bye" to the store owner, who cheerfully responded, "See you soon."
>
> Two weeks later, police officers arrested James as he was leaving work. The officers told him that the prosecutor was charging him with theft from the comic-book store. More specifically, the store owner had watched a surveillance video recording of the store from January 2, and in the video, he had seen one of James's sons, who was holding James's briefcase, place five comic books in the briefcase while the trio was browsing in the store. Before they left the store, James paid for the three comic books that he was holding in his hand. He did not pay for the five comic books in the briefcase that he carried out of the store.

During their investigation, the police located an incident report indicating that 15 years earlier James had been arrested at a local grocery store and accused of theft. James had eaten a handful of grapes, claiming that he was tasting them before he ultimately decided not to purchase any grapes. Although arrested, he was never charged with a crime regarding the grapes.

State A has adopted rules of evidence that are identical to the Federal Rules of Evidence. At trial, during the state's case-in-chief, the state asks the court to admit evidence that James was once accused of theft of grapes. Defense counsel objects on three independent grounds: (1) the evidence is irrelevant, (2) the evidence is improper character evidence, and (3) the evidence is improper evidence of other acts.

How would the court likely rule on each ground? Explain. Do not address any notice requirements.

MEE Question 4

Husband properly executed a will that included the following bequests:

A. Any automobile I own at the time of my death to my brother if he survives me;

B. The house I own at 211 Pearson Drive, City, State Y, which I purchased as an investment, to my mother; and

C. The residue of my estate to Wife if she survives me.

The will contained no other provisions relating to the disposition of Husband's estate. At the time Husband executed his will, he did not own an automobile.

Six months after Husband executed his will, he sold the house at 211 Pearson Drive and reinvested the proceeds in another house, located at 500 South Street, City, State Y. At no time did Husband or Wife live in the house at 211 Pearson Drive or the subsequently acquired house on South Street.

One year after Husband executed his will, he and Wife had a child named Sam.

Two years after executing his will, Husband had a nonmarital child with his neighbor. This child is named Doris.

Three years after Husband executed his will, his brother died.

Husband died in State Y five years after executing his will, having never revised it. He is survived by Wife; his two children, Sam and Doris; his mother; and his brother's adopted child, Fred. Husband's estate is valued at $3,325,000. It consists of an automobile (valued at $25,000) that he acquired two months before he died, the house at 500 South Street (valued at $300,000), and $3 million in cash. His estate has no debts and no expenses.

State Y has adopted the Uniform Probate Code.

1. Does the bequest of the automobile to Husband's brother lapse and pass as part of the residue, or does it pass to the brother's adopted child, Fred? Explain.

2. Is Husband's mother entitled to the house at 500 South Street as a substitute for the house specifically bequeathed to her, or did that bequest adeem resulting in the house at 500 South Street passing to the takers of the residue under Husband's will? Explain.

3. To whom should the residuary estate be distributed? Explain.

4. Is Doris entitled to take a share of Husband's estate as an omitted child? Explain.

5. Is Sam entitled to take a share of Husband's estate as an omitted child? Explain.

MEE Question 5

Harmony Corporation sells musical instruments to both professional and amateur musicians. Harmony finances its business pursuant to a signed agreement with Bank, under which Bank has loaned money to Harmony and will continue to do so from time to time, and pursuant to which Harmony has granted Bank a security interest in all of Harmony's present and future inventory to secure its obligation to repay the loans. Bank has filed a properly completed financing statement reflecting this transaction in the appropriate filing office. The financing statement lists Harmony Corporation as the debtor and Bank as the secured party and indicates that the collateral is "inventory."

Harmony sells musical instruments to some of its customers on credit. In a credit sale, Harmony requires the customer to sign an agreement indicating that Harmony retains title to the instrument until the customer finishes paying for it.

Six months ago, Walter, a professional flutist, went to Harmony's showroom, where Walter saw a flute that he liked and thought would be perfect for his professional performances. Walter could not, however, afford to pay the $1,500 price of the flute. Harmony agreed to sell Walter the flute on credit. As memorialized in a "credit sales agreement" signed by Walter, he paid $300 in cash and promised to make payments of $100 on the first day of each of the next 12 months, and until the last payment was made, Harmony retained title to the flute. At the time of the transaction between Walter and Harmony, Walter was unaware of the financing arrangement between Harmony and Bank.

One month ago, Walter, who had not finished paying Harmony the purchase price of the flute (which he had used exclusively for professional purposes), sold it to Joan, another professional flutist, for $900 in cash. Joan had no knowledge of any interest of Bank or Harmony in the flute. After selling the flute to Joan, Walter stopped making installment payments to Harmony.

One week ago, Harmony defaulted on its obligations to Bank.

Both Bank and Harmony have discovered that Joan now has the flute, and each has demanded that she surrender the flute on the grounds that it is collateral for obligations owed to them.

1. Does Bank have a security interest in the flute that is enforceable against Joan? Explain.

2. Does Harmony have a security interest in the flute that is enforceable against Joan? Explain.

Assume that the financing statement filed by Bank is the only relevant financing statement filed and that all parties acted in good faith at all times.

MEE Question 6

A corporation is incorporated in and has its headquarters in State A. The corporation provides wealth-management services to high-net-worth individuals through its offices in States A, B, and C. The corporation is registered to do business in State C, pursuant to a state statute providing that any corporation that registers to do business in the state agrees that the state's courts may exercise "general personal jurisdiction" over the corporation and that the registered corporation "shall be subject to the same liabilities and duties" as corporations incorporated in State C.

Two years ago, Penny, a woman who lived in State B, visited the corporation's branch office in State B and there entered into a contract with the corporation to manage her assets. The corporation assigned Dan, one of its wealth managers at that branch office, to manage Penny's assets. Without Penny's authorization, Dan made extremely risky investments, resulting in the loss of almost all of Penny's assets. When the corporation learned of Dan's behavior, it fired him. Dan then left State B and moved into his parents' home in State C.

After terminating her relationship with the corporation, Penny also moved to State C. She hired an attorney there to represent her regarding possible claims against Dan and the corporation. For several months, the attorney unsuccessfully attempted to negotiate a settlement of Penny's potential claims against the corporation.

Penny's attorney learned that Dan was living with his parents in State C. The attorney tried to contact Dan at his parents' home to discuss settlement, but Dan never responded. The attorney learned that Dan was frequently away from home for weeks traveling throughout the United States.

One week before expiration of the statute of limitations on Penny's claims, her attorney, at Penny's direction, brought two separate actions in the US District Court for the District of State C: one action against Dan and one action against the corporation, both raising claims under a federal law designed to protect investors.

In the action against Dan, Penny's attorney mailed a request for waiver of service of process to the home of Dan's parents. Dan never replied to the request for waiver of service of process.

After receiving no reply to the request for waiver of service of process, Penny's attorney attempted to serve process on Dan. The law of State C allows service of process in its courts of general jurisdiction by sending the summons and complaint by first-class mail to a defendant's place of residence. Consistent with this law, Penny's attorney sent an envelope containing the summons and complaint by first-class mail to the home of Dan's parents.

The envelope had no markings indicating the nature of its contents, and Dan's parents placed the envelope with the rest of his mail, which they were collecting and saving for him until he returned from his travels.

When Dan failed to respond to the summons and complaint, Penny's attorney moved for a default judgment, which the court granted.

Two months later, Dan returned and opened his mail, discovering the summons and complaint. He contacted an attorney, who learned of the default judgment and promptly filed a motion in the federal court to set it aside based on insufficient service of process.

In Penny's separate action against the corporation, her attorney requested, and the corporation executed, a waiver of service of process. The corporation then filed a timely motion to dismiss for lack of personal jurisdiction over it.

Penny has done no business with the corporation's office in State C, and none of its employees in State C had anything to do with managing her assets.

Assume that the federal district court has federal-question jurisdiction over Penny's claims against Dan and the corporation.

1. Was service of process on Dan sufficient? Explain.

2. Does the district court have personal jurisdiction over the corporation? Explain.