Vitol, Inc. v. United States: The Fifth Circuit Rejects the Energy Industry's Established Understanding of Butane

I. INTRODUCTION

A recent development in the long-contested and heavily litigated battle between the United States government and the energy industry over alternative fuels and related financial incentives emphasizes the importance of the judiciary for the future of environmental security.[1] Since 1932, Congress has required energy companies to pay excise taxes on the production of motor fuel such as gasoline.[2] In 2005, Congress introduced alternative fuel tax credits that these companies could use to lessen the amount of fuel excise taxes.[3]

In 2013, Vitol, a Dutch energy and commodity trading company, introduced a fuel product—a mixture of butane and gasoline—and subsequently paid relevant excise taxes on the product.[4] However, Vitol did not receive a statutorily granted tax credit on the excise taxes.[5] Vitol sued the United States in the United States District Court for the Southern

1. *See* Vitol, Inc. v. United States, 30 F.4th 248, 249-52 (5th Cir. 2022); U.S. Venture, Inc. v. United States, 2 F.4th 1034, 1035-36 (7th Cir. 2021).

2. *U.S. Venture*, 2 F.4th at 1036. An excise tax is "[a] tax imposed on the manufacture, sale, or use of goods . . . or on an occupation or activity." *Excise Tax*, BLACK'S LAW DICTIONARY (11th ed. 2019).

3. *U.S. Venture*, 2 F.4th at 1036.

4. *Vitol*, 30 F.4th at 250.

5. *Id*.

District of Texas for a refund of $8.8 million for excise taxes paid, claiming that it was legally entitled to a tax credit under 26 U.S.C. § 6426(e) for the blended product.[6] Specifically, Vitol argued that butane is a "liquefied petroleum gas" (LPG) under § 6426(d)(2) and therefore qualifies as an "alternative fuel" eligible for the § 6426(e) credit when mixed with a "taxable fuel."[7] The United States contended that butane, like gasoline, is a "taxable fuel" and is therefore not eligible for the tax credit.[8] Vitol sought partial summary judgment on whether butane is an LPG, and in adopting the report and recommendation of the magistrate judge, the district court denied the motion and concluded that butane does not qualify as an LPG under the law.[9] The court reasoned that butane cannot be an LPG for purposes of § 6426 because butane is included in the statutory definition of taxable fuel in § 4083(a), and a fuel cannot be both an alternative fuel and taxable fuel.[10]

The district court certified an order for interlocutory appeal and stayed the case.[11] The United States Court of Appeals for the Fifth Circuit granted Vitol's motion for leave to file an interlocutory appeal, and Vitol appealed.[12] The Fifth Circuit, in a two-to-one split panel decision, ultimately affirmed the district court's decision and held that butane is not an LPG under 26 U.S.C. § 6426(d)(2).[13] The court, in a decision hinging on statutory interpretation, focused on a controversial taxable fuel-alternative fuel dichotomy.[14]

The court evaded the fact that as a matter of chemistry, common usage, and accepted understanding throughout the energy sector, butane is an LPG.[15] In failing to show that the relevant statutory scheme establishes butane as something other than its ordinary meaning, the Fifth Circuit incorrectly eschewed this meaning in favor of a new meaning of the terms "alternative fuel" and "liquefied petroleum gas." Part II of this Note discusses the historical background of the methods of statutory interpretation, details the energy industry's understanding of LPGs and

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6. *Id*.
7. *Id*.
8. *Id*.
9. *Id*.
10. Vitol, Inc. v. United States, No. H-18-2275, 2020 WL 1442136, at *3 (S.D. Tex. Feb. 25, 2020).
11. *Vitol*, 30 F.4th at 250.
12. *Id*.
13. *Id*.
14. *Id*. at 254.
15. František Synák et al., *Liquefied Petroleum Gas as an Alternative Fuel*, 40 TRANSP. RSCH. PROCEDIA 527, 528 (2019).

butane, highlights another federal circuit court's decision on butane as an LPG, and presents an overview of the Tax Code provisions and regulations governing the taxation of fuel. Part III explores how the Fifth Circuit resolved the *de novo* issue of the tax implications for fuel blended with butane.[16] Part IV asserts that the Fifth Circuit's decision misapplied the canons of statutory interpretation by setting aside the energy industry's commonly held understanding that butane is an LPG.[17] Part V briefly concludes.

II. BACKGROUND

Federal courts have long employed canons of construction to interpret federal statutes such as the Internal Revenue Code (IRC).[18] A canon of construction is "[a] principle that guides the interpreter of a text on some phase of the interpretive process."[19] From a taxpayer's perspective, the taxpayer would prefer a narrow, restrictive interpretation of tax-imposing provisions of the IRC and a broad, expansive interpretation of IRC provisions that grant credits or deductions. However, courts have adopted and employed tax-specific canons of interpretation that seem to frustrate taxpayers on both counts.[20] Considering the tax implications for a mixture of gasoline and butane, two federal circuit courts have attempted to add clarity to the complex issue, and each decision thus far has rejected the commonly held understanding of butane as an LPG.[21]

A. The Canons of Statutory Interpretation

Although it is widely accepted that "construction" is synonymous with "interpretation," canons may not only be mere rules of interpretation but may also be "presumptions about what an intelligently produced text conveys."[22] Historically, canons of interpretation are classified as either

16. *Vitol*, 30 F.4th at 252 (citing Schaeffler v. United States, 889 F.3d 238, 242 (5th Cir. 2018)).

17. *Id*. at 254.

18. Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 109 (2010).

19. ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 426 (2012) (alteration in original).

20. *See* Joseph Isenbergh, *Musings on Form and Substance in Taxation*, 49 U. CHI. L. REV. 859, 865 (1982).

21. *Vitol*, 30 F.4th at 249-52; U.S. Venture, Inc. v. United States, 2 F.4th 1034, 1035-36 (7th Cir. 2021).

22. *See* SCALIA & GARNER, *supra* note 19, at 51.

linguistic or substantive.[23] Linguistic canons apply rules of grammar and syntax to decipher the legislature's intent.[24] Linguistic canons pose no threat to the principle of legislative supremacy because their very purpose is to unravel legislative intent through language and semantics.[25] On the other hand, substantive canons incorporate policy-based assumptions about legislative intent and instruct the court to favor interpretations that promote certain results, giving the judiciary the ability to challenge legislative supremacy.[26] Importantly, canons, whether linguistic or substantive, are nonbinding judicial guidelines that are external to a statute.[27]

The United States Supreme Court has consistently held that substantive canons of interpretation are never employed at the outset of an examination of statutory text.[28] The justification behind this application is that a substantive canon and the policies it advances (independent of those expressed by the legislature) can never overcome concrete text.[29] Additionally, even if the statutory text is considered ambiguous, classical "text-centric" canons must be applied before employing policy-enhancing substantive methods.[30] In interpreting a statute, a court begins by scrutinizing the plain language of the text, proceeding under the assumption that the plain meaning of Congress's words matches their ordinary meaning.[31] However, this assumption is not absolute and yields when (1) Congress defined the term differently in the statute or (2) when the ordinary meaning is incompatible with the statutory context.[32] Assuming the statute does not define a term, the plain meaning of the term will govern unless the statutory context provides "sound reason" for the court to disregard and depart from the ordinary meaning.[33] Essentially, the

23. *See* Barrett, *supra* note 18, at 117.

24. *Id*.

25. *Id*.

26. *Id*.

27. *Id*.

28. *See* Shular v. United States, 140 S. Ct. 779, 787 (2020) (citing United States v. Shabani, 513 U.S. 10, 17 (1994)).

29. Vitol, Inc. v. United States, 30 F.4th 248, 253 (5th Cir. 2022) (citing Thomas v. Reeves, 961 F.3d 800, 820 (5th Cir. 2020) (Willett, J., concurring)).

30. *Id*. (quoting *Thomas*, 961 F.3d at 815) ("[O]nly if [the court] determine[s] that a statute is ambiguous—that is, 'after plain meaning and application of the interpretive canons are found lacking'—'do the so-called substantive canons . . . come into play.'").

31. *Id*. (explaining that ordinary meaning is usually the natural meaning taken from dictionaries).

32. *Id*. at 254 (first citing FCC v. AT&T Inc., 562 U.S. 397, 403 (2011); and then citing Yates v. United States, 574 U.S. 528, 537 (2015)).

33. *Id*. at 255 (citing *FCC*, 562 U.S. at 407).

statutory context and scheme must make it "apparent" that the term has a different meaning than what people would assume.[34]

Reliance on the context of a statute is appropriate in some cases.[35] The contextual construction of a specific statutory directive demands a holistic approach, including consideration of a statute's various parts within their broader statutory context.[36] Thus, the contextual meaning of a statute may be shaped, for example, by its defined terms, by its statement of purposes, by its relationship to other statutes, and by its overall structure or scheme.[37] In formulating that statutory text must be viewed as a whole, Justice Antonin Scalia argued, "[p]erhaps no interpretive fault is more common than the failure to follow the whole-text canon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts."[38]

B. The Understanding of Butane as a Liquefied Petroleum Gas in the Energy Industry and the Seventh Circuit's Opinion on the Issue

Liquefied petroleum gas has been used as a fuel for vehicles with a combustion engine as early as 1912, although at that time it was on a very small scale.[39] In the mid-1950s, LPG gained popularity throughout the energy and transport sectors as engine technologies evolved and improved.[40] At the highest level, LPG is obtained as a by-product during the refining of petroleum and consists primarily of butane, propane, and other hydrocarbons in minute quantities.[41] The composition of LPG varies, ranging from pure butane or pure propane to various ratios of butane and propane mixtures.[42] LPG is a viable medium-term alternative in the transition to cleaner, more sustainable fuels.[43]

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34. *See* Camacho v. Ford Motor Co., 993 F.3d 308, 312 (5th Cir. 2021).

35. *See* King v. Burwell, 576 U.S. 473, 496-98 (2015).

36. *See* United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988) (citations omitted).

37. *See* Green v. Bock Laundry Mach. Co., 490 U.S. 504, 528 (1989).

38. *See* SCALIA & GARNER, *supra* note 19, at 167; *see also King*, 576 U.S. at 500-01 (Scalia, J., dissenting) (alteration in original) (concluding that "sound interpretation requires paying attention to the whole law, not homing in on isolated words or even isolated sections. Context always matters. . . . It is a tool for understanding the terms of the law, not an excuse for rewriting them.").

39. Laurencas Raslavičius et al., *Liquefied Petroleum Gas (LPG) as a Medium-Term Option in the Transition to Sustainable Fuels and Transport*, 32 RENEWABLE AND SUSTAINABLE ENERGY REVS. 513, 515 (2014).

40. *Id.*

41. *Id.*

42. *Id.*

43. *See id.*

Because butane is a primary chemical component of LPG, it is not surprising that the entire petroleum industry considers and defines butane, without question, as a form of LPG.[44] To be sure, courts have positively and directly acknowledged this widely accepted categorization of butane as an LPG.[45] Moreover, some dictionaries refer to butane as an LPG.[46]

In addressing the same question of whether butane qualifies as a "taxable fuel," the United States Court of Appeals for the Seventh Circuit ruled that a mixture of gasoline and butane does not qualify for the alternative fuel mixture tax credit.[47] After inquiring into the statutory language and context, the Seventh Circuit classified butane as a "taxable fuel" instead of an LPG.[48] The court also reasoned that classifying butane as an alternative fuel would not square with the intent of the tax credit, which Congress enacted to incentivize the use of alternative fuels, not to encourage continued use of a standard fuel.[49] The intricacies of the Tax Code provisions governing fuel mixtures intensify the complexity of the debate on how to classify butane for statutory purposes.

C. The Statutory and Regulatory Framework of Tax-Imposing Provisions and Tax-Credit Provisions Concerning Fuel

Federal tax law imposes excise taxes on fuel.[50] Two Tax Code provisions are relevant in an analysis of the tax implications of a fuel blend consisting of butane and gasoline, and each provision incorporates a nexus of statutory and regulatory definitions.[51] Moreover, the Tax Code provides certain tax credits reducing excise taxes for fuel that is made from certain components.[52] First, 26 U.S.C. § 4081 imposes an excise tax on "taxable fuel," defined in § 4083 to mean "(A) gasoline, (B) diesel fuel, and (C) kerosene."[53] The term "gasoline" is defined to include "any gasoline blend" and, "to the extent prescribed in regulations . . . any

44. *See id*.

45. Vitol, Inc. v. United States, 30 F.4th 248, 254-55 (5th Cir. 2022); U.S. Venture, Inc. v. United States, 2 F.4th 1034, 1040 (7th Cir. 2021) (noting the "meaning of butane commonly accepted in the petroleum industry or in this or that dictionary.")

46. *See, e.g.*, *Liquified Petroleum Gas*, OXFORD DICTIONARY OF ENGLISH (3d ed. 2010); *Liquefied Petroleum Gas*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2014).

47. *U.S. Venture*, 2 F.4th at 1038.

48. *Id*. at 1039.

49. *Id*.

50. *E.g.*, 26 U.S.C. § 4081 (2012).

51. *Id*. §§ 4041, 4081.

52. *Id*. § 6426(d)-(e).

53. *Id*. § 4083(a)(1).

gasoline blend stock."[54] The term "gasoline blend stock" is further defined as "any petroleum product component of gasoline."[55] The relevant Tax Code regulations include a list of examples of "gasoline blendstocks," butane among them.[56] The § 4081 excise tax on taxable fuel can be reduced by the alternative fuel credit mixture set forth in § 6426(e)(2), a tax credit for fuel that is "a mixture of alternative fuel and taxable fuel."[57]

Second, 26 U.S.C. § 4041(a)(2)(A) imposes an excise tax on "alternative fuels," clarified there as "any liquid[,] other than gas oil, fuel oil, or any product taxable under section 4081."[58] The relevant Tax Code regulations expound upon the meaning of alternative fuel and describe it as "any liquid fuel," which includes "[a]ny liquefied petroleum gas (such as propane, butane, pentane, or mixtures of the same)."[59] The next paragraph clarifies that alternative fuel "does not include any product taxable under the provisions of section 4081."[60] The § 4041 excise tax on alternative fuel can be reduced by the alternative fuel credit established in § 6426(d).[61]

For purposes of the tax credits at § 6426(e) and (d), "alternative fuel" is defined to mean "liquefied petroleum gas" and other fuels such as "compressed or liquefied natural gas" and "liquid fuel derived from biomass."[62] For purposes of the credits at § 6426(e), the definition of "taxable fuel" references "subparagraph (A), (B), or (C) of section 4083(a)(1)" which includes gasoline, diesel, and kerosene.[63]

III. COURT'S DECISION

In the noted case, the Fifth Circuit followed a context-based framework and affirmed the decision of the district court, holding that butane is not an LPG under § 6426(d)(2).[64] First, the Fifth Circuit detailed the Tax Code related to a butane mixture.[65] Second, the court utilized and

54. *Id*. § 4083(a)(2).

55. *Id*.

56. 26 C.F.R. § 48.4081–1(a) ("provid[ing] definitions for purposes of the tax on taxable fuel imposed by section 4081"); *id*. § 48.4081–1(c)(3)(i)(B).

57. 26 U.S.C. § 6426(e)(2).

58. Vitol, Inc. v. United States, 30 F.4th 248, 250 (5th Cir. 2022) (quoting 26 U.S.C. § 4041(a)(2)(A)); *id*. at 250 n.5 ("The term 'special motor fuel' appears throughout the relevant statutes and regulations. The parties agree that this is a predecessor term for 'alternative fuel.'").

59. 26 C.F.R. § 48.4041–8(f)(1) (2012) (alteration in original).

60. *Id*. § 48.4041–8(f)(2).

61. 26 U.S.C. § 6426(d).

62. *Id*. § 6426(d)(2).

63. *Id*. § 6426(e).

64. Vitol, Inc. v. United States, 30 F.4th 248, 250 (5th Cir. 2022).

65. *Id*. at 250-52 (summarizing the relevant Tax Code provisions and regulations).

relied upon an examination of the statutory language through application of standard canons of construction.[66] Ultimately, the court concluded that butane mixed with gasoline did not qualify for an alternative fuel mixture credit.[67] In doing so, the Fifth Circuit set aside the energy industry's commonly held understanding that butane is an LPG.[68]

First, the Fifth Circuit recited the relevant Tax Code provisions and regulations.[69] The court commenced its analysis of those provisions and regulations by noting that although there is a complex relationship among the governing code provisions and regulations, each one is part of a broad statutory framework that works together.[70] The provisions impose excise taxes of fuels, grant excise tax credits for some mixtures and types of fuels, and define key terms within the text of the governing statutes.[71] For example, butane is included under the regulatory definition of "[g]asoline blendstocks," which is referring to the statutory definition of "taxable fuel."[72] After laying out the substance of the Tax Code, the Fifth Circuit discussed the standard canons of statutory construction.[73]

Next, the court applied the tools of statutory interpretation and examined the language of § 6426(d)(2), acknowledging that unless one of the two assumption-defeating possibilities (statutory definition or statutory context) defeats the plain meaning of LPG, the plain meaning of LPG includes butane under the Tax Code.[74] Noting that Congress did not define the term "liquefied petroleum gas," the court concluded that the first assumption-defeating option—statutory definition—fails.[75] The court therefore focused its analysis on statutory context.[76] It reasoned that a dichotomy exists between what is able to qualify as a taxable fuel versus an alternative fuel.[77] Noting the separate statutory subparts for taxable fuel and alternative fuel, the court reasoned that the § 6246 tax credit stems from a dichotomous statutory scheme.[78] Under this rationale, the Fifth Circuit again considered the interconnected web of relevant Tax Code

66. *Id*. at 254-57.
67. *Id*. at 256.
68. *Id*. at 254.
69. *Id*. at 250-52.
70. *Id*.
71. *Id*.
72. *Id*. at 250 (alteration in original) (quoting 26 C.F.R. § 48.4081–1(c)(3)(i)(B)).
73. *Id*. at 253; *see* discussion *supra* Part II.A.
74. *Vitol*, 30 F.4th at 254.
75. *Id*.
76. *Id*.
77. *Id*.
78. *Id*.

provisions and corresponding regulations, reasoning that "[t]he separate subparts suggest a cordoning off between taxable fuels and alternative fuels."[79] The Fifth Circuit also noted that for a taxpayer to receive a § 6426 credit, there must first be a § 4081 or § 4041 excise tax imposed.[80]

The court also asserted that the structure of the tax credit provisions does not allow for a fuel to change identities as a result of being mixed with another fuel.[81] The relevant statute, the court concluded, is mutually exclusive: a fuel can be either an alternative fuel or a taxable fuel—it cannot be both.[82] Because butane falls under the definition of a taxable fuel under § 4083, the Fifth Circuit therefore concluded that it cannot simultaneously be an alternative fuel that gives rise to the § 6246 excise tax credit.[83]

In a dissenting opinion, Judge Elrod deferred to the commonly held understanding in the oil and gas industry that butane is an LPG, pointing to the fact that even the government and the government's own witness conceded to this.[84] Noting the two assumption-defeating possibilities, Judge Elrod reasoned that "[t]he best evidence that Congress means something other than the ordinary meaning is that it specifically defined the term another way."[85] Because Congress failed to do so, Judge Elrod asserted that the government faced a great challenge to show that statutory context overrides commonly understood meaning.[86]

In analyzing the majority's view of a dichotomous statutory scheme, Judge Elrod reasoned that because the common understanding of butane is known by everyone in the industry, it must be "apparent" that Congress did not use the term the way the energy industry understands it.[87] Under this rationale, Judge Elrod concluded that the majority's approach is not sufficient to show evidence that Congress intended to deviate from the common industry understanding.[88]

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79. *Id*. at 255.
80. *Id*.
81. *Id*.
82. *Id*. at 256.
83. *Id*.
84. *Id*. at 258 (Elrod, J., dissenting) ("[T]he government's own witness testified that 'butane is always an LPG.'").
85. *Id*. at 259 (alteration in original) (citing Digit. Realty Tr., Inc. v. Somers, 138 S. Ct. 767, 776-77 (2018)).
86. *Id*.
87. *Id*. at 260.
88. *Id*. ("All of the majority opinion's conclusions hinge on the taxable fuel—alternative fuel dichotomy from the excise-tax provisions. But it is not at all [clear] that such a dichotomy exists in the tax-credit provisions.").

IV. ANALYSIS

In the noted case, the Fifth Circuit incorrectly affirmed the Southern District of Texas's decision, rejecting the energy industry's commonly held understanding that butane is an LPG.[89] First, the court failed to show that one of the two assumption-defeating options overrides the ordinary meaning of butane. In doing so, the Fifth Circuit misapplied the canons of construction and created an unsupported, unrealistic taxable fuel-alternative fuel dichotomy that fails to recognize the relationship among the relevant statutory provisions and regulations.[90] Next, the court failed to fully consider Congressional intent and its relationship to statutory context. The Fifth Circuit missed an opportunity to analyze the canons of statutory interpretation when Congressional intent is unknown and even debated.[91] To be sure, it is not the role of the judiciary to create law; however, it *is* the role of the judiciary to appropriately decide what laws mean under legislative context by conducting a technical analysis.[92] Lastly, the court failed to reconcile the categorization of butane with examples of other substances that are not statutorily dichotomous.[93] All in all, it is not "apparent" that Congress intended for statutory context to supersede the ordinary meaning of butane as an LPG; therefore, the majority had no "sound reason" to deviate from that meaning.[94]

As an initial matter, the Fifth Circuit's decision is inconsistent with conventional methods of statutory interpretation.[95] The court correctly began its analysis with a linguistic approach.[96] However, the court could have avoided the dichotomous approach and joined the dissent's straightforward, direct approach, which contends that the ordinary

89. *Id*. at 257 (majority opinion).

90. *See id*.

91. *Id*. at 253 (explaining that inquiring into legislative intent would be futile given the unambiguity of the statutory text). Perhaps the Fifth Circuit did not fully appreciate the notion that what Congress intends to say is relevant to an interpretation of what it actually says, especially when the language conflicts with ordinary understanding of an industry-specific term. *See id*. at 253-54.

92. *Id*. at 258 (Elrod, J., dissenting) ("Or perhaps the left hand (Congress) knew not what the right hand (the IRS) was doing.").

93. *Id*. at 262.

94. *Id*.

95. *Id*. at 259 (arguing that there is no evidence that Congress intended to employ a different meaning for "butane" from the definition that is widely accepted throughout the energy industry).

96. *Id*. at 253 (majority opinion) (citing Schaeffler v. United States, 889 F.3d 238, 242 (5th Cir. 2018)); *see* Thomas v. Reeves, 961 F.3d 800, 820 (5th Cir. 2020) (Willett, J., concurring).

meaning governs.[97] Although dichotomies are appropriate in some instances, the court's presentation of the fuel dichotomy contradicts a reasonable interpretation of the web of relevant statutory definitions.[98] The majority opinion appropriately noted that "[t]ext cannot be divorced from context, and statutory meaning is not always common meaning."[99] It also logically claimed that words Congress uses "must be read as part of a contextual whole."[100] However, by overcomplicating the connection between the relevant tax provisions and regulations, the Fifth Circuit "was too quick to discard the ordinary meaning" of butane as an LPG.[101] Furthermore, the Fifth Circuit's technical analysis of the statutes leaves the definition of alternative fuels susceptible to disagreement among the other federal circuit courts.

Second, the Fifth Circuit's decision to disqualify butane as an LPG for purposes of determining specific tax credits fails to appropriately consider the objectives of excise taxes and tax credits.[102] At the most rudimentary level, as the dissenting opinion noted, taxes and tax credits serve two different purposes.[103] In failing to appreciate the basic distinction, the court illogically imported the definition of "alternative fuels" from the excise tax-imposing provision; it was unnecessary to do so because the tax-credit provision already defines the term "alternative fuel" to include LPGs.[104] This result is inconsistent with the proposition that if Congress's intent was to use the definition from the excise-tax provision, it would have expressed some sort of textual reference from one to the other.[105] This is especially apparent since Congress *did* define the term "taxable fuel[s]" in the tax-credit provision by explicitly

97. *Vitol*, 30 F.4th at 258 (Elrod, J., dissenting). Judge Elrod goes on to argue against the majority opinion's "gratuitously roundabout and complex" analysis. *Id*. at 259 (quoting SCALIA & GARNER, *supra* note 19, at 70). It appears that Judge Elrod is implying that the more indirect and complex a route required to reach a conclusion, the less likely it is that such conclusion is "apparent," or even logically sound for that matter. *See id*.

98. *See id*. at 252-54 (majority opinion).

99. *Id*. at 250 (alteration in original).

100. *Id*.

101. *Id*. at 257-58 (Elrod, J., dissenting) ("This case comes down to ordinary meaning. . . . But at the end of the day, it makes more sense that Congress meant what it said when it used a term that its primary audience would readily understand." (citing David S. Louk, *The Audiences of Statutes*, 105 CORNELL L. REV. 137, 142 (2019))).

102. *Id*. at 260.

103. *Id*.

104. *Id*.

105. *Id*.

referencing the excise-tax provisions.[106] On this issue, in *U.S. Venture, Inc. v. United States*, the Seventh Circuit correctly noted that "by enacting the alternative fuel mixture tax credit, Congress sought to incentivize the use of alternative fuels in the production of motor fuel."[107] The Seventh Circuit then reasoned that there would not be much of a reason to incentivize the long-standing practice of adding butane to gasoline, a practice extending more than thirty years before the enactment of the tax credit in 2005.[108] However, this notion fails to recognize that since the mid-1950s, there has been significant technological development within the transport and energy industries as well as a cultural shift in the debate on environmental awareness.[109]

Finally, the Fifth Circuit failed to reconcile the strict taxable fuel-alternative fuel dichotomy with examples of fuels like butane, which, depending on the circumstances, could qualify as either a taxable fuel or a fuel eligible for a tax credit.[110] For example, in discussing renewable diesel, which is a taxable "diesel fuel" also treated as biodiesel (which qualifies for the biodiesel mixture credit in the tax-credit provisions), the majority opinion asserts that "'renewable diesel is an exception to the rule' because 'Congress made the exception expressly.'"[111] In doing so, the court failed to realize that Congress also made the exception for LPGs expressly, and "[a]s everyone in the oil and gas industry knows, . . . butane is an LPG."[112] As a result, the decision provides little to no guidance to future courts within the Fifth Circuit on the threshold determination of whether a fuel is a taxable fuel or an alternative fuel. This lack of guidance could not only lead to more cases like *Vitol, Inc. v. United States*, but it could also have a chilling effect on a taxpayer using alternative fuels.[113]

The blending of gasoline and butane furthers the goals of the alternative fuel mixture credit—namely, to incentivize the use of alternative fuels, lessen U.S. dependence on foreign petroleum fuels, and transition to cleaner, domestic alternatives.[114] If butane is not an LPG, the purpose of the tax credit—promoting cleaner energy—fails and energy

106. *Id*. (alteration in original) ("So we know Congress knows how to define by reference; it just did not do so with 'alternative fuels.'").

107. 2 F.4th 1034, 1039 (7th Cir. 2021).

108. *Id*.

109. *See* Raslavičius et al., *supra* note 39, at 514.

110. *Vitol*, 30 F.4th at 261 (Elrod, J., dissenting).

111. *Id*. at 257 (majority opinion).

112. *Id*. at 258 (alteration in original).

113. *Id*.

114. *See* U.S. Venture, Inc. v. United States, 2 F.4th 1034, 1035-36 (7th Cir. 2021).

companies who have relied for decades on industry practice will have no financial motive to use alternative fuel blends.[115]

V. CONCLUSION

The Internal Revenue Code provisions and regulations governing the imposition and credits of excise taxes on fuel are complex and, in some instances, controversial.[116] In *Vitol*, the Fifth Circuit improperly held that butane is not a "liquefied petroleum gas" under § 6426(d)(2).[117] The implications of the decision leave the energy industry at the mercy of a novel fuel-focused tax dichotomy that will cost it hundreds of millions of dollars.[118] Although the holding is narrowly applied to the oil and gas industry, the analysis conducted by the Fifth Circuit suggests that statutory context, even among statutes that relate to different types of taxes and that do not explicitly reference each other, can defeat decades of industry understanding and practice.[119] Critically, the Fifth Circuit's opinion creates an unworkable and erroneous framework for interpreting fuel tax-credit statutes that fails to square with widely accepted canons of construction.

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115. *Id*.

116. *See* 26 U.S.C. §§ 4041, 4081, 4083, 6426; *see also* 26 C.F.R. §§ 48.4041, 48.4081 (expounding upon the meanings of relevant provisions of the Internal Revenue Code).

117. 30 F.4th at 250.

118. *See id*.; *see U.S. Venture*, 2 F.4th at 1034. As discussed in *U.S. Venture*, the Seventh Circuit, similar to the Fifth Circuit in *Vitol*, focused on the taxable fuel-alternative fuel dichotomy. *See* 2 F.4th at 1038-43. Holding in favor of the government, the Seventh Circuit likewise relied on 26 U.S.C. § 4083 and its inclusion of butane under the list of examples for gasoline blendstocks. *See id*. at 1038-39, 1041-42.

119. *Vitol*, 30 F.4th at 250-53.

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