In the

Supreme Court of Virginia

At Richmond

Record No. 151956

JOSEPH A. HORBAL, Commissioner of the Revenue for Chesterfield County, Virginia,

Appellant,

– v. –

VERIZON ONLINE, LLC,

Appellee.

OPENING BRIEF OF APPELLANT

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SCV: Submitted on 07-18-2016 14:47:22 EDT for filing on 07-18-2016

TABLE OF CONTENTS

Table of Authorities iii

Statement of the Case, Facts, and Material Proceedings Below 1

Assignments of Error 6

Standard of Review 7

Argument and Authorities 8

I. The trial court erred by finding that VA. CODE § 58.1-1101(A)(2a) is ambiguous. The parties stipulated to the plain meaning of the statutory word at issue in this case, "machines," and that the definition of "machines" includes Verizon's set top boxes which the statute states "shall be taxed" by the County 8

II. The trial court erred by finding that the phrase "machines and tools" used in VA. CODE § 58.1-1101(A)(2a) has any application to this case, and the words "and tools" do not make the word "machines" ambiguous nor do they change the plain meaning of the word "machines" 18

III. Since the word "machines" is not ambiguous in the context of the statute, the trial court erred by referring to extrinsic evidence to interpret the statute. The court then compounded this error by materially misreading the text of VA. CODE § 58.1-1101(A)(2a) before and after an 1984 amendment which added "machines" as a category of taxable property 22

IV. The trial court erred by relying on the "reasoning" of the Arlington County Circuit Court's decision in Arlington Cable Partners v. County of Arlington, on March 20, 1987 because the decision in that case contains no reasoning 26

V. The trial court erred by giving great weight to and adopting the State Tax Commissioner's construction of VA. CODE § 58.1-1101(A)(2a) because this Court ruled in Nielsen v. County Bd. of Arlington County that courts should only give weight to an

agency's construction of a statute if it is reflected in the agency's regulations, which is not the case here 27

Conclusion.....29

Certificate

Exhibit A – Excerpt from Webster's Ninth New Collegiate Dictionary

Exhibit B – Excerpt from Webster's New Collegiate Dictionary

TABLE OF AUTHORITIES

Cases

Arlington Cable Partners v. County of Arlington,
No. 26719 (Arlington Cir. Ct. March 20, 1984) 7, 26, 27

Ayres v. Harleysville Mut. Casualty Co.,
172 Va. 383 (1939) 9

Blake v. Commonwealth,
288 Va. 375 (2015) 9, 10, 16, 17

Brown v. Lukhard,
229 Va. 316 (1985) 10

Butler v. Fairfax County School Bd.,
291 Va. 32 (2015) 9

Campbell County v. Royal,
283 Va. 4 (2012) 7

Chase v. DaimlerChrysler Corp.,
266 Va. 544 (2003) 19

Chesapeake Hosp. Authority v. Commonwealth Dept. of Taxation,
262 Va. 551 (2001) 9, 28

City of Portsmouth v. City of Chesapeake,
205 Va. 259 (1964) 9, 10

City of Virginia Beach v. ESG Enterprises, Inc.,
243 Va. 149 (1992) 19

City of Winchester v. American Woodmark Corp.,
250 Va. 451 (1995) 19, 20, 22

Comcast of Chesterfield County v. Bd. of Supervisors of Chesterfield County,
277 Va. 293 (2009) 3, 4, 26

Commonwealth Dept. of Taxation v. Delta Airlines, Inc.,
257 Va. 419 (1999) 19

David v. David,
287 Va. 231 (2014) 8

Dodge v. Tr. of Randolph Macon Women's College,
276 Va. 10 (2008) 8

Flanary v. Commonwealth,
184 Va. 204 (1945) 22

Harris v. Commonwealth,
142 Va. 620 (1925) 22

In re: Woodley,
290 Va. 482 (2015) 8

JSR Mechanical, Inc. v. Aireco Supply, Inc.,
291 Va. 377 (2016) 8

LaCara v. Commonwealth,
283 Va. 465 (2012) 10

Lamar Co., LLC v. City of Richmond,
287 Va. 348 (2014) 8

Newberry Station Homeowners Assoc., Inc. v. Bd. of Supervisors of Fairfax County,
285 Va. 604 (2013) 9, 10

Nielsen Co. (US), LLC v. County Bd. of Arlington County,
289 Va. 79 (2015) 7, 9, 27, 28

Simpson v. Simpson,
162 Va. 621 (1934) 22

The Daily Press, Inc. v. City of Newport News,
265 Va. 304 (2003) 20, 21

Tvardek v. Powhatan Village Homeowners Ass'n, Inc.,
291 Va. 269, 784 S.E.2d 280 (2016).....8, 9

Washington v. Commonwealth,
273 Va. 619 (2007).....22

Zinone v. Lee's Crossing Homeowners Ass'n,
282 Va. 330 (2011).....8

Rules and Statutes

23 VAC §10-340-20.D.....28

VA. CODE § 30-19.03:2.....24

VA. CODE § 58.1-609.6.....26

VA. CODE § 58.1-1021.02.....25

VA. CODE § 58.1-1100.....20

VA. CODE § 58.1-1101.....2, 23, 27

VA. CODE § 58.1-1101(A)(2).....19, 20

VA. CODE § 58.1-1101(A)(2a)..... passim

VA. CODE § 58.1-2401.....25

VA. CODE § 58.1-2607.B.....25

VA. CODE § 58.1-3510.4.B.2.....25

VA. CODE § 58.1-3740.....25

VA. CODE § 58.1-3983.1.....3, 5

VA. CODE § 58.1-3983.1.D.....4

VA. CODE § 58.1-3984 5

Constitutional Provisions

Virginia Constitution, Article X, § 4 2

Virginia Constitution, Article X, § 6(a)(5) 2

Other Authorities

http://dls.virginia.gov 24, 25

Webster's New Collegiate Dictionary (1986) ..... passim

Webster's Ninth New Collegiate Dictionary (1988) ..... passim

STATEMENT OF THE CASE, FACTS, AND MATERIAL PROCEEDINGS BELOW

Verizon Virginia, Inc. entered the cable television business in 2005 and began offering cable television services across the Commonwealth of Virginia in 2006. (Joint Appendix ("J.A.") at 377.) Verizon's cable service is called "FiOS." (J.A. at 366.) Verizon Online, LLC ("Verizon"), the taxpayer, is an affiliate entity of Verizon Virginia, Inc. and provides FiOS customers with an electronic set top box, also called a converter, so that customers can view cable video programming on their televisions. (J.A. at 366.) Cable television companies generally use both electronic devices (set top boxes, amplifiers) and mechanical devices (backhoes, trenchers) in their businesses. But, under Verizon Virginia, Inc.'s corporate structure, Verizon itself owns no personal property of any significance other than set top boxes. (J.A. at 344, 345.)

The parties stipulated at trial that a set top box is "a mechanically, electrically, or electronically operated device for performing a task" which perform a series of tasks and functions necessary for delivering audio and video to FiOS subscribers' televisions so that they can watch cable television. (J.A. at 369.) The common functions performed by the set top boxes include decoding the incoming cable signal, displaying an electronic

signal on the television, allowing digital video recording, enabling customers to use an electronic program guide, and providing interactive television services such as pay-per-view and video on demand. (J.A. at 369, 482-760.)

This case concerns whether the electronic set top boxes which Verizon owns and provides to FiOS subscribers are "machines" and therefore taxable by Chesterfield County ("County") as tangible business personal property pursuant to VA. CODE § 58.1-1101(A)(2a). VA. CODE § 58.1-1101(A)(2a) mandates that the "machines and tools, motor vehicles, delivery equipment, trunk and feeder cables, studio equipment, antennae and office furniture and equipment" used in a cable television business "shall be taxed locally" as tangible personal property. (emphasis added).[1]

When Verizon Virginia, Inc. started providing cable television service in the County, and Verizon began supplying customers with set top boxes, Verizon filed business personal property tax returns for the set top boxes

[1] The Virginia Constitution, Article X, § 4 provides that "tangible" personal property is subject to local taxation by the County. Article X § 6(a)(5) of the Virginia Constitution, however, authorizes the General Assembly to segregate "intangible" personal property for state taxation. Pursuant to this constitutional provision, the General Assembly adopted VA. CODE § 58.1-1101 which classifies certain property used by specified businesses as "intangible" and reserves such property for taxation by the state. In VA. CODE § 58.1-1101(A)(2a), however, the General Assembly classified "machines" used in a cable television business as tangible personal property which "shall be taxed locally."

with the Commissioner of Revenue for Chesterfield County, Joseph Horbal ("Horbal"). (J.A. at 366, 367.) Verizon filed annual business personal property tax returns on its set top boxes for tax years 2008, 2009, and 2010. (J.A. at 366.) Each year, pursuant to his statutory authority, Horbal assessed local property taxes on Verizon's set top boxes because they are "machines" subject to local taxation under VA. CODE § 58.1-1101(A)(2a). (J.A. at 367.)

On June 22, 2011, Verizon submitted an application to challenge Horbal's assessments for tax years 2008, 2009, and 2010, contending that the set top boxes it had reported to Horbal for local taxation are not machines subject to local tax under VA. CODE § 58.1-1101(A)(2a). (J.A. at 367.) Horbal denied Verizon's appeal because Verizon's set top boxes are machines as that word is commonly used and understood.[2] In fact, the Chesterfield County Circuit Court had previously ruled on this precise issue in Comcast of Chesterfield County, Inc. v. Bd. of Supervisors for Chesterfield County (February 15, 2008) ("Comcast"). (J.A. at 367, 401.) In

[2] Verizon's appeal to Horbal as to tax years 2008 and 2009 was also invalid because it was untimely and incomplete. Pursuant to VA. CODE § 58.1-3983.1, a letter of administrative appeal must be filed within one year from the last day of the tax year for which the assessment is made. Verizon's appeal was not timely for the tax years 2008 and 2009. Accordingly, the trial court properly granted Horbal's motion for summary judgment on this issue denying Verizon's claim for a refund on the taxes for 2008 and 2009.

that case, the court ruled that the set top boxes Comcast uses in its cable business are "machines" under the plain meaning of the word and, therefore, subject to local taxation in accordance with VA. CODE § 58.1-1101(A)(2a).[3] (J.A. at 401.)

On August 26, 2011, Verizon appealed Horbal's assessment to the State Tax Commissioner under VA. CODE § 58.1-3983.1.D (J.A. at 368.) On October 16, 2012, the State Tax Commissioner issued a determination. (J.A. at 8.) In his determination, the Tax Commissioner did not attempt to apply the plain meaning of the word "machines" to the statute nor did he find the word "machines" or VA. CODE § 58.1-1101(A)(2a) to be in any way ambiguous. Rather, the Tax Commissioner improperly turned to, and then misconstrued, "extrinsic evidence" and "policy" to conclude that Verizon's set top boxes are not machines subject to local taxation. He reached this conclusion despite the fact that the commonly accepted meaning of "machine" includes electronic devices like set top boxes.[4] (J.A. at 11.)

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[3] Comcast appealed the circuit court decision to this Court. This Court determined that the circuit court order finding that set top box converters are "machines" was not a final order because the court had not yet determined the fair market value of the property and assessed the tax as required by statute. Comcast of Chesterfield County v. Bd. of Supervisors of Chesterfield County, 277 Va. 293 (2009). This Court remanded the case, and it was subsequently resolved between the parties.

[4] As discussed below, the Department of Taxation's "policy" as well as its regulations both support local taxation of set top boxes. (See infra p. 28.)

Horbal appealed the Tax Commissioner's ruling to the Chesterfield County Circuit Court pursuant to VA. CODE § 58.1-3983.1 and § 58.1-3984. In that proceeding, the parties stipulated all of the material facts and filed cross-motions for summary judgment. (J.A. at 366.) Significantly, the parties stipulated to all the facts necessary for the trial court to apply the plain meaning of the word "machines" to Verizon's set top boxes in the context of VA. CODE § 58.1-1101(A)(2a).

First, the parties stipulated that a set top box meets the commonly accepted definition of the word "machine," which is "a mechanically, electrically, or electronically operated device for performing a task" found in Webster's New Collegiate Dictionary (1986) ("Webster's") and Webster's Ninth New Collegiate Dictionary (1988) ("Webster's Ninth"). (J.A. at 369.)

Second, the parties stipulated that another definition of "machine" in Webster's and Webster's Ninth – "an assemblage of parts that transmits forces, motion and energy one to another in a predetermined fashion"– also applied in the context of § 58.1-1101(A)(2a) because it describe other types of machines commonly used in cable television businesses such as "[t]renchers and backhoes to dig earth up to place cable." (J.A. at 369.)

Third, the parties stipulated that the other senses of the word "machine" that appear in the dictionary are plainly inapplicable in the

context of § 58.1-1101(A)(2a), such as the sense of "machine" that refers to "a highly organized political group under the leadership of a boss or small clique." (J.A. at 369, 370.) Webster's Ninth.

Notwithstanding the parties' stipulation that set top boxes meet the definition of the word "machine," and without offering any reasoned analysis, the trial court simply declared that the statute was "clear as mud." (J.A. at 359.) The trial court then proceeded to misread and misinterpret a variety of "extrinsic evidence" to conclude that Verizon's set top boxes are not "machines." The trial court denied Horbal's motion for summary judgment on that issue, and this appeal followed.

ASSIGNMENTS OF ERROR

1. The trial court erred by finding that VA. CODE § 58.1-1101(A)(2a) is ambiguous. The parties stipulated to the plain meaning of the statutory word at issue in this case, "machines," and that the definition of "machines" includes Verizon's set top boxes which the statute states "shall be taxed" by the County.

Horbal Objection No. 7 to Final Order (J.A. at 811.)

2. The trial court erred by finding that the phrase "machines and tools" used in VA. CODE § 58.1-1101(A)(2a) has any application to this case, and the words "and tools" do not make the word "machines" ambiguous nor do they change the plain meaning of the word "machines".

Horbal Objection No. 3 to Final Order (J.A. at 811.)

3. Since the word "machines" is not ambiguous in the context of the statute, the trial court erred by referring to extrinsic evidence to interpret the statute. The court then compounded this error by materially misreading the text of VA. CODE § 58.1-1101(A)(2a) before and after a 1984 amendment.

Horbal Objections Nos. 1 and 6 to Final Order (J.A. at 811.)

4. The trial court erred by relying on the "reasoning" of the Arlington County Circuit Court's decision in Arlington Cable Partners v. County of Arlington, on March 20, 1987 because the decision in that case contains no reasoning.

Horbal Objection No. 9 to Final Order (J.A. at 811.)

5. The trial court erred by giving great weight to and adopting the State Tax Commissioner's construction of VA. CODE § 58.1-1101(A)(2a) because this Court ruled in Nielsen v. County Board of Arlington County that courts should only give weight to an agency's construction of a statute if it is reflected in the agency's regulations, which is not the case here.

Horbal Objections Nos. 4 and 5 to Final Order (J.A. at 811.)

STANDARD OF REVIEW

This case concerns whether or not the electronic set top boxes which Verizon owns and provides to FiOS subscribers are "machines" and therefore taxable by the County as tangible business personal property pursuant to VA. CODE § 58.1-1101(A)(2a). Because this case presents a purely legal question involving the interpretation of a statute, this Court reviews the trial court's decision de novo. Campbell County v. Royal, 283 Va. 4 (2012).

ARGUMENT AND AUTHORITIES

I. The trial court erred by finding that VA. CODE § 58.1-1101(A)(2a) is ambiguous. The parties stipulated to the plain meaning of the statutory word at issue in this case, "machines," and that the definition of "machines" includes Verizon's set top boxes which the statute states "shall be taxed" by the County.

According to this Court, the one canon of statutory construction that precedes all others is that "[w]e presume that the legislature says what it means and means what it says." Tvardek v. Powhatan Village Homeowners Ass'n, Inc., 291 Va. 269, 784 S.E.2d 280 (2016); In re: Woodley, 290 Va. 482 (2015). When construing legislative language, courts must adhere closely to statutory texts and "presume that the legislature chose, with care, the words it used when it enacted the relevant statute." Tvardek, 291 Va. at _, 784 S.E.2d at 284; Zinone v. Lee's Crossing Homeowners Ass'n, 282 Va. 330, 337 (2011).

The intent of the legislature in enacting a statute "must be gathered from the words used, unless a literal construction would involve a manifest absurdity." Dodge v. Tr. of Randolph Macon Women's College, 276 Va. 10, 15 (2008). Lamar Co., LLC v. City of Richmond, 287 Va. 348, 351 (2014); David v. David, 287 Va. 231, 237 (2014); JSR Mechanical, Inc. v. Aireco Supply, Inc., 291 Va. 377 (2016). Absurdity exists when a purely

literal reading of the statute forces the statutory text into an "internally inconsistent" conflict or renders the statute "otherwise incapable of operation." Tvardek, 291 Va. at __, 784 S.E.2d at 286; Butler v. Fairfax County School Bd., 291 Va. 32 (2015).

A word is ambiguous when the word has "no definite sense or else a double one" and this ambiguity allows for two distinct interpretations that are in such conflict that the statute is incapable of being understood or applied. Ayres v. Harleysville Mut. Casualty Co., 172 Va. 383, 393 (1939) (citing Corpus Juris Secundum, vol. 3, pages 1035, 1037 (emphasis added)); Newberry Station Homeowners Assoc., Inc. v. Bd. of Supervisors of Fairfax County, 285 Va. 604 (2013); Blake v. Commonwealth, 288 Va. 375 (2015).

In the absence of such ambiguity, there is no room for interpretation. Chesapeake Hosp. Authority v. Commonwealth Dept. of Taxation, 262 Va. 551, 562 (2001). The intent of a statute is to be ascertained from the language used in the statute, not by referring to extrinsic sources or documents. Butler v. Fairfax County School Bd., 291 Va. 32 (2015); Nielsen v. County Bd. of Arlington County, 289 Va. 79 (2015); City of Portsmouth v. City of Chesapeake, 205 Va. 259, 269 (1964). Resorting to "legislative history" and extrinsic facts under these circumstances is legally

improper because it is the words as written in the statue which determine their meaning and the intent of the legislature. City of Portsmouth, 205 Va. at 269; Newberry Station, 285 Va. at 614. When a statute is unambiguous, extrinsic legislative history may not be used to create an ambiguity, and then remove it, where none otherwise exists. Brown v. Lukhard, 229 Va. 316, 321 (1985); LaCara v. Commonwealth, 283 Va. 465 (2012).

The primary question for the Court in this case is whether the word "machines" as used in VA. CODE § 58.1-1101(A)(2a) is ambiguous or not. Therefore, the Court's task is to determine whether the word "machines" is "capable of being understood in more senses than one" or has "either no definite sense or else a double one" thereby rendering the statute incapable of being applied and therefore inoperable.

The word "machines" is not defined by VA. CODE § 58.1-1101(A)(2a). This Court regularly consults dictionaries to determine the sense of a word used in a statute when the word is not defined by the statute. Blake v. Commonwealth, 288 Va. 375 (2015). The parties referred the trial court to Webster's and Webster's Ninth (J.A. at 369.). The definition of "machine" found in Webster's and Webster's Ninth referenced by the parties in the Joint Stipulations is the same and is as follows:

[1]ma·chine \mə-'shēn\ *n, often attrib* [MF, fr. L *machina,* fr. Gk *mēchanē* (Dor dial. *machana*), fr. *mēchos* means, expedient — more at MAY] (1549) **1 a** *archaic* : a constructed thing whether material or immaterial **b** : CONVEYANCE, VEHICLE; *specif* : AUTOMOBILE **c** *archaic* : a military engine **d** : any of various apparatuses formerly used to produce stage effects **e** (1) : an assemblage of parts that transmit forces, motion, and energy one to another in a predetermined manner (2) : an instrument (as a lever) designed to transmit or modify the application of power, force, or motion **f** : a mechanically, electrically, or electronically operated device for performing a task ⟨a calculating ~⟩ ⟨a card-sorting ~⟩ **g** : a coin-operated device ⟨a cigarette ~⟩ **h** : MACHINERY — used with *the* or in pl. ⟨man must not become the servant of the ~⟩ **2 a** : a living organism or one of its functional systems **b** : a person or organization that resembles a machine (as in being methodical, tireless, or unemotional) **c** (1) : a combination of persons acting together for a common end along with the agencies they use (2) : a highly organized political group under the leadership of a boss or small clique **3** : a literary device or contrivance introduced for dramatic effect

Webster's Ninth, at 713, attached as Exhibit A.

Webster's Ninth explains how to read and understand a definition in the Explanatory Notes section of the dictionary. In the subsection "Division of Senses," the Explanatory Notes state that boldface Arabic numerals separate the different senses of a word that has more than one sense. Exhibit A, Webster's Ninth, at 19.

As seen above, the word "machine" can be used in three different senses of the word. The first sense of the word "machine" (Sense No. 1.) describes items of personal property and encompasses mechanically, electrically, or electronically operated devices which perform a task or function. See, e.g., Exhibit A, at 713, 1.e., 1.f., 1.h. This sense obviously

applies to the personal property tax statute at issue. In fact, the parties stipulated that cable television businesses use both mechanical and electronic machines in their businesses and that set top boxes are included within Sense No. 1 of the definition of machines as an "electrically or electronically operated devices."

The other two senses of "machine" do not apply in the context of a personal property tax statute. The second sense of "machine" refers to people, such as a "highly organized political group" Id. at 2.c. The third sense of the word "machine" refers to "a literary device or contrivance introduced for dramatic effect."

In this case, the parties stipulated that, in the context of VA. CODE § 58.1-1101(A)(2a), only Sense No. 1 of the word "machines" applies. (J.A. at 369, 370.) That is because Sense No. 1 deals exclusively with items of personal property, whether mechanical or electronic, that perform tasks and the statute imposes a tax on personal property used in a cable business. The statute has nothing to do with "political machines" or the literary device deus ex machina.

Webster's Ninth tells us further that within each sense of a word, there may be "subsenses" of the word with a "semantic relationship to one another." If so, they are indicated by boldface lowercase letters and listed in

historical order of use. Webster's Ninth at 19. Therefore, one can determine that Sense No. 1, the only sense of the word that applies to VA. CODE § 58.1-1101(A)(2a), has evolved over time. Historically, "machine" had a once common, but now "archaic," meaning that referred to "a military engine" See Entry 1.c. above. Later, the word "machine" came to include a device with "an assemblage of parts that transmit forces, motion, and energy one to another in a predetermined manner" Id. at 1.e. ("Entry 1.e.") And then, even more recently, with the advent of electronic technology, a machine became commonly known not just as a mechanical device, but as "a mechanically, electrically, or electronically operated device for performing a task." Id. at 1.f. ("Entry 1.f.")

The parties to this case stipulated that a set top box is, in fact, "a mechanically, electrically, or electronically operated device for performing a task." (J.A. at 369.) And, significantly, in 1984, when the General Assembly amended VA. CODE § 58.1-1101(A)(2a) to mandate that "machines" of a cable television business "shall be taxed locally as tangible personal property", Webster's definition for "machine" was precisely the same as the 1986 and 1988 definitions which the parties stipulated were applicable to set top boxes: "a mechanically, electrically, or electronically operated device for performing a task" See Exhibit B, Webster's New Collegiate

Dictionary (1981). Equally significant is the fact, stipulated by the parties, that it is customary for cable television businesses also to use mechanical machines such as backhoes and trenchers. These mechanical machines also fall squarely within the Sense No. 1 definitions.

Yet, Verizon argues that the word "machines" is ambiguous because notwithstanding the fact that a set top box is "a mechanically, electrically, or electronically operated device for performing a task", it is not "an assemblage of parts that transmit forces, motion, and energy one to another in a predetermined manner". Compare Entry 1.f. with Entry 1.e. Verizon's argument does not prove that the word "machine" is ambiguous. Verizon's argument proves only that there are at least two different types of machines that may be taxed under VA. CODE § 58.1-1101(A)(2a).[5] That fact, however, does not render the statute internally inconsistent or inoperable.

Entry 1.e. and Entry 1.f. are not two mutually exclusive senses of the word "machines." In other words, Entry 1.e. does not provide a definition of "machine" that expressly precludes electronic devices. Rather, Entry 1.e. is a definition of the word from a time when electronic machines did not yet

[5] And again, Verizon may own only set top boxes, but many other cable television businesses like Comcast own both set top boxes and mechanical equipment like cable-laying trenchers or backhoes.

exist. Entry 1.f., on the other hand, is more evolved. It includes not only mechanical devices, but also recognizes the development of more complex electrical and electronic machines, like set top boxes. Therefore, both entries define "machine" in the same sense of the word, and both apply in the context of the statute. Entry 1.f. is a more historically relevant definition of the word. But Entry 1.e. is also applicable, as are the other entries in Sense No. 1. Whatever personal property Verizon owns which is used in its business and comes under a definition within Sense No. 1 of "machine" is locally taxable in accordance with § 58.1-1101(A)(2a). In this case, set top boxes come under Entry 1.f.

Ambiguity is not created by the fact that there was a time in our history, before the development of electronic technology, when machines were defined only as mechanical devices as described in Entry 1.e. Ambiguity is not created by the fact that some machines are more technologically advanced than others. The fact that the dictionary includes two subsenses of the word, one that describes mechanical machines, the other that describes electronic and mechanical machines, does not mean that VA. CODE § 58.1-1101(A)(2a) is incapable of being applied. And, in fact, cable companies generally own both kinds of machines and use them in their businesses.

Verizon's argument might possibly be of interest had the historic evolution of the word "machine" ended with Entry 1.e. in 1984 when the General Assembly instructed localities to tax the machines used by a cable business. But, in 1984, when the current statute was enacted, a "machine" was well-understood to mean "a mechanically, electrically, or electronically operated device for performing a task". See, Webster's New Collegiate Dictionary (1981), Exhibit B. Therefore, contrary to Verizon's argument, the fact that two items of personal property, a backhoe and a set top box, can both be unambiguously understood to be machines within the same sense of the word renders neither the statute nor the word "machines" ambiguous; it simply makes both machines locally taxable under the statute.

An example of when a statute is truly rendered ambiguous by a word with a "double" sense, that is, two meanings that make the statute incapable of being applied, was addressed by this Court in Blake v. Commonwealth, 288 Va. 375 (2015). In Blake, this Court had to determine which sense of the word "send" applied to a truancy statute requiring parents and guardians to "send" their children to school. The Court referred to the "ten definitions" for "send" found in Webster's. Id. at 382.[6]

[6] This Court was referring to the ten definitions headed by boldface Arabic numerals which Webster's Explanatory Notes explains separates the ten different senses of the word.

The Court found among the ten different senses of the word “send”, two senses of the word could be used in the context of the statute, but one sense, “to cause to go” resulted in giving the law a completely different meaning than the other sense, “to direct, order, or request to go; to permit or enable to attend a term or session.” Id. at 382. In other words, this Court had to determine whether “send” meant merely to enroll the child in school or rather did it mean to ensure that the child actually physically attended the school. Since the two different senses of the word changed the meaning of the statute and yielded two inconsistent readings, this Court found the word “send” to be legally ambiguous. Id. at 383. In the present case, however, and completely unlike the statutory language in Blake, there are no two mutually exclusive senses of the word “machines” one of which necessarily includes set top boxes while the other clearly excludes them.

Here, one, and only one, sense of the word “machines” applies in the context of § 58.1-1101(A)(2a). Applying that sense of the word fails in any way to render the statute internally inconsistent or incapable of operation. To the contrary, both the backhoes and the set top boxes of a cable company (and any other personal property defined in Sense No. 1 of

"machine") are subject to taxation pursuant to VA. CODE § 58.1-1101(A)(2a). The trial court's decision should be reversed.

II. The trial court erred by finding that the phrase "machines and tools" used in VA. CODE § 58.1-1101(A)(2a) has any application to this case, and the words "and tools" do not make the word "machines" ambiguous nor do they change the plain meaning of the word "machines".

Verizon has argued that even if the word "machines" can be understood and applied in the context of VA. CODE § 58.1-1101(A)(2a), the legislature somehow rendered the statute ambiguous by linking the words "machines" and "tools" together instead of separating the two words by a comma. (J.A. at 97.) Verizon has asserted, without any authority, that the term "machines and tools" does not include electrical or electronic devices such as set top boxes. (Id.)

The only question before the Court, however, is whether Verizon's set top boxes are "machines" as that word is used in the context of VA. CODE § 58.1-1101(A)(2a). Horbal did not and does not contend that Verizon's set top boxes are tools. Verizon has never contended that its set top boxes are or are not tools. The issue of "tools" was not before the trial court, so it is irrelevant what kind of "tools" the legislature was referring to in § 58.1-1101(A)(2a).

Furthermore, there is no more ambiguity in the phrase "machines and tools" than in the word "machines." Rather than presume that the General Assembly chose to be obtuse, as the trial court's ruling suggests, the Court is required to assume that the legislature chose the words it used with care. Commonwealth Dept. of Taxation v. Delta Airlines, Inc., 257 Va. 419 (1999); City of Virginia Beach v. ESG Enterprises, Inc., 243 Va. 149, 153 (1992). Although "just" or "substantial" doubts in the meaning of the legislative language are to be resolved in favor of the taxpayer, "[w]here the legislature has used words of a plain and definite import, the courts cannot put upon them a construction which amounts to holding the legislature did not mean what it actually expressed." City of Winchester v. American Woodmark Corp., 250 Va. 451, 457 (1995); Chase v. DaimlerChrysler Corp., 266 Va. 544, 547-48 (2003).

Moreover, the language used by the legislature in § 58.1-1101(A)(2a) applicable to cable businesses is very similar to the language in § 58.1-1101(A)(2), pursuant to which the "machinery and tools" of manufacturers is taxable by the locality, not the state. City of Winchester v. American Woodmark Corp., 250 Va. 451 (1995) (emphasis added). Even though the General Assembly provided no definition for the words "machinery and tools," this Court has found that language to be unambiguous:

> …when we interpret unambiguous statutes, such as CODE §§ 58.1-1100 and -1101(A)(2), we apply the plain meaning rule.
>
> > While in the construction of statutes the constant endeavor of the courts is to ascertain and give effect to the intention of the legislature, that intention must be gathered from the words used, unless a literal construction would involve a manifest absurdity. Where the legislature has used words of a plain and definite import the courts cannot put upon them a construction which amounts to holding the legislature did not mean what it has actually expressed. (internal cite omitted)

American Woodmark, 250 Va. at 457 (emphasis added).

"Machines and tools" is no more ambiguous than "machinery and tools". In fact, "machines" and "machinery" are synonymous words which this Court has used interchangeably. In The Daily Press, Inc. v. City of Newport News, 265 Va. 304 (2003), this Court had to determine which pieces of personal property used by a newspaper publisher were subject to local taxation as "machinery and tools" used in manufacturing. This Court referred with ease and multiple times to the "machinery" owned by The Daily Press as "machines". More significant, however, is the fact that the "machines" at issue in that case were electronic machines – "computers, servers, modems, and other equipment linked in a local area network…" just like the set top boxes at issue here. The Daily Press, 265 Va. at 307.

The Court's recognition in The Daily Press that electronic devices are machines or machinery is consistent with the historical understanding of the word dating back to at least 1984 when § 58.1-1101(A)(2a) was amended by the General Assembly. In 1985 the Attorney General concluded that electronic equipment was "properly classified as machinery and tools," and noted that this had been "the long-standing administrative interpretation" of the State Tax Commissioner, and the position of the Attorney General's Office, since 1967:

> The foregoing interpretation of the statute is long-standing and has remained undisturbed by many subsequent sessions of the General Assembly; hence, it is presumed to be the construction intended by the General Assembly. See Browning-Ferris v. Commonwealth, 225 Va. 157, 300 S.E. 2d 603 (1983); Deal v. Commonwealth, 224 Va. 618, 299 S.E. 2d 346 (1983).

1984-85 O.A.G. 338 at 339. Therefore, when § 58.1-1101(A)(2a) was enacted in 1984, it was enacted in the context of the "long-standing interpretation" that electronic equipment is machinery and that electronic equipment is locally taxable as business tangible personal property.[7]

Finally, there is no ambiguity created by using the word "and" instead of a comma because there is no meaningful difference in the articulation

---

[7] In 1984, as now, Webster's definition of "machinery" includes "machines of a particular kind or machines in general," and Webster's and Webster's Ninth each list as Entry 1.h. "MACHINERY" as a synonymous meaning for "machine" in the definition which the parties stipulated is applicable to this case and which is set out in its entirety, supra at 11.

"machines and tools" and the articulation "machines, tools, …" Punctuation is the most fallible of all standards by which to interpret a statute. Harris v. Commonwealth, 142 Va. 620 (1925). Interpretation of words does not rely so much on the propriety of grammar as it does on their general and popular use. Simpson v. Simpson, 162 Va. 621 (1934); Flanary v. Commonwealth, 184 Va. 204 (1945); Washington v. Commonwealth, 273 Va. 619 (2007) (statutes are not to be construed by strict and critical adherence to technical grammatical rules).

It was error for the trial court to find ambiguity in the words "machines and tools" as if those words would, for some unarticulated reason, not include electrical or electronic machines like a set top box. There is no ambiguity in "machines and tools" just as this Court held in American Woodmark that there is no ambiguity in "machinery and tools."

III. Since the word "machines" is not ambiguous in the context of the statute, the trial court erred by referring to extrinsic evidence to interpret the statute. The court then compounded this error by materially misreading the text of VA. CODE § 58.1-1101(A)(2a) before and after an 1984 amendment which added "machines" as a category of taxable property.

Since the word "machines" is not ambiguous in the context of the statute, the trial court erred by referring to extrinsic evidence to "interpret" the statute in the first place. But, even if this Court were to examine the so-called "legislative history," the Court would see that it is not reasonable to

conclude that the intention of the General Assembly was to limit the list of property used in a cable business to be taxed locally. The words "machines" and "tools" were not contained in the statute prior to the 1984 legislative amendment to § 58.1-1101. The locally-taxable categories of "machines" and "tools" was added at the same time and pursuant to the same legislative action as when the words "converters" and "tuners" were removed. In fact, this legislative replacement of "machines and tools" for "converters" and "tuners" led the Virginia Department of Taxation to conclude that: "Machines and tools, a new category of property, apparently the actual machines and tools of cable television businesses, is now excluded from the definition of intangible personal property <u>and is subject to local taxation as tangible personal property</u>." (J.A. at 774 (emphasis added).) Likewise, the 1984 Legislative Digest prepared by the State Department of Taxation states in pertinent part: "This act amends § 58-405 [now § 58.1-1101(A)(2a)]…to <u>define the machines</u> and tools of [cable television businesses] <u>as tangible personal property</u>." (J.A. at 776, 778 (emphasis added).)

Thus, the Department of Taxation concluded twice that the significance of the 1984 legislation was not what language was removed from the statute, but the <u>addition</u> of "machines and tools" to the list of

tangible, taxable property which is "subject to local taxation." Accordingly, it was error for the trial court to interpret the statute as if it excluded set top boxes from the types of property taxable as machines.[8]

As is demonstrated by the trial court's misinterpretation of the legislative intent in this case, it is always risky to attempt to divine legislative intent from the legislative history of a bill in Virginia. That is why VA. CODE § 30-19.03:2 provides that even the legislative summaries appearing on the face of legislation "shall not be used to indicate or infer legislative intent", and the Commonwealth of Virginia's Division of Legislative Services notes on its website that Virginia does not collect or maintain legislative history. Looking for a "needle in a haystack" in the legislative draft files is as close as one can come to determining intent. See http://dls.virginia.gov.

Moreover, anything found in the legislative draft files provides only an indication of the intent of the person who requested that the bill be drafted. By the time the bill is enacted, it has gone through a complex legislative

[8] Verizon, likewise, wants to focus on a conflicting tax bulletin and a legislative impact statement which state erroneously that "converters" and "tuners" have been "defined" as intangible personal property. But, the statute clearly did not "define" converters as intangible property. It replaced "converters" and "tuners" with the new locally taxable categories of "machines and tools" which "shall not be defined" as intangible personal property.

process. “The intent of the General Assembly in passing the bill is generally not recorded, and if it is, it is printed on the face of the bill or referenced in the Code of Virginia.” See http://dls.virginia.gov. The General Assembly expresses its intent by saying things like (i) “[i]t is the intent and purpose of this article that…” in § 58.1-1021.02 (imposing liability for tax on distributor of cigarettes); or (ii) “it is the intent of the General Assembly that…” in §58.1-3740 (defining “economic interest”). In this case, however, no such intent was printed on the face of the bill amending § 58.1-1101(A)(2a).

The General Assembly also knows how to exclude specific items from an overall category of personal property when it intends to. For example, the “tangible personal property (other than the rolling stock) of every railway company” is subject to local taxation. VA. CODE § 58.1-2607.B. (emphasis added.) The Virginia Motor Vehicle Sales and Use Tax defines a “motor vehicle” to mean every vehicle, “except for mobile offices”. VA. CODE § 58.1-2401 (emphasis added). The tax imposed on a person engaged in a short term rental business includes rental income from transactions involving the broad category of “heavy equipment property” “excluding office furniture, office equipment, and programmable computer equipment…” VA. CODE § 58.1-3510.4.B.2. (emphasis added). The Retail Sales and Use Tax imposes a tax on all newsstand sales but provides

further that this broad category "shall not include" sales of back copies of publications by the publisher. VA. CODE § 58.1-609.6. (emphasis added).

In this case, the General Assembly could have likewise stated that set top boxes are excluded or excepted from, or not included in, the broad category of "machines and tools" used in a cable business subject to local taxation. But, it did not.

IV. The trial court erred by relying on the "reasoning" of the Arlington County Circuit Court's decision in Arlington Cable Partners v. County of Arlington, on March 20, 1987 because the decision in that case contains no reasoning.

When the trial court made its decision in this case, the Chesterfield County Circuit Court had already ruled in Comcast that set tops are "machines" under the plain meaning of that word and therefore taxable by the County. The trial court stated, however, that it would rely instead on "the reasoning" from the Arlington County Circuit Court in Arlington Cable Partners v. County of Arlington, No. 26719 (Arlington Cir. Ct. March 20, 1984) which ruled that set top boxes are not machines and are not taxable locally. (J.A. at 406.)

Although the Chesterfield County trial court was not bound by the ruling in Comcast, it was nevertheless error for the court to have relied on the "reasoning" of the Arlington Cable Partners decision, "reasoning" which the trial court specifically found to be "persuasive." (J.A. at 362.) This was

error because the Arlington Cable Partners order contains no reasoning or analysis whatsoever upon which the trial court could have relied. The order simply states that "[u]pon consideration of the facts before the court as recited in the Stipulations of Evidence submitted by the parties and previously approved by the Court, together with the provisions of Section 58.1-1101 of the Code of Virginia (1960), as amended, the Court is satisfied that the Respondent's 1985 assessment of the Applicant's tangible personal property was erroneous to the extent such assessment included the value of converters…" (J.A. at 406.)

There is no record of what facts were contained in the Stipulations of Evidence mentioned by the court nor does the order contain any "reasoning" explaining how the language of VA. CODE § 58.1-1101(A)(2a) was ambiguous or manifestly absurd. It was error for the trial court to have relied on the "reasoning" of the Arlington decision when that decision did not contain any reasoning.

V. The trial court erred by giving great weight to and adopting the State Tax Commissioner's construction of VA. CODE § 58.1-1101(A)(2a) because this Court ruled in Nielsen v. County Bd. of Arlington County that courts should only give weight to an agency's construction of a statute if it is reflected in the agency's regulations, which is not the case here.

Not only did the trial court erroneously find VA. CODE § 58.1-1101(A)(2a) to be ambiguous, it also improperly attached great weight to,

and adopted the reasoning contained in, the October 16, 2012, Tax Commissioner's determination that was the subject of Horbal's appeal.

This Court has stated that courts do not defer to a government agency's construction of a statute; the interpretation of statutory language always falls within a court's judicial expertise. Nielsen Co. (US), LLC v. County Bd. of Arlington County, 289 Va. 79 (2015). Absent ambiguity that renders the statute internally inconsistent, the plain language of a statute controls; the agency's interpretation is afforded no weight. Nielsen, 289 Va. at 80. But even when a court legitimately concludes that a statute is ambiguous, the Department of Taxation's "longstanding" administrative rulings and policies concerning the meaning of that statute are not entitled to great weight unless they are also expressed in regulations. Chesapeake Hosp. Auth., 262 Va. at 560 (2001).

In this case, neither the Tax Commissioner nor the trial court identified a Department of Taxation regulation to support the Tax Commissioner's determination. No such regulation exists. In fact, the only Department of Taxation regulation which is arguably applicable to this case, 23 VAC §10-340-20.D. expressly states that set top box converters are subject to local taxation:

> Trunk and feeder cables, studio equipment, tuners, converters, antennae and office furniture and equipment of cable television businesses are also exempt from the intangible personal property tax and are subject to local taxation as tangible personal property. (emphasis added)

That regulation has not been amended since 1983 and was not amended by the Department of Taxation as a result of the 1984 amendment which made set top boxes locally taxable under the category of "machines." Nor has the Department of Taxation changed or amended this regulation from 1984 to the present.

Having no regulations to support his position, the Tax Commissioner, and the trial court, simply referenced some "longstanding policy" that set top boxes are not taxable locally – an unwritten and unlocatable "policy" which is directly at odds with the Tax Department's own regulation and with the plain meaning of the word "machines". It was error for the trial court to have afforded the Tax Commissioner's conclusions any weight.

CONCLUSION

The trial court was bound by the unambiguous plain meaning of the word "machine" used by the legislature when the court interpreted VA. CODE § 58.1-1101(A)(2a). That meaning was stipulated to by the parties, could easily be applied in the context of the law, and it included Verizon's set top boxes. Subjecting Verizon's set top boxes to local taxation under a

statute that requires the "machines" used in a cable business to be taxed locally is not an absurd result. The trial court's decision should be reversed.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 18, 2016, the foregoing Opening Brief was filed electronically via the VACES system with the Supreme Court of Virginia and that ten copies of the same were hand delivered to the clerk's office. This same date, a copy of the Opening Brief was sent via email to all counsel of record, at the email addresses below:

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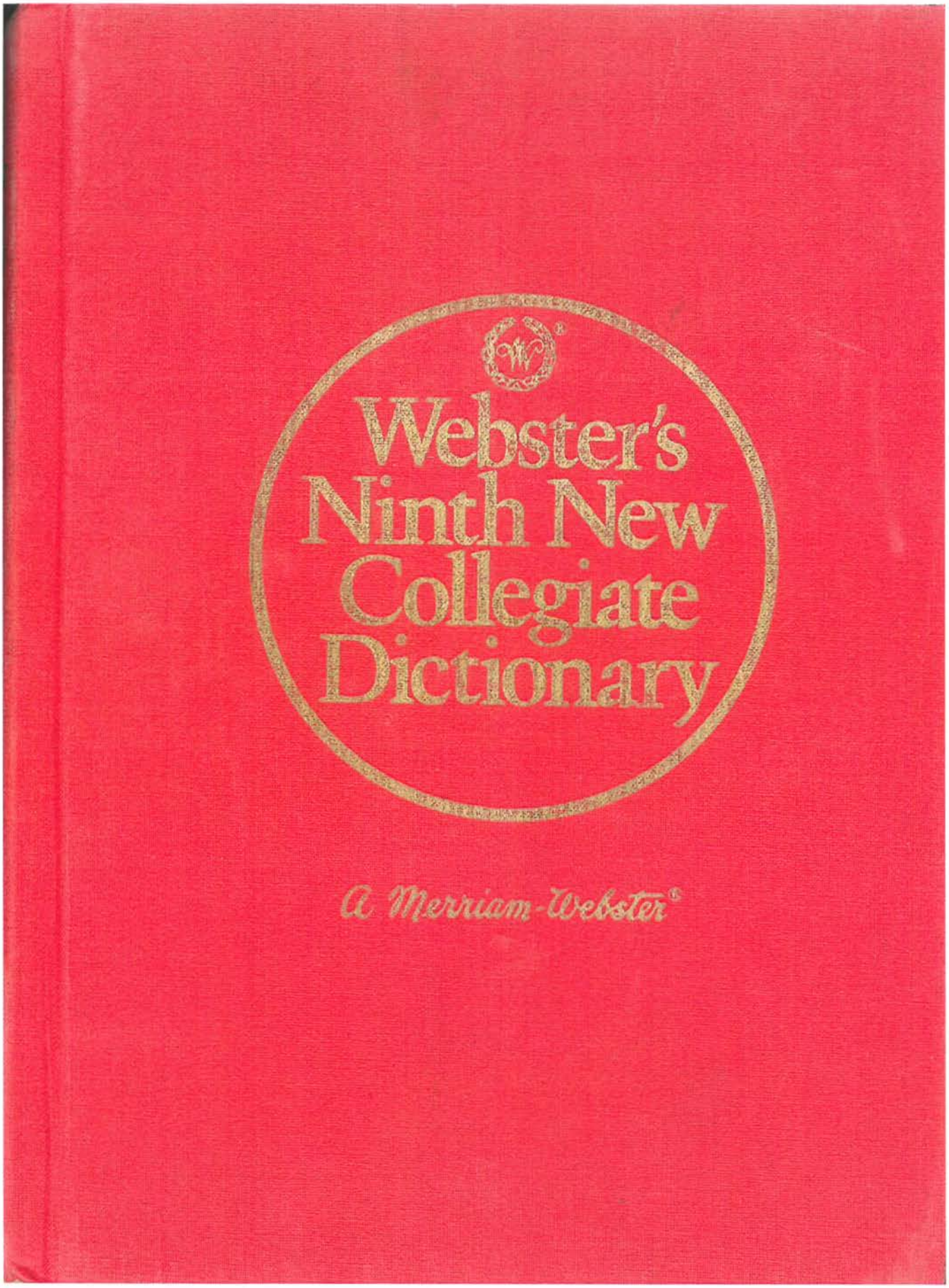
EXHIBIT A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Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's ninth new collegiate dictionary.

Includes index.
1. English language—Dictionaries. I. Merriam-Webster Inc.
PE1628.W5638 1988 423 87-24041
ISBN 0-87779-508-8
ISBN 0-87779-509-6 (indexed)
ISBN 0-87779-510-X (deluxe)

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with . . . *prep* . . . **7 a** —used as a function word to indicate manner of action

hey . . . *interj* . . . —used esp. to call attention or to express interrogation, surprise, or exultation

[3]**gad** *interj* . . . —used as a mild oath

[1]**lord** . . . *n* . . . **4** —used as a British title

USAGE PARAGRAPHS

Brief usage paragraphs have been placed at a number of entries for terms that are considered to present problems of confused or disputed usage. A usage paragraph typically summarizes the historical background of the item and its associated body of opinion, compares these with available evidence of current usage, and often adds a few words of suitable advice for the dictionary user.

Each paragraph is signaled by an indented boldface italic *usage*. Where appropriate, discussion is keyed by sense number to the definition of the meaning in question. Most paragraphs incorporate appropriate verbal illustrations and illustrative quotations to clarify and exemplify the points being made:

ag·gra·vate . . . *vt* . . . **1** *obs* **a** : to make heavy : BURDEN **b** : INCREASE **2** : to make worse, more serious, or more severe : intensify unpleasantly <problems have been *aggravated* by neglect> **3 a** : to rouse to displeasure or anger by usu. persistent and often petty goading **b** : to produce inflammation in . . .
usage Although *aggravate* has been used in sense 3a since the 17th century, it has been the object of disapproval only since about 1870. It is used in expository prose <declining to participate directly in the motorcade . . . greatly *aggravating* the President —W. F. Buckley *b*1925> but seems to be more common in speech and casual writing <our two countries *aggravate* each other from time to time —O. W. Holmes †1935 (letter to Sir Frederick Pollock, 1895)> <times when we get *aggravated* and displeased, for instance, with the French —Jimmy Carter (press conference, 1980)> Sense 2 is far more common than sense 3a in published prose. Such is not the case, however, with *aggravation* and *aggravating*. *Aggravation* is used in sense 3 somewhat more than in its earlier senses; *aggravating* has practically no use other than to express annoyance.

When a second word is also discussed in a paragraph, the main entry for that word is followed by a run-on ***usage*** see— which refers to the entry where the paragraph may be found:

ag·gra·va·ting *adj* . . . ***usage*** see AGGRAVATE

Definitions

DIVISION OF SENSES

A boldface colon is used in this dictionary to introduce a definition:

equine . . . *adj* . . . : of, relating to, or resembling a horse or the horse family

It is also used to separate two or more definitions of a single sense:

[2]**imitation** *adj* . . . : resembling something else that is usu. genuine and of better quality : not real

Boldface Arabic numerals separate the senses of a word that has more than one sense:

pal·pa·ble . . . *adj* . . . **1** : capable of being touched or felt : TANGIBLE **2** : easily perceptible : NOTICEABLE **3** : easily perceptible by the mind : MANIFEST

Boldface lowercase letters separate the subsenses of a word:

[1]**name** . . . *n* . . . **3 a** : REPUTATION . . . **b** : an illustrious record : FAME . . . **c** : a person or thing with a reputation

Lightface numerals in parentheses indicate a further division of subsenses:

[1]**re·treat** . . . *n* . . . **1 a** (1) : an act or process of withdrawing . . . (2) : the process of receding . . . **b** (1) : the usu. forced withdrawal of troops . . . (2) : a signal for retreating . . .

A lightface colon following a definition and immediately preceding two or more subsenses indicates that the subsenses are subsumed by the preceding definition:

ven·om·ous . . . *adj* . . . **1** : full of venom: as **a** : POISONOUS, ENVENOMED **b** : NOXIOUS, PERNICIOUS . . . **c** : SPITEFUL, MALEVOLENT

[1]**pe·cu·liar** . . . *adj* . . . **2** : different from the usual or normal: **a** : SPECIAL, PARTICULAR **b** : ODD, CURIOUS **c** : ECCENTRIC, QUEER

The word *as* may or may not follow the lightface colon. Its presence (as at *venomous*) indicates that the following subsenses are typical or significant examples. Its absence (as at *peculiar*) indicates that the subsenses which follow are exhaustive.

The system of separating the various senses of a word by numerals and letters is a lexical convenience. It reflects something of their semantic relationship, but it does not evaluate senses or set up a hierarchy of importance among them.

Sometimes a particular semantic relationship between senses is suggested by the use of one of four italic sense dividers: *esp, specif, also,* or *broadly.*

The sense divider *esp* (for *especially*) is used to introduce the most common meaning subsumed in the more general preceding definition:

tad . . . *n* . . . **1** : a small child; *esp* : BOY

The sense divider *specif* (for *specifically*) is used to introduce a common but highly restricted meaning subsumed in the more general preceding definition:

[2]**pitcher** *n* . . . : one that pitches; *specif* : the player that pitches in a game of baseball

The sense divider *also* is used to introduce a meaning that is closely related to but may be considered less important than the preceding sense:

eq·ui·page . . . *n* . . . **3** : a horse-drawn carriage with its servants; *also* : such a carriage alone

The sense divider *broadly* is used to introduce an extended or wider meaning of the preceding definition:

pha·lanx . . . *n* . . . **1** : a body of heavily armed infantry in ancient Greece formed in close deep ranks and files; *broadly* : a body of troops in close array

ORDER OF SENSES

The order of senses within an entry is historical: the sense known to have been first used in English is entered first. This is not to be taken to mean, however, that each sense of a multisense word developed from the immediately preceding sense. It is altogether possible that sense 1 of a word has given rise to sense 2 and sense 2 to sense 3, but frequently sense 2 and sense 3 may have arisen independently of one another from sense 1.

When a numbered sense is further subdivided into lettered subsenses, the inclusion of particular subsenses within a sense is based upon their semantic relationship to one another, but their order is likewise historical: subsense 1a is earlier than 1b, 1b is earlier than 1c, and so forth. Divisions of subsenses indicated by lightface numerals in parentheses are also in historical order with respect to one another. Subsenses may be out of historical order, however, with respect to the broader numbered senses:

[1]**job** . . . *n* . . . (1627) **1 a** : a piece of work; *esp* : a small miscellaneous piece of work undertaken on order at a stated rate **b** : the object or material on which work is being done **c** : something produced by or as if by work <do a better ~ next time> **d** : an

-lyt·ic \ˈlit-ik\ *adj suffix* [Gk *lytikos*] : of, relating to, or effecting (such) decomposition ⟨hydro*lytic*⟩

-lyze \ˌliz\ *vb comb form* [ISV, prob. irreg. fr. NL *-lysis*] : produce or undergo lytic disintegration or dissolution ⟨electro*lyze*⟩

M

m \ˈem\ *n, pl* **m's** *or* **ms** \ˈemz\ *often cap, often attrib* **1 a** : the 13th letter of the English alphabet **b** : a graphic representation of this letter **c** : a speech counterpart of orthographic *m* **2** : one thousand — see NUMBER table **3** : a graphic device for reproducing the letter *m* **4** : one designated *m* esp. as the 13th in order or class **5** : something shaped like the letter M **6 a** : EM 2 **b** : PICA 2

'm \m\ *vb* : AM ⟨I'm going⟩

ma \ˈmä, ˈmȯ\ *n* [short for *mama*] (1829) : MOTHER

ma'am \ˈmam, *after "yes" often* əm\ *n* (1668) : MADAM

ma-and-pa \ˌmä(-ə)n-ˈpä, ˌmȯ(-ə)n-ˈpȯ\ *adj* (ca. 1963) : MOM-AND-POP

Mab \ˈmab\ *n* : a queen of fairies in English literature

mabe \ˈmāb\ *n* [origin unknown] (1951) : a cultured pearl essentially hemispherical in form — called also *mabe pearl*

mac \ˈmak\ *n, Brit* (1901) : MACKINTOSH

Mac \ˈmak\ *n* [*Mac-, Mc-*, common patronymic prefix in Scotch and Irish surnames] (ca. 1937) : FELLOW — used informally to address a man whose name is not known

ma·ca·bre \mə-ˈkäb(-rə), -ˈkäb-ər, -ˈkäbr²\ *adj* [F, fr. (*danse*) *macabre* dance of death, fr. MF (*danse de*) *Macabré*] (15c) **1** : having death as a subject : comprising or including a personalized representation of death **2** : dwelling on the gruesome **3** : tending to produce horror in a beholder ***syn*** see GHASTLY

mac·ad·am \mə-ˈkad-əm\ *n* [John L. *McAdam* †1836 Brit. engineer] (1824) : macadamized roadway or pavement esp. with a bituminous binder

mac·a·da·mia nut \ˌmak-ə-ˈdā-mē-ə-\ *n* [NL *Macadamia*, fr. John *Macadam* †1865 Australian chemist] (1929) : a hard-shelled nut somewhat resembling a filbert and produced by an Australian evergreen tree (*Macadamia ternifolia*) of the protea family that is cultivated extensively in Hawaii

mac·ad·am·ize \mə-ˈkad-ə-ˌmīz\ *vt* **-ized; -iz·ing** (1826) : to construct or finish (a road) by compacting into a solid mass a layer of small broken stone on a convex well-drained roadbed and using a binder (as cement or asphalt) for the mass

ma·caque \mə-ˈkak, -ˈkäk\ *n* [F, fr. Pg *macaco*] (1840) : any of numerous short-tailed Old World monkeys (*Macaca* and related genera) chiefly of southern Asia and the East Indies; *esp* : RHESUS MONKEY

mac·a·ro·ni \ˌmak-ə-ˈrō-nē\ *n* [It *maccheroni*, pl. of *maccherone*, fr. It dial. *maccarone* dumpling, macaroni] (1599) **1** : pasta made from semolina and shaped in the form of slender tubes **2** *pl* **macaronis** *or* **macaronies a** : a member of a class of traveled young Englishmen of the late 18th and early 19th centuries who affected foreign ways **b** : an affected young man : FOP

mac·a·ron·ic \-ˈrän-ik\ *adj* [NL *macaronicus*, fr. It dial. *maccarone* macaroni] (1638) **1** : characterized by a mixture of vernacular words with Latin words or with non-Latin words having Latin endings **2** : characterized by a mixture of two languages — **macaronic** *n*

mac·a·roon \ˌmak-ə-ˈrün\ *n* [F *macaron*, fr. It dial. *maccarone*] (ca. 1611) : a small cookie composed chiefly of egg whites, sugar, and ground almonds or coconut

ma·caw \mə-ˈkȯ\ *n* [Pg *macau*] (1668) : any of numerous parrots (esp. genus *Ara*) of South and Central America including some of the largest and showiest of parrots

macaw

Mac·beth \mək-ˈbeth, mak-\ *n* : a Scottish general who is the protagonist of Shakespeare's tragedy *Macbeth*

Mac·ca·bees \ˈmak-ə-(ˌ)bēz\ *n pl* [Gk *Makkabaioi*, fr. pl. of *Makkabaios*, surname of Judas Maccabaeus 2d cent. B.C. Jewish patriot] **1** : a priestly family leading a Jewish revolt begun in 168 B.C. against Hellenism and Syrian rule and reigning over Palestine from 142 B.C. to 63 B.C. **2** *sing in constr* : either of two narrative and historical books included in the Roman Catholic canon of the Old Testament and in the Protestant Apocrypha — see BIBLE table — **Mac·ca·be·an** \ˌmak-ə-ˈbē-ən\ *adj*

mac·ca·boy \ˈmak-ə-ˌbȯi\ *n* [F *macouba*, fr. *Macouba*, district in Martinique] (1740) : a snuff from Martinique

¹**mace** \ˈmās\ *n* [ME, fr. OF, fr. (assumed) VL *mattia*; akin to OHG *medela* plow, L *mateola* mallet] (13c) **1 a** : a heavy often spiked staff or club used esp. in the Middle Ages for breaking armor **b** : a club used as a weapon **2 a** : an ornamental staff borne as a symbol of authority before a public official or a legislative body **b** : one who carries a mace

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Mac·e·do·nian \ˌmas-ə-ˈdō-nyən, -nē-ən\ *n* (1582) **1** : a native or inhabitant of Macedonia **2** : the Slavic language of modern Macedonia **3** : the language of ancient Macedonia of uncertain affinity but generally assumed to be Indo-European

mac·er·ate \ˈmas-ə-ˌrāt\ *vb* **-at·ed; -at·ing** [L *maceratus*, pp. of *macerare* to soften, steep] *vt* (1547) **1** : to cause to waste away by or as if by excessive fasting **2** : to cause to become soft or separated into constituent elements by or as if by steeping in fluid; *broadly* : STEEP, SOAK ~ *vi* : to soften and wear away esp. as a result of being wetted or steeped — **mac·er·a·tion** \ˌmas-ə-ˈrā-shən\ *n* — **mac·er·a·tor** \ˈmas-ə-ˌrāt-ər\ *n*

Mach \ˈmäk\ *n* [*Mach number*] (1946) : a usu. high speed expressed by a Mach number ⟨an airplane flying at ~ 2⟩

Mach·a·bees \ˈmak-ə-(ˌ)bēz\ *n pl but sing in constr* [LL *Machabaei*, modif. of Gk *Makkabaioi*] : MACCABEES

ma·chete \mə-ˈshet-ē, -ˈchet-; -ˈshet\ *n* [Sp] (1598) : a large heavy knife used for cutting sugarcane and underbrush and as a weapon

Ma·chi·a·vel·lian \ˌmak-ē-ə-ˈvel-ē-ən, -ˈvel-yən\ *adj* [Niccolo *Machiavelli*] (1579) **1** : of or relating to Machiavelli or Machiavellianism **2** : suggesting the principles of conduct laid down by Machiavelli; *specif* : characterized by cunning, duplicity, or bad faith — **Machiavellian** *n*

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ma·chic·o·la·tion \mə-ˌchik-ə-ˈlā-shən\ *n* (1788) **1 a** : an opening between the corbels of a projecting parapet or in the floor of a gallery or roof of a portal for discharging missiles upon assailants below — see BATTLEMENT illustration **b** : a gallery or parapet containing such openings **2** : construction imitating medieval machicolation

mach·i·nate \ˈmak-ə-ˌnāt, ˈmash-ə-\ *vb* **-nat·ed; -nat·ing** [L *machinatus*, pp. of *machinari*, fr. *machina* machine, contrivance] *vi* (1600) : to plan or plot esp. to do harm ~ *vt* : to scheme or contrive to bring about : PLOT — **mach·i·na·tor** \-ˌnāt-ər\ *n*

mach·i·na·tion \ˌmak-ə-ˈnā-shən, ˌmash-ə-\ *n* (15c) **1** : an act of machinating **2** : a scheming or crafty action or artful design intended to accomplish some usu. evil end ⟨backstage ~*s* and power plays that have dominated the film industry —Peter Bogdanovich⟩ ***syn*** see PLOT

¹**ma·chine** \mə-ˈshēn\ *n, often attrib* [MF, fr. L *machina*, fr. Gk *mēchanē* (Dor dial. *machana*), fr. *mēchos* means, expedient — more at MAY] (1549) **1 a** *archaic* : a constructed thing whether material or immaterial **b** : CONVEYANCE, VEHICLE; *specif* : AUTOMOBILE **c** *archaic* : a military engine **d** : any of various apparatuses formerly used to produce stage effects **e** (1) : an assemblage of parts that transmit forces, motion, and energy one to another in a predetermined manner (2) : an instrument (as a lever) designed to transmit or modify the application of power, force, or motion **f** : a mechanically, electrically, or electronically operated device for performing a task ⟨a calculating ~⟩ ⟨a card-sorting ~⟩ **g** : a coin-operated device ⟨a cigarette ~⟩ **h** : MACHINERY — used with *the* or in pl. ⟨man must not become the servant of the ~⟩ **2 a** : a living organism or one of its functional systems **b** : a person or organization that resembles a machine (as in being methodical, tireless, or unemotional) **c** (1) : a combination of persons acting together for a common end along with the agencies they use (2) : a highly organized political group under the leadership of a boss or small clique **3** : a literary device or contrivance introduced for dramatic effect

²**machine** *vt* **ma·chined; ma·chin·ing** (ca. 1864) : to process by or as if by machine; *esp* : to reduce or finish by or as if by turning, shaping, planing, or milling by machine-operated tools — **ma·chin·abil·i·ty** \-ˌshē-nə-ˈbil-ət-ē\ *n* — **ma·chin·able** *also* **ma·chine·able** \-ˈshē-nə-bəl\ *adj*

ma·chine-gun \mə-ˌshēn-ˌgən\ *adj* (1906) : characterized by rapidity and sharpness : RAPID-FIRE ⟨a comic's ~ delivery⟩

machine gun *n* (1870) **1** : a gun for continuous rapid firing that uses bullets **2** : SUBMACHINE GUN — **machine-gun** *vb* — **machine gunner** *n*

machine language *n* (ca. 1954) **1** : the set of symbolic instruction codes usu. in binary form that is used to represent operations and data in a machine (as a computer) **2** : ASSEMBLY LANGUAGE

EXHIBIT B

Webster's New Collegiate Dictionary

A Merriam-Webster®

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Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's new collegiate dictionary.

Editions for 1898–1948 have title: Webster's collegiate dictionary.
Includes index.
1. English language—Dictionaries.
PE1628.W4M4 1981 423 80-25144
ISBN 0-87779-408-1
ISBN 0-87779-409-x (indexed)
ISBN 0-87779-410-3 (deluxe)

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Made in the United States of America

424344RMcN80

[1]m \'em\ *n, pl* **m's** *or* **ms** \'emz\ *often cap, often attrib* **1 a** : the 13th letter of the English alphabet **b** : a graphic representation of this letter **c** : a speech counterpart of orthographic *m* **2** : one thousand — see NUMBER table **3** : a graphic device for reproducing the letter *m* **4** : one designated *m* esp. as the 13th in order or class **5** : something shaped like the letter M **6 a** : EM 2 **b** : PICA

[2]m *abbr, often cap* **1** mach **2** male **3** manual **4** March **5** martyr **6** masculine **7** mass **8** May **9** mega- **10** [L *meridies*] noon **11** meter **12** middle **13** mile **14** [L *mille*] thousand **15** milli- **16** million **17** molal; molality **18** molar; molarity **19** mole **20** month **21** moon **22** morning **23** muscle

m- \ˌem, ˈem\ *abbr* meta-

'm \m\ *vb* : AM ⟨I'*m* going⟩

[1]ma \ˈmä, ˈmȯ\ *n* [short for *mama*] : MOTHER

[2]ma *abbr* milliampere

MA *abbr* **1** Massachusetts **2** [ML *magister artium*] master of arts **3** mental age **4** Middle Ages

MAA *abbr* master of applied arts

ma'am \ˈmam, *after "yes" often* əm\ *n* : MADAM

MA and A *abbr* master of aeronautics and astronautics

MAArch *abbr* master of arts in architecture

Mab \ˈmab\ *n* : a queen of fairies in English literature

MABE *abbr* master of agricultural business and economics

mac \ˈmak\ *n, Brit* : MACKINTOSH

[1]Mac \ˈmak\ *n* [*Mac-, Mc-*, common patronymic prefix in Scotch and Irish surnames] : FELLOW — used informally to address a man whose name is not known

[2]Mac *or* **Macc** *abbr* Maccabees

MAc *abbr* master of accounting

MAC *abbr* **1** master of arts in communications **2** military airlift command

ma-ca-bre \mə-ˈkäb(-rə), -ˈkäb-ər, -ˈkābr\ *adj* [F, fr. (*danse*) *macabre* dance of death, fr. MF (*danse de*) *Macabré*] **1** : having death as a subject : comprising or including a personalized representation of death **2** : dwelling on the gruesome **3** : tending to produce horror in a beholder

mac-ad-am \mə-ˈkad-əm\ *n* [John L. *McAdam* †1836 Brit engineer] : macadamized roadway or pavement esp. with a bituminous binder

mac-a-da-mia nut \ˌmak-ə-ˈdā-mē-ə-\ *n* [NL *Macadamia*, genus of evergreens, fr. John *Macadam* †1865 Australian chemist] : a hard-shelled nut somewhat resembling a filbert and produced by an Australian evergreen tree (*Macadamia ternifolia*) of the protea family that is cultivated extensively in Hawaii

mac-ad-am-ize \mə-ˈkad-ə-ˌmīz\ *vt* **-ized; -iz-ing** : to construct or finish (a road) by compacting into a solid mass a layer of small broken stone on a convex well-drained roadbed and using a binder (as cement or asphalt) for the mass

ma-caque \mə-ˈkak, -ˈkäk\ *n* [F, fr. Pg *macaco*] : any of numerous short-tailed Old World monkeys (*Macaca* and related genera) chiefly of southern Asia and the East Indies; *esp* : RHESUS MONKEY

mac-a-ro-ni \ˌmak-ə-ˈrō-nē\ *n* [It *maccheroni*, pl. of *maccherone*, fr. It dial. *maccarone* dumpling, macaroni] **1** : a paste composed chiefly of semolina dried in the form of slender tubes for use as food **2** *pl* **macaronis** *or* **macaronies** **a** : a member of a class of traveled young Englishmen of the late 18th and early 19th centuries who affected foreign ways **b** : an affected young man : FOP

mac-a-ron-ic \-ˈrän-ik\ *adj* [NL *macaronicus*, fr. It dial. *maccarone* macaroni] **1** : characterized by a mixture of vernacular words with Latin words or with non-Latin words having Latin endings **2** : characterized by a mixture of two languages — **macaronic** *n* — **mac-a-ron-i-cal-ly** \-i-k(ə-)lē\ *adv*

mac-a-roon \ˌmak-ə-ˈrün\ *n* [F *macaron*, fr. It dial. *maccarone*] : a small cookie composed chiefly of egg whites, sugar, and ground almonds or coconut

ma-caw \mə-ˈkȯ\ *n* [Pg *macau*] : any of numerous parrots (esp. genus *Ara*) of South and Central America including some of the largest and showiest of parrots

macaw

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Mc-Car-thy-ism \mə-ˈkär-thē-ˌiz-əm *also* -ˈkärt-ē-\ *n* [Joseph R. *McCarthy*] : a mid-twentieth-century political attitude characterized chiefly by opposition to elements held to be subversive and by the use of tactics involving personal attacks on individuals by means of widely publicized indiscriminate allegations esp. on the basis of unsubstantiated charges — **Mc-Car-thy-ite** \-ˌīt\ *n*

Mc-Coy \mə-ˈkȯi\ *n* [alter. of *Mackay* (in the phrase *the real Mackay* the true chief of the Mackay clan, a position often disputed)] : something that is neither imitation nor substitute — often used in the phrase *the real McCoy*

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machine gun *n* : an automatic gun using small-arms ammunition for rapid continuous firing — **machine-gun** *vb* — **machine gunner** *n*

machine language *n* **1** : information recorded in a form usable by a machine (as a computer) **2** : numbers or instructions expressed in a form directly usable by a computer

ma-chine-like \mə-ˈshēn-ˌlīk\ *adj* : resembling a machine esp. in regularity of action or stereotyped uniformity of product

machine-readable *adj* : directly usable by a computer ⟨~ text⟩

ma-chin-ery \mə-ˈshēn-(ə-)rē\ *n, pl* **-er-ies** **1 a** : machines in general or as a functioning unit: as (1) : apparatus for producing stage effects (2) : literary devices used esp. for dramatic effect **b** : the working parts of a machine **2** : the means by which something is kept in action or a desired result is obtained

machine shop *n* : a workshop in which work is machined to size and assembled

machine tool *n* : a usu. power-driven machine designed for shaping solid work

ma-chin-ist \mə-ˈshē-nəst\ *n* **1 a** : a worker who fabricates, assembles, or repairs machinery **b** : a craftsman skilled in the use of machine tools **c** : one who operates a machine **2** *archaic* : a person in charge of the mechanical aspects of a theatrical produc-