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The Rise of Plain Language Laws

Michael A. Blasie

Penn State Dickinson Law

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The Rise of Plain Language Laws

MICHAEL A. BLASIE*

When lawmakers enacted 776 plain language laws across the United States, no one noticed. Apart from a handful, these laws went untracked and unstudied. Without study, large questions remain about these laws' effects and utility, and about how they inform the adoption or rejection of plain language.

This Article creates a conceptual framework for plain language laws to set the stage for future empirical research and normative discussions on the value of plain language. It unveils the first nationwide empirical survey of plain language laws to reveal their locations, coverages, and standards. In doing so, the Article creates a systematic method to find these laws. Then it coins a taxonomy of categories and terminology to describe their coverage and standards, thus creating a timely launchpad for future scholarship on domestic and international plain language laws. Along the way, the Article exposes the previously unknown scope of these laws—from election ballots and insurance contracts, to veterans housing and consumer contracts, to regulatory drafting and governor reports. That scope underscores the pervasive influence of plain language across public and private sectors, and over lawyers and non-lawyers alike. Moreover, the survey reveals significant intrastate and interstate variations and trends in coverages and standards. With this

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knowledge, for the first-time, empirical research can more precisely measure the benefits and costs of plain language laws while controlling for variables. Plus, the Article sets the stage for a forthcoming series of normative assessments on the role and design of plain language laws. Ultimately, the Article reignites a lively discourse on plain language amongst lawmakers, practitioners, and academics.

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INTRODUCTION

Fifty years ago, a surge in plain language laws spread across the country.¹ But what happened next is unknown. No one investigated the extent of the surge: how many of these laws exist, what do they cover, what do they require? Equally unanalyzed is what problems lawmakers use plain language to solve. Potential answers include informing consumers, ensuring knowing assent to contracts, improving market efficiency, decreasing litigation, ensuring the populace is informed about the law, and protecting the legal system's integrity. This Article is the first nationwide empirical analysis of plain language laws. It reveals the United States is in the middle of a massive plain language experiment: fifty-two jurisdictions with fifty-two different approaches.² The results will inform decisions on whether plain language thrives, evolves, or dies. By providing the first systematic methodology to find plain language laws, the first classification scheme for the laws' design, and nationwide data on what these laws cover and require, this Article primes the plain language discourse in future scholarship.

Plain language convicts lawyers of the centuries-old criticism that their writing is incomprehensible.³ Consumers struggle to understand contracts and citizens to understand laws.⁴ Even lawyers hate lawyer writing.⁵ To improve reader understanding, plain language focuses on writing from the reader's perspective.⁶ Embracing that perspective requires dramatic changes in document format, structure, and content.⁷ Supporters point to societal benefits like

¹ Joseph Kimble, *Plain English: A Charter for Clear Writing*, T. M. COOLEY L. REV. 1, 1 (1992) [hereinafter *Plain English: A Charter for Clear Writing*].

² Michael A. Blasie, Appendices to *The Rise of Plain Language Laws* (unpublished appendices) (on file with author).

³ George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 346 (1987).

⁴ See Bernard Black, *A Model Plain Language Law*, 33 STAN. L. REV. 255, 255-57 (1981). (discussing harms to consumers); Ellen E. Hoffman, *Getting to "Plain Language"*, 29 J. NAT'L ASS'N ADMIN. L. JUDICIARY 47, 48-57 (2009) (noting the difficulty citizens have understanding laws).

⁵ Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 84-90 (2003).

⁶ *Plain English: A Charter for Clear Writing*, *supra* note 1, at 11.

⁷ Annetta Cheek, *Defining Plain Language*, 64 CLARITY 5, 5 (2010).

consumer protection, systematic benefits like improved justice system accessibility and transparency, professional benefits like better client service and increased public confidence in lawyers, and pragmatic benefits like efficiencies and cost-savings.⁸

Even though research and anecdotes tout these benefits, many reject the recommendation to use plain language.⁹ Some find the research and anecdotes inconclusive.¹⁰ Others worry about the costs and risks of change.¹¹ Still others oppose plain language, claiming it prevents effective writing.¹²

Nonetheless, many lawmakers injected plain language through targeted laws that require certain documents to use plain language.¹³ Some laws are broad enough to cover nearly all documents a government writes,¹⁴ while others apply to consumer contracts,¹⁵ and still others are so narrow that they only cover certain product labels.¹⁶ What these laws mean by “plain language” also varies. Some are diffuse, like those requiring a document to be understandable to a person of average intelligence and education,¹⁷ while others are exacting, requiring counting the number of syllables or words in passages.¹⁸

Surprisingly, these laws remained obscure and unstudied. Most scholars discussed plain language as a concept and recommendation divorced from governing law; they encouraged or opposed lawyers adopting plain language, and disputed whether plain language

⁸ See JOSEPH KIMBLE, *WRITING FOR DOLLARS, WRITING TO PLEASE: THE CASE FOR PLAIN LANGUAGE IN BUSINESS, GOVERNMENT, AND LAW* 64–73, 104 (2012) [hereinafter *WRITING FOR DOLLARS, WRITING TO PLEASE*].

⁹ See *infra* Section I.D.

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.*

¹³ See *infra* Part III.

¹⁴ See, e.g., HAW. CONST. art. XVI, § 13.

¹⁵ See, e.g., ME. REV. STAT. tit. 10, § 1121–1126 (West, Westlaw through 2021 1st Regular Sess. and 2021 1st Special Sess.).

¹⁶ See, e.g., ARIZ. ADMIN. CODE §R20-6-210 (West, Westlaw through rules published in Ariz. Admin. Reg. Vol.27, Issue 40, Oct. 1, 2021).

¹⁷ See, e.g., MINN. STAT. ANN. § 80D.04 Subd. 4 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

¹⁸ See, e.g., ARIZ. ADMIN. CODE §R20-6-213(C)(2)(c) (West, Westlaw through rules published in Arizona Administrative Register Vol. 27, Issue 40, October 1, 2021).

would help or hurt lawyers, clients, businesses, and the public.¹⁹ Fleeting discussions of plain language laws recorded an ebb and flow patchwork of adoption: a few dozen state consumer protection and insurance laws in the 1970s,²⁰ the Securities and Exchange Commission's plain language push in the 1990s,²¹ and the federal Plain Writing Act of 2010 that covers certain agency documents.²² But no one analyzed the full scope of plain language laws nationwide. As a result, plain language laws lacked rigorous scholarly engagement; in fact, scholars had no common taxonomy on how to talk about these laws.

This Article is the first empirical nationwide survey of plain language laws. At its core, the Article makes two contributions. First, the Article creates a method to systematically search for plain language laws. That method delivers the inaugural reveal of 776 plain language laws, including which jurisdictions passed the laws, what documents the laws cover, and what standards the laws apply.²³ These laws exist in statutes, regulations, or constitutions spread across every state, the District of Columbia, and the federal government.²⁴

Second, the Article creates a plain language law classification scheme. To describe coverage, the Article divides these laws into ten categories of private sector documents and five categories of public sector documents.²⁵ The survey results show these laws cover documents drafted by lawyers and non-lawyers; businesses and individuals; and all three branches of government.²⁶ They effect industries like healthcare, insurance, and housing, plus quintessential government roles like elections, statutory and regulatory drafting, taxes, government reports, and court notices.²⁷ Because some laws fit within multiple categories, the survey results show a total of 873

¹⁹ See *infra* Section I.C, I.D.

²⁰ Black, *supra* note 4, at 267.

²¹ SEC Updated Staff Legal Bulletin No. 7 (June 7, 1999), <https://www.sec.gov/interps/legal/cfslb7a.htm> [hereinafter SEC Staff Legal Bulletin No. 7].

²² Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat 2861 (2010).

²³ See generally Blasié, *supra* note 2.

²⁴ See *id.*

²⁵ See *infra* Part IV, V.

²⁶ *Id.*

²⁷ *Id.*

laws across all categories.²⁸ To describe standards, the Article diverges from prior scholarship by recognizing four standards.²⁹ Some standards provide general guidance, while others import formulas that count syllables and sentence length, and still others target drafting preferences like word-choice and organization.³⁰

These two contributions combine to reveal substantial interstate and intrastate variations in coverages and standards. This information is the missing foundation for empirical research on plain language laws. Now scholars can target research to assess the effects of different plain language laws—while controlling for variables like jurisdiction, coverage, and standard—to yield stronger conclusions about the costs and benefits of different laws. Ultimately, the Article triggers a more informed and robust analysis of both plain language and plain language laws. Likewise, the survey results prime future scholarship on the role of plain language in different legal doctrines and its effect on consumers, contracting parties, citizens, businesses, and governments.

This Article proceeds in five parts. Part I details the Plain Language Movement. After explaining the century-plus history of problems with legal writing, this Part details the evolution of plain language as a proposed solution in the United States. Along the way it identifies support for, skepticism to, and opposition to plain language, and the need for research on plain language laws.³¹ Part II details a methodology to find and describe plain language laws. It proposes a new classification scheme for the laws' coverages and standards.³² Part III provides a nationwide overview of plain language laws.³³ Parts IV and V dive into the public and private sector laws discovered, while identifying national trends, variations, and anomalies.³⁴

²⁸ Blasie, *supra* note 2, at Appendix P.

²⁹ *See infra* Part II.B.

³⁰ Blasie, *supra* note 2, at Appendix P.

³¹ *See infra* Part I.

³² *See infra* Part II.

³³ *See infra* Part III.

³⁴ *See infra* Part IV, V.

I. THE PLAIN LANGUAGE MOVEMENT

Concerns about difficulties reading and understanding legal documents go back centuries.³⁵ Only recently has this problem received thorough study.³⁶ The leading solution is a concept known as plain language.³⁷ This section details the concerns about legal writing and how scholars converged on plain language as a solution. Then it explains the definition of plain language, the history of deploying it as a solution, and its debated benefits.

A. *The Centuries-Old Legal Writing Problem in the United States*

While complaints about lawyer writing are not new, recent scholarship advances plain language as a solution.³⁸ Concerns about writing are common—even Sumerian tablets complain of deteriorating writing skills in the young.³⁹ Many industries report writing skills deficits.⁴⁰ According to one report, over 800 American companies use self-study grammar courses for their employees.⁴¹ Employers rank writing as the second largest weakness of college graduates.⁴²

³⁵ Gopen, *supra* note 3, at 346; Debra R. Cohen, *Competent Legal Writing—A Lawyer’s Professional Responsibility*, 67 U. CIN. L. REV. 491, 494 (1999); Carol M. Bast, *Lawyers Should Use Plain Language*, 69 FLA. B.J. 30, 30–32 (1995).

³⁶ Ian Gallacher, “*When Numbers Get Serious*”: *A Study of Plain English Usage in Briefs Filed Before the New York Court of Appeals*, 46 SUFFOLK U. L. REV. 451, 461-61 (2013).

³⁷ *See infra* nn. 92–101.

³⁸ *See, e.g.*, Bast, *supra* note 35, at 31–32; RICHARD C. WYDICK & AMY E. SLOAN, *PLAIN ENGLISH FOR LAWYERS* (6th ed. 2019).

³⁹ STEVEN PINKER, *THE SENSE OF STYLE: THE THINKING PERSON’S GUIDE TO WRITING IN THE 21ST CENTURY* 6 (2014).

⁴⁰ *Plain English: A Charter for Clear Writing*, *supra* note 1, at 4.

⁴¹ *Id.*

⁴² *Id.*

The legal field is no different. Complaints about lawyer writing go back centuries.⁴³ Even colonials and the Founding Fathers criticized lawyer writing.⁴⁴

In a profession known for caveats and subtleties, the criticism of legal writing is bright and blunt. Judges have called legal writing “appalling” and “awful.”⁴⁵ Scholars who research the issue are even less forgiving: legal writing “has become synonymous with poor writing”⁴⁶ and there is “a pervasive lack of elementary writing skills among law students and lawyers.”⁴⁷

Recent empirical research agrees. A 2013 analysis of 102 plaintiff employment discrimination summary judgment motions concluded “the vast majority of plaintiffs’ briefs (72%) are badly deficient . . . [d]isturbingly many fall far below the most basic professional standards, either lacking any legal research or amounting to a troubling mess of incoherent writing.”⁴⁸ A 2014 search found “an alarming multitude” of judicial opinions “admonish[ing] lawyers of all levels of experience for shoddy briefs or for flouting non-negotiable substantive and procedural rules.”⁴⁹ Three years later, updated

⁴³ Gopen, *supra* note 3, at 346 (identifying complaints throughout the centuries); Cohen, *supra* note 35, at 491, 494 n. 19 (1999) (providing examples of complaints); Bast, *supra* note 35, at 32 (describing Legal Writing Institute resolution that acknowledged over four centuries of complaints).

⁴⁴ Michael S. Friman, *Plain English Statutes – Long Overdue or Underdone?*, 7 LOY. CONSUMER L. REP. 103, 107–08 (1995).

⁴⁵ Mark K. Osbeck, *What Is “Good Legal Writing” and Why Does It Matter?*, 4 DREXEL L. REV. 417, 420 (2012).

⁴⁶ Steven Stark, *Why Lawyers Can’t Write*, 97 HARV. L. REV. 1389, 1389 (1984).

⁴⁷ Matthew J. Arnold, *The Lack of Basic Writing Skills and Its Impact on the Legal Profession*, 24 CAP. U. L. REV. 227, 228 (1995).

⁴⁸ Scott A. Moss, *Bad Briefs, Bad Law, Bad Markets: Documenting the Poor Quality of Plaintiffs’ Briefs, Its Impact on the Law, and the Market Failure It Reflects*, 63 EMORY L. J. 59, 80 (2013). The researcher added “[s]ome briefs are so incoherent or ungrammatical it is hard to believe the author is even a college graduate.” *Id.* at 82.

⁴⁹ Heidi K. Brown, *Converting Benchslaps to Backslaps: Instilling Professional Accountability in New Legal Writers by Teaching and Reinforcing Context*, 11 LEGAL COMM. & RHETORIC: JALWD 109, 109 (2014) [hereinafter *Converting Benchslaps to Backslaps*].

research “confirm[ed] that the rash of bad briefing in federal and state courts persists.”⁵⁰

Transactional writing fairs no better.⁵¹ Scholars launch similar critiques of transactional writing.⁵² A 2013 survey of hundreds of software licensing agreements concluded the average agreement required a college education to understand and was comparable to the readability of scientific journals.⁵³

The American Bar Association (“ABA”) concurs. A 1992 ABA report listed legal communication as one of ten fundamental lawyering skills and recommended law schools improve legal writing education “[i]n view of the widely held perception that new lawyers today are deficient in writing skills.”⁵⁴ A decade later, that “widely held perception” had not changed; in a 2003 survey, over 93% of attorneys, judges, and legal writing professors identified fundamental writing problems with new lawyers.⁵⁵

Employers agree. A 2014 Harvard Law School survey of its eleven largest employers of litigators identified writing as a key skill

⁵⁰ Heidi K. Brown, *Breaking Bad Briefs*, 41 J. LEGAL PRO. 259, 262 (2017) [hereinafter *Breaking Bad Briefs*].

⁵¹ See, e.g., Chad Baruch, *Everything You Wanted to Know About Legal Writing But Were Afraid to Ask*, 17 J. CONSUMER & COM. L. 9, 11 (2013) (“[M]any contracts leave one with the unmistakable impression that the drafter’s goal was to make certain that no one would ever comprehend the contract’s terms.”).

⁵² See, e.g., Gallacher, *supra* note 36, at 462 (“Corporate lawyers rely heavily on boilerplate, and most practitioners seem to have absorbed the language of their law school casebooks. They may have heard that legalese is dead, but they don’t write like they believe it.”) (quoting ANNE ENQUIST & LAUREL CURRIE OATES, *JUST WRITING: GRAMMAR, PUNCTUATION, AND STYLE FOR THE LEGAL WRITER* 127 (3d ed. 2009)); Baruch, *supra* note 51.

⁵³ Florencia Marotta-Wurgler & Robert Taylor, *Set in Stone? Change and Innovation in Consumer Standard-Form Contracts*, 88 N.Y.U. L. REV. 240, 253 (2013).

⁵⁴ *Legal Education and Professional Development—An Educational Continuum, The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. Sec. Legal Educ. & Admissions to the Bar 332.

⁵⁵ Kosse & ButleRitchie, *supra* note 5, at 84–90.

lacking in graduates.⁵⁶ A 2015 LexisNexis study of law firm supervisors found new lawyer writing and drafting skills “lacking the most.”⁵⁷

In addition to the judges, scholars, employers, and bar associations, business clients also want improvement. Such clients realize better writing saves them “time and money by increasing the ability of readers to understand and retain what they have read.”⁵⁸ In particular, the business community has begun to talk about legal writing. Even a Harvard Business Review article discusses the effects of contract drafting language.⁵⁹ While the evidence suggests benefits to all clients, the effects of legal writing on clients who are individuals needs greater study.

Scholars point to several complex causes of poor legal writing.⁶⁰ Many point to educational deficits from primary school through college.⁶¹ Others cite economic reasons, like lawyers creating complicated documents to justify fees, prove their importance, or create a need for their services.⁶² Some invoke psychological barriers like resistance to change, reliance on templates and tradition, and pressure to conform with the past.⁶³ A few scholars argue some lawyers

⁵⁶ John C. Coates et al., *What Courses Should Law Students Take? Harvard's Largest Employers Weigh In* at 7 (HLS Program on the Legal Pro., Working Paper No. 14-20, 2014), <http://nrs.harvard.edu/urn-3:HUL.InstRepos:12911341>.

⁵⁷ LEXISNEXIS, *HIRING PARTNERS REVEAL NEW ATTORNEY READINESS FOR REAL WORLD PRACTICE*, 7 (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf.

⁵⁸ Matthew Salzwedel, *Face It—Bad Legal Writing Wastes Money*, 92 MICH. BAR J. 52, 52 (2013).

⁵⁹ See generally Shawn Burton, *The Case for Plain-Language Contracts*, 8 HARV. BUS. REV. 134 (Feb. 2018); see also Kate Vitasek, *Plain Language Contracts on the Rise*, FORBES (Mar 19, 2018, 7:00 AM), <https://www.forbes.com/sites/katevitasek/2018/03/19/plain-language-contracts-on-the-rise/?sh=595b9e1efc66>.

⁶⁰ Wayne Schiess, *Legal Writing Is Not What It Should Be*, 37 S.U. L. REV. 1, 2–22 (2009) (surveying potential causes).

⁶¹ Kosse & ButleRitchie, *supra* note 5, at 98–99.

⁶² *Id.* at 97.

⁶³ *Id.* at 97–98.

cannot see the problems in their own writing,⁶⁴ or believe poor writing has strategic value.⁶⁵ Still others point to pragmatic barriers like time constraints, the costs of change and training, and the lack of sufficient training and writing practice.⁶⁶

Whatever the causes, the consequences are severe. Poorly written briefs may increase the odds of losing a motion and risk skewing the law's development.⁶⁷ Some opine poor legal writing contributes to low public opinion, respect, and trust in lawyers.⁶⁸ Others claim poor legal writing wastes resources, and risks malpractice and professional discipline.⁶⁹ Bar associations and courts have asserted writing caliber affects access to the law and how well lawyers counsel clients.⁷⁰ Others tie poor writing to oppressing consumers through incomprehensible disclosures or to inhibiting a free market economy.⁷¹

Complaints about legal writing inevitably circle back to law schools. Over the last forty years, legal writing education steadily

⁶⁴ Bryan A. Garner, *Why Lawyers Can't Write*, 99 ABA J. 24, 24 (2013) (explaining the Dunning-Kruger effect).

⁶⁵ Christopher T. Lutz, *Why Can't Lawyers Write?*, 15 LITIG. 26, 26-27 (1989) (stating that lawyers might strategically err on overinclusion to risk omitting important information); Stark, *supra* note 46, at 1389-90 (stating lawyers might strategically make writing complicated to conceal a weakness).

⁶⁶ Kosse & ButleRitchie, *supra* note 5, at 99-100; Cohen, *supra* note 35, at 505-17; Arnold, *supra* note 47, at 236.

⁶⁷ See, e.g., Moss, *supra* note 48, at 93 (using empirical data to explain effects of bad brief writing).

⁶⁸ George Hathaway, *An Overview of the Plain English Movement for Lawyers . . . Ten Years Later*, 73 MICH. BAR. J. 26, 26 (1994) [hereinafter *An Overview of Plain English*].

⁶⁹ Cohen, *supra* note 35, at 492-93.

⁷⁰ See, e.g., *Plain English Committee*, PA. BAR ASS'N, <https://www.pabar.org/site/For-Lawyers/Committees-Commissions/Plain-English> (last visited Aug. 3, 2021); *Illinois Supreme Court Policy on Plain Language*, (Apr. 1, 2018), https://www.illinoiscourts.gov/Resources/e44f267e-8de5-4833-9ac7-9272e70301d2/Plain_Language_Policy.pdf [hereinafter *Illinois Supreme Court Policy*].

⁷¹ See Black, *supra* note 4, at 255-57 (discussing harms to consumers from incomprehensible contracts); Christopher Cox, Chairman, SEC, Keynote Address to the Center for Plain Language Symposium: Plain Language and Good Business, (Oct. 12, 2007), <https://www.sec.gov/news/speech/2007/spch101207cc.htm> (discussing market benefits of plain language) [hereinafter *Plain Language and Good Business*].

improved.⁷² In 1979, the ABA recommended law schools provide at least “one rigorous legal writing experience in each year.”⁷³ By 1992, fewer than twenty percent of schools did so, but most required two semesters of legal writing training.⁷⁴ In 2001, the ABA required law school students to have at least one “additional rigorous writing experience” on top of the first legal writing course.⁷⁵ A 2002 survey revealed the average law student receives about two credit hours of legal writing instruction each semester of the first year, and thirteen law schools required an upper-level legal writing component.⁷⁶

While legal writing classes have the potential to infuse the profession with much-needed change, thus far they have not.⁷⁷ “[D]espite access to professors’ comprehensive instruction, one-on-one writing conferences, and detailed grading rubrics, some law students submit written work product that lacks key substantive components and violates clear procedural and formatting requirements.”⁷⁸ To be sure, a “notable percentage” of graduates do write well, and writing concerns are not specific to new graduates.⁷⁹ In fact, “attorneys who have been practicing law for decades represent some of the more egregious offenders.”⁸⁰ Nonetheless, despite the changes to legal writing classes, there is little evidence of major improvement in lawyer writing within the field and some evidence lawyers are getting worse.⁸¹

⁷² See *infra* nn. 73–86.

⁷³ ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 15 (1979).

⁷⁴ *Plain English: A Charter for Clear Writing*, *supra* note 1, at 5.

⁷⁵ Osbeck, *supra* note 45, at 419.

⁷⁶ Kosse & ButleRitchie, *supra* note 5, at 86–87.

⁷⁷ See *infra* note 81 and accompanying text.

⁷⁸ *Converting Benchslaps to Backslaps*, *supra* note 49, at 109.

⁷⁹ *Id.* at 110. For more studies reaching similar conclusions see Gallacher, *supra* note 36, at 455 n. 18. See also Kosse & ButleRitchie, *supra* note 5, at 85–86 (“Nearly 94 percent, overall, of the respondents found briefs and memoranda marred by basic writing problems A clear majority of respondents—57.3 percent—thought that new members of the profession do not write well.”).

⁸⁰ *Converting Benchslaps to Backslaps*, *supra* note 49, at 109.

⁸¹ See Gallacher, *supra* note 36, at 454–55 (“[T]he criticisms of legal writing continue, apparently unabated, even though for the past twenty-five years or so, law schools have been producing graduates who are carefully trained in the tech-

But none of this is to say legal writing classes are not a big step in the right direction. Indeed, many scholars argue for more.⁸² With students arriving to law school with writing deficiencies,⁸³ one year of instruction in a low-credit class provides exposure to good writing principles, not proficiency in them.⁸⁴ Plus, because legal writing classes are relatively new to law schools, many practitioners never took them and even today many students attend law schools that do not offer comprehensive legal writing classes.⁸⁵ Complicating matters, legal writing professors and classes are often devalued by students and other professors, upper level writing instruction is rare, the curriculum and format of legal writing classes vary significantly between schools, and most students receive little professional writing training or development after graduation.⁸⁶

Still, more change in the academy and profession may be coming as more legal organizations recognize the importance of writing. The American Bar Foundation concluded oral and written communication are the two most important lawyer skills.⁸⁷ An ABA study found lawyers spend over 20% of their time writing, more than any

nique and practice of legal writing.”); Baruch, *supra* note 51, at 9 (“Despite recognition of this problem and concerted efforts by law schools to fight it, legal writing continues to deteriorate.”); James E. Viator, *Legal Education’s Perfect Storm: Law Students’ Poor Writing and Legal Analysis Skills Collide with Dismal Employment Prospects, Creating the Urgent Need to Reconfigure the First-Year Curriculum*, 61 CATH. U. L. REV. 735, 741–42 (2012) (stating that despite “complaining insistently for some thirty years,” legal writing remains poor). Admittedly, assessments of profession-wide legal writing caliber are imperfect. Few studies examine other lawyer writings like memoranda, letters, legislation, transactional documents, and emails, each of which may warrant different metrics for review. Also, research rarely accounts for whether a lone lawyer or team of lawyers authored a document, or a client’s influence over authorship.

⁸² See, e.g., Kosse & ButleRitchie, *supra* note 5, at 92–96.

⁸³ *Id.* at 93–99.

⁸⁴ *Id.* at 86–87 (“With so little required writing, it is hardly surprising that new graduates do not write as well as more senior members of the profession. After all, repetition and practice are essential to improving writing skills.”).

⁸⁵ *Id.* at 86, 93–99.

⁸⁶ See *id.*

⁸⁷ Arnold, *supra* note 47, at 230.

other activity.⁸⁸ Many state bar exams have a legal writing component.⁸⁹ And some bar association committees run writing competitions and give out awards for exceptional writing.⁹⁰ Nonetheless, even with more classes in law school, few students could graduate in three years with competency to draft a securities filing or a licensing agreement.

Any effective solution must first answer the major question: what makes good legal writing? For the first time in the centuries-long history of legal writing criticism, robust scholarship investigates this question. Three professional organizations, three specialty journals, law review articles, a “library full of books,” and a growing number of professors study legal writing.⁹¹ Rather than record complaints, legal writing scholarship investigates the causes of those complaints.

Such scholarship converges on one concept as a solution: “plain English” (also known as “plain language”).⁹² “That [p]lain English is something to be desired in legal writing . . . is something taken almost as an article of faith in legal writing circles.”⁹³ Even the ABA’s Sourcebook on legal writing courses promotes it.⁹⁴ Some of the most popular writing resources for practitioners center on plain language, like Richard Wydick’s *Plain English for Lawyers*,⁹⁵

⁸⁸ *Id.* at 230–31.

⁸⁹ Kathleen E. Vinson, *Improving Legal Writing: A Life-Long Learning Process and Continuing Professional Challenge*, 21 *TOURO L. REV.* 507, 517 (2005).

⁹⁰ See, e.g., *1999 Clarity*, PA. BAR ASS’N, <http://www.pabar.org/site/For-Lawyers/Committees-Commissions/Plain-English/Awards/1999-Clarity> (last visited Aug. 3, 2021) (rewriting jury instruction competition and Plain English award).

⁹¹ Gallacher, *supra* note 36, at 451–52.

⁹² *Id.* at 460–61, 461 n. 50–52 (2013). See, e.g., Baruch, *supra* note 51 at 11 (encouraging transactional lawyers to “set aside entrenched writing habits and embrace the use of plain language”); Sean Flammer, *Persuading Judges: An Empirical Analysis of Writing Style, Persuasion, and the Use of Plain English*, 16 *J. LEGAL WRITING INST.* 183, 211 (2010) (showing that “judges prefer Plain English to Legalese”).

⁹³ Gallacher, *supra* note 36, at 460.

⁹⁴ *Id.* at 462.

⁹⁵ See generally RICHARD C. WYDICK & AMY E. SLOAN, *PLAIN ENGLISH FOR LAWYERS* (6th ed. 2019).

which has sold over one million copies.⁹⁶ Plain language in transactional documents has endorsements from seasoned practitioners, like the general counsel of General Electric's aviation division.⁹⁷

B. *Definition of Plain Language*

Despite the robust scholarship on plain language, terminology varies. Many use the terms “plain English” and “plain language” interchangeably.⁹⁸ This Article uses the term “plain language” because that term conveys the concept applies across multiple languages, but its application may differ between languages.⁹⁹

Although plain language has no universal definition, descriptions center on the same idea: when a drafter tries to convey information to others through a written document, the more successful the document is at conveying that information to the intended audience the more the document uses plain language.¹⁰⁰ This Article

⁹⁶ Richard Wydick, *Ambiguity*, 95 MICH. B.J. 48, 48 (2016).

⁹⁷ Burton, *supra* note 59, at 137.

⁹⁸ *What is Plain Language?* PLAINLANGUAGE.GOV <https://www.plainlanguage.gov/about/definitions/> (last visited on Dec. 16, 2021); Wayne Schiess, *Using Intensifiers Is Literally A Crime*, 96 MICH. B.J. 48, 48 (August 2017) (“‘Plain Language’ is a regular feature of the *Michigan Bar Journal*, edited by Joseph Kimble for the Plain English Subcommittee of the Publications and Website Advisory Committee.”); Michael D. Murray, *Diagrammatics and the Proactive Visualization of Legal Information*, 43 U. ARK. LITTLE ROCK L. REV. 1, 2 n.5 (2021) (“The Proactive Law movement shares common and parallel goals with the Plain Language (or Plain English) movements . . .”).

⁹⁹ *See generally Plain Language Around the World*, PLAIN LANGUAGE ASS'N INT'L, <https://plainlanguagenetwork.org/plain-language/plain-language-around-the-world/> (last visited Dec. 20, 2021) (identifying plain language efforts across multiple languages).

¹⁰⁰ *See* Flammer, *supra* note 92, at 185 (“The basic idea behind it is to make the document as reader-friendly as possible to get the message across”); Andrew T. Serafin, *Kicking the Legalese Habit: The SEC's “Plain English Disclosure” Proposal*, 29 LOY. U. CHI. L. J. 681, 683 (1998) (stating that plain language is the “idea that writing must be clear and readable in order for people to fully understand what is written.”); *Plain English: A Charter for Clear Writing*, *supra* note 1, at 11–14 (plain language involves crafting a document “to convey your ideas with the greatest possible clarity”); Charles R. Dyer, et al. *Improving Access to Justice: Plain Language Family Law Court Forms in Washington State*, 11 SEATTLE J. SOC. JUST. 1065, 1068, 1072–73 (2013) (“The goal of using plain language is to make documents intelligible to the greatest possible number of intended readers.”).

uses the following definition: plain language is drafting documents to maximize the chance the reader will understand the drafter's intended message.¹⁰¹

To maximize that chance, plain language requires drafters to consider how every feature within the drafter's control affects the reader.¹⁰² These features include the document's language, structure, and design.¹⁰³ Language features include decisions about word choice and what information to include.¹⁰⁴ A common language feature is replacing legalese with everyday language.¹⁰⁵ Structural features cover choices like the order of information and use of headers.¹⁰⁶ Design features involve choices like the use of visual aids.¹⁰⁷

No single authoritative source establishes all plain language features.¹⁰⁸ But over time, several have become common.¹⁰⁹ Plain language recommends presenting information in a logical order; leading with the most important information; and deploying headers,

¹⁰¹ Some use a results-focused definition of plain language. For example, according to the Plain Language Association International a "communication is in plain language if its wording, structure, and design are so clear that the intended audience can easily find what they need, understand what they find, and use that information." PLAIN LANGUAGE ASS'N INT'L, <https://plainlanguagenetwork.org/> (last visited Oct. 28, 2021). This Article chooses an objective standard that stops short of whether the intended results of plain language occur. That decision separates the efficacy of plain language from its standard and catches a broader range of lawmaking approaches to codifying plain language into law. See Cheek, *supra* note 7, at 5–9 (discussing three ways of defining plain language through standards and advocating for a subjective standard).

¹⁰² *Plain English: A Charter for Clear Writing*, *supra* note 1, at 11–14 (listing various plain language features).

¹⁰³ Cheek, *supra* note 7, at 5.

¹⁰⁴ *Id.* at 6.

¹⁰⁵ Flammer, *supra* note 92, at 186–87.

¹⁰⁶ Cheek, *supra* note 7, at 6.

¹⁰⁷ *Id.*

¹⁰⁸ See e.g., *What Is Plain Language?*, *supra* note 98 (noting a variety of definitions); Flammer, *supra* note 92, at 185 ("Like many legal terms, 'Plain English' is vague and difficult to define.").

¹⁰⁹ See e.g., Cheek, *supra* note 7, at 9; *Plain English: A Charter for Clear Writing* *supra* note 1, at 14.

topic sentences, and transitions.¹¹⁰ Plain language emphasizes brevity: short sentences, short paragraphs, and short sections.¹¹¹ Plain language prefers using present tense verbs and active voice.¹¹² At the same time, writing with simple words and phrases, while minimizing jargon, abbreviations, and definitions exemplify plain language.¹¹³

C. *The History of Plain Language*

Although plain language has no precise birth, its timeline contains several commonly reported landmarks.¹¹⁴

In the 1940s, plain language received its research foundation.¹¹⁵ During this decade, the federal government hired professors to help agencies communicate price control regulations to businesses.¹¹⁶ One of those professors, Rudolph Flesch, published a book on how to use “plain talk;” the book included a readability formula (discussed below) that assessed a document’s readability by measuring the number of words in a sentence and the number of syllables in a word.¹¹⁷ Even as more formulas emerged, Flesch’s formula remained a staple in the plain language community.¹¹⁸ The Flesch formula was a popular objective metric to measure how easy or difficult readers would find any document,¹¹⁹ but the link to law was ancillary.¹²⁰ The research on formulas and “plain talk” did not focus

¹¹⁰ *Organize the Information*, PLAINLANGUAGE.GOV, <https://www.plainlanguage.gov/guidelines/organize/> (last visited Aug. 3, 2021).

¹¹¹ *Be Concise*, PLAINLANGUAGE.GOV, <https://www.plainlanguage.gov/guidelines/concise/> (last visited Aug. 3, 2021).

¹¹² *Keep it Conversational*, PLAINLANGUAGE.GOV, <https://www.plainlanguage.gov/guidelines/conversational/> (last visited Aug. 3, 2021).

¹¹³ *Choose Your Words Carefully*, PLAINLANGUAGE.GOV, <https://www.plainlanguage.gov/guidelines/words/> (last visited Aug. 3, 2021).

¹¹⁴ One author claims the earliest plain language law was in England in 1362. Friman, *supra* note 44, at 104.

¹¹⁵ Cohen, *supra* note 35, at 499.

¹¹⁶ *Id.* at 499 n. 46.

¹¹⁷ Serafin, *supra* note 100, at 683; Cheek, *supra* note 7, at 6.

¹¹⁸ Lance N. Long & William F. Christensen, *Does the Readability of Your Brief Affect Your Chance of Winning an Appeal?*, 12 J. APP. PRAC. & PROCESS 145, 148–151 (2011) (describing most common formulas and identifying Flesch’s formula as the most influential and popular).

¹¹⁹ Cheek, *supra* note 7, at 5–6.

¹²⁰ Friman, *supra* note 44, at 107–08.

on legal writing.¹²¹ Indeed, many more formulas emerged as ways to evaluate elementary school material.¹²²

In 1963, David Mellinkoff published *The Language of the Law*—the intellectual founding of plain language in the law.¹²³ Mellinkoff delivered a systematic study of law-specific language.¹²⁴ He identified specific characteristics common to legal writing like using jargon and Latin, deliberately using words with flexible meanings, and attempting extreme precision.¹²⁵ After thoroughly detailing the historical criticisms specific to lawyer writing and the corresponding problems caused by such writing,¹²⁶ Mellinkoff announced his thesis: “The argument of this book is that the language of the law should not be different [from everyday language] without a reason.”¹²⁷ The remainder of the book challenged common justifications for traditional legal writing prose and suggested potential benefits of change.¹²⁸ Many books with similar advice followed.¹²⁹

The 1970s jolted plain language into the spotlight. Specifically, when two insurance companies and a bank voluntarily revised some of their policies and loan documents with plain language, they received positive publicity and support from consumer activists.¹³⁰ Then lawmakers jumped onboard.¹³¹ Several new federal laws required certain documents, like pension and warranty documents, to use understandable language or language likely to be understood by the average reader, although none explained how to meet these standards.¹³² President Carter issued an executive order requiring federal regulations to be as simple and as clear as possible.¹³³ At the

¹²¹ *Id.* at 107.

¹²² *Id.*

¹²³ *See generally* DAVID MELLINKOFF, *THE LANGUAGE OF THE LAW*; Flammer, *supra* note 92, at 185.

¹²⁴ *See generally* MELLINKOFF, *supra* note 123, at 11.

¹²⁵ *Id.* at 11.

¹²⁶ *Id.* at 230–82.

¹²⁷ *Id.* at 285.

¹²⁸ *Id.* at 285–455.

¹²⁹ *See, e.g.*, BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH* (2d ed. 2001); WAYNE SCHIESS, *PLAIN LEGAL WRITING: DO IT* (2019).

¹³⁰ Friman, *supra* note 44, at 105.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

same time, states began passing laws requiring plain language in insurance policies and consumer contracts.¹³⁴ The 1970s stand out as a time when large companies voluntarily experimented with plain language and when the United States experienced a surge in plain language legislation.¹³⁵ That legislation converted plain language from recommendations to laws.¹³⁶ During this decade, plain language became associated with consumer protection, disclosures, and disparate bargaining power.¹³⁷

A major plain language landmark occurred in the 1990s when an experimental program evolved into a series of Securities and Exchange Commission (“SEC”) regulations on public filings.¹³⁸ The SEC’s adoption of plain language had an unprecedented scale.¹³⁹ The number and scope of regulations required changes from thousands of companies, lawyers, and SEC staff, which in turn required major training and education.¹⁴⁰ While still rooted as a tool to improve disclosures, these regulations marked a shift away from a consumer-protection rationale.¹⁴¹ Now plain language was a tool for sophisticated investors and government regulators, two groups capable of deciphering more complex writing and who possessed more influence or bargaining power than a typical consumer.¹⁴² The purported benefits were not just to individual transactions, but were instead market-wide to investors, companies, and regulators.¹⁴³

More legislation followed.¹⁴⁴ Recent laws continue to focus on using plain language in government documents.¹⁴⁵ In 2010, plain

¹³⁴ *Id.*; *Plain English: A Charter for Clear Writing*, *supra* note 1, at 2.

¹³⁵ Friman, *supra* note 44, at 105–06.

¹³⁶ *Id.*

¹³⁷ *See id.*

¹³⁸ Serafin, *supra* note 100, at 681, 696 (describing experiment); SEC Staff Legal Bulletin No. 7, *supra* note 21.

¹³⁹ *Id.*

¹⁴⁰ Christopher Cox, Chairman, SEC, Before the Subcommittee on Contracting and Technology: Plain Language—The Benefits to Small Business (Feb. 26, 2008), available at <https://www.sec.gov/news/testimony/2008/ts022608cc.htm> [hereinafter *The Benefits to Small Business*].

¹⁴¹ *See id.*

¹⁴² *See id.*

¹⁴³ *Id.*; Plain Language and Good Business, *supra* note 71.

¹⁴⁴ *See generally* Blasi, *supra* note 2.

¹⁴⁵ *See, e.g.*, Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat 2861 (2010).

language spread across the federal executive branch with the Plain Writing Act, which covered many federal agency documents.¹⁴⁶ In March of 2021, Massachusetts state senator Sonia Chang-Diaz proposed a law to require plain language in state government documents.¹⁴⁷

During its rise, plain language also sparked robust initiatives outside legislative chambers. Bar associations formed plain language committees and projects, and international organizations like Clarity formed to promote plain language in legal writing.¹⁴⁸ Now organizations and agencies ranging from the Internal Revenue Services and state bar associations, to the Federal Judicial Center and National Conference of Commissioners on Uniform State Laws, have plain language projects and guidance.¹⁴⁹ Since 1998, the federal Judicial Conference has been restyling federal procedural rules to use plain language.¹⁵⁰

Similar efforts arose, and continue to arise, in other countries.¹⁵¹ Since 2007, experts from over fifty countries have promoted plain language in dozens of languages.¹⁵² In 2019, they took “one giant leap towards a plain language standard” by proposing an international, multi-language plain language standard to the International Standards Organization.¹⁵³ The proposal is under development.¹⁵⁴

¹⁴⁶ *Id.*

¹⁴⁷ An Act Providing for Plain Writing in Certain Government Documents, S. 2019 (Mass. 2021).

¹⁴⁸ Norman E. Plate, *Do As I Say, Not As I Do: A Report Card on Plain Language in the United States Supreme Court*, 13 T. M. COOLEY J. PRAC. & CLINICAL L. 79, 83–84 (2010); *Plain English: A Charter for Clear Writing*, *supra* note 1, at 3 (identifying plain language legal organizations).

¹⁴⁹ Cohen, *supra* note 35, at 503–04.

¹⁵⁰ 16A CHARLES ALAN WRIGHT & ARTHUR R. MILLER ET AL., FEDERAL PRACTICE & PROCEDURE: JURISDICTION AND RELATED MATTERS 7 (5th ed. 2019).

¹⁵¹ *Plain English: A Charter for Clear Writing*, *supra* note 1, at 46–58 (identifying international endeavors); WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 66–103.

¹⁵² *Membership*, INT’L PLAIN LANGUAGE FED’N <https://www.iplfederation.org/membership> (last visited on Dec. 16, 2021).

¹⁵³ *One Giant Step Towards a Plain Language Standard*, INT’L PLAIN LANGUAGE FED’N (June 2019), <http://www.iplfederation.org/one-giant-step-towards-a-plain-language-standard/>.

¹⁵⁴ STANDARDIZATION, <https://www.iso.org/standard/78907.html> (last visited Nov. 8, 2021).

D. *Plain Language Supporters, Skeptics, and Opponents*

Throughout the decades, plain language has gathered supporters, skeptics, and opponents alike. Supporters point to how plain language benefits many sectors.¹⁵⁵ Looking to a broad range of documents, they argue plain language benefits businesses and customers.¹⁵⁶ Supporters claim plain language documents allow employees to do their job more efficiently and accurately.¹⁵⁷ Anecdotal evidence suggests customers buy more while complaining and suing less when product documents use plain language.¹⁵⁸ Effective written communication translates to big savings; case studies report plain language revisions to one document, or one group of documents, saved companies hundreds of thousands of dollars or more.¹⁵⁹ Selective testing of plain language in legal business documents shows promise. For example, of the hundreds of forms revised by the Michigan Plain English Committee, none received feedback that the revisions changed the forms' meaning or were inferior to the originals.¹⁶⁰ Plus, scholars report no link between plain language adoptions and increased confusion or litigation.¹⁶¹

Famous investors like Warren Buffet and multiple SEC chairpersons backed plain language as beneficial to investors and the public.¹⁶² As one SEC Chairman explained, the "time and money that is wasted on translating legalese into plain English is dead weight economic loss. It benefits no one, and harms millions of consumers who pay for it."¹⁶³ According to the SEC, plain language helps investors find important information and use their time more

¹⁵⁵ WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 104–33.

¹⁵⁶ *Id.*

¹⁵⁷ Black, *supra* note 4, at 263. This position is primed for more robust empirical research.

¹⁵⁸ See WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 106–33.

¹⁵⁹ *Id.* For more examples see Joseph Kimble, *Notes Towards Better Legal Writing*, 75 MICH. BAR J. 1072, 1074 (1996).

¹⁶⁰ *Plain English: A Charter for Clear Writing*, *supra* note 1, at 19.

¹⁶¹ Matt Keating, *On the Cult of Precision Underpinning Legalese: A Reflection on the Goals of Legal Drafting*, 18 SCRIBES J. LEGAL WRITING 91, 91–92 (2019).

¹⁶² OFF. INV. EDUC. AND ASSISTANCE, SEC, A PLAIN ENGLISH HANDBOOK: HOW TO CREATE CLEAR SEC DISCLOSURE DOCUMENTS 1 (1998), <https://www.sec.gov/pdf/handbook.pdf>.

¹⁶³ The Benefits to Small Business, *supra* note 140.

productively.¹⁶⁴ Investors stop reading and throw away poorly written documents, including disclosures, because they do not have time to decipher them.¹⁶⁵ “When your customers routinely throw your product away, you’ve got a problem If time is money, then poorly written disclosure documents are wasting one of the investor’s most important assets.”¹⁶⁶ After the SEC required plain language, readers of annual reports felt they could make more informed investment decisions and were more willing to invest in the company.¹⁶⁷ The SEC also claims plain language improves market efficiency and honesty, which strengthen investor confidence.¹⁶⁸ According to the SEC, plain language increases transparency and prevents companies from hiding wrongdoing in convoluted language, like Enron did.¹⁶⁹

Governments benefit too. Here again case studies show plain language in government documents bring cost savings and efficiencies from greater compliance, sometimes exceeding one million dollars from a single document revision.¹⁷⁰ Supporters claim using plain language when drafting laws makes their application more predictable, reduces disputes over poorly written laws, and decreases the time for lawyers and non-lawyers to determine a law’s meaning.¹⁷¹ Courts deploy plain language to improve access to justice and public faith in the judiciary.¹⁷² Indeed, the National Association for Court Management’s plain language reference guide redesigns court correspondence, websites, and building signage to improve access to courts and increase public trust.¹⁷³

¹⁶⁴ *Id.*

¹⁶⁵ Plain Language and Good Business, *supra* note 71.

¹⁶⁶ The Benefits to Small Business, *supra* note 140.

¹⁶⁷ WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 165.

¹⁶⁸ Plain Language and Good Business, *supra* note 71.

¹⁶⁹ *Id.*

¹⁷⁰ Joseph Kimble, *Testifying to Plain Language*, 85 MICH. BAR J. 45, 45 (2006).

¹⁷¹ See Hoffman, *supra* note 4, at 48–57.

¹⁷² See, e.g., *Plain Language Guide: How to Incorporate Plain Language Into Court Forms, Websites, and Other Materials*, NAT’L. ASS’N. CT. MGMT., 1, 13–14 (2019), <https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/e777731b-4188-48dc-8213-3aec4f232b22/ReferenceGuide.pdf>. (Jan. 7, 2019).

¹⁷³ *Id.* at 14.

Lawyers also benefit. Supporters argue plain language may increase respect for lawyers and the law.¹⁷⁴ More and more, clients prefer, expect, and better understand documents written in plain language.¹⁷⁵

But not everyone agrees and skepticism remains. Even after some companies voluntarily experimented with plain language in the 1970s, others did not follow.¹⁷⁶ Plain language gained momentum but, “on the whole, companies were not rushing to revise their documents.”¹⁷⁷ Since the 1970s, its voluntary adoption has been sporadic and inconsistent. For example, a Michigan survey of real estate transactional documents reported a mixed use of plain language, with some documents using it and others not.¹⁷⁸ Some Michigan real estate organizations and individual companies refused to revise their forms or use plain language versions awaiting use.¹⁷⁹ In short, “while the private sector’s efforts were encouraging, there was simply not enough incentive (or disincentive) to trigger widespread use of plain English contracts.”¹⁸⁰ Occasionally, large companies like Google and Facebook selectively used plain language, often due to pressure from consumers or consumer-focused regulators.¹⁸¹

¹⁷⁴ See *Plain English: A Charter for Clear Writing*, *supra* note 1, at 27. Here again, although the claim is repeated amongst supporters and has intuitive appeal, there is no conclusive data.

¹⁷⁵ Christopher R. Trudeau, *The Public Speaks: An Empirical Study of Legal Communication*, 14 SCRIBES J. LEGAL WRITING 121, 124–25, 137–44 (2011–2012) (summarizing empirical research and results of testing).

¹⁷⁶ George H. Hathaway, *Plain English in Car Loans*, 77 MICH. BAR J. 954, 954 (1998) [hereinafter *Plain English in Car Loans*].

¹⁷⁷ Cohen, *supra* note 35, at 501.

¹⁷⁸ George Hathaway, *Plain English in Real Estate Papers*, 72 MICH. BAR J. 1308, 1308–10 (1998) [hereinafter *Plain English in Real Estate Papers*]. Another Michigan survey found plain language common in credit card agreements and some car loan agreements. *Plain English in Car Loans*, *supra* note 176, at 954.

¹⁷⁹ *Plain English in Real Estate Papers*, *supra* note 178, at 1308–10.

¹⁸⁰ Friman, *supra* note 44, at 105.

¹⁸¹ Rachel Lerman, *Google Updates Terms in Plain Language After EU Scrutiny*, ASSOCIATED PRESS (Feb. 20, 2020), <https://apnews.com/article/business-technology-us-news-ca-state-wire-ireland-0b848cb4dfdbe14998f7eeb9fde1cd8>; Rachel Lerman, *Facebook Enlists Plain English to Clarify How it Makes Money*, ASSOCIATED PRESS (June 27, 2019), <https://apnews.com/article/technology-business-social-platforms-facebook-privacy-scandal--europe-7ae0dc87eeaf4d789fe1988b18f6bc3b>.

Lawyers too may have reluctance to adopt plain language due to the same psychological, pragmatic, and educational barriers that have long inhibited legal writing improvement.¹⁸² Lawyers may understandably be reluctant to dramatically change the way they write documents—documents they have drafted dozens of times, templates they have used for decades, versions they have seen others use hundreds of times, and styles clients are comfortable with and expect. Many may worry the change to plain language will cause litigation or confusion, or clients might reject the document.¹⁸³ Others may worry the purported benefits will not come to fruition or are not worth the cost of conversion. Likewise, clients may share the same concerns.

But there are deeper objections that go passed skepticism and amount to outright opposition. Some argue plain language uses oversimplified language or language incapable of expressing the complex ideas lawyers must communicate.¹⁸⁴ Other opponents worry plain language sacrifices accuracy for clarity.¹⁸⁵ Another criticism questions whether plain language improves comprehension or

¹⁸² See *supra*, Part I. Plain language supporters are often unsympathetic to lawyers' skepticism. See, e.g., WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 25–26 (claiming the reasons why lawyers do not use plain language is “lack of will, lack of skill, and lack of time” and in a “triumph of self-deception,” lawyers estimate only 5% of the documents they read are well drafted yet estimate 95% of the documents they write are well drafted); Gallacher, *supra* note 36, at 497 (“[L]awyers are unconscious of how their writing is perceived by clients and judges and do not realize they write badly Put simply, if lawyers think they write well, they likely will see no reason to improve skills they already believe to be adequate.”).

¹⁸³ Another risk is that a lawyer could misapply plain language or cause an unintended error when converting a document to plain language. But these risks are not unique to plain language. They exist whenever drafting or editing a document. Joseph Kimble, *Wrong—Again—About Plain Language*, 92 MICH. BAR J. 44, 44–45 (2013). See also WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 42–43 (noting errors in a plain language document are often caused by difficulties understanding the original version, not by application of plain language).

¹⁸⁴ Joseph Kimble, *Answering the Critics of Plain Language*, 5 SCRIBES J. LEGAL WRITING 51, 51–52 (1994–1995) (describing criticism and then responding to it).

¹⁸⁵ *Id.* at 53 (describing criticism and then responding to it).

reduces litigation, and asserts plain language is too text-based to accurately determine whether a reader will understand a document.¹⁸⁶ In a notable critique, David Crump argued there is no consensus on what plain language is: options include brevity, easy reading, making technical documents readable to professionals and lay persons, and making text interesting and engaging.¹⁸⁷ Crump went on to argue plain language may be inappropriate or counterproductive for many transactional documents because (1) plain language's emphasis on brevity and lay person understanding may sacrifice accuracy for precision; (2) plain language's efforts to alter certain words and phrases that have established legal meanings may cause litigation or confusion; (3) plain language prevents the values ceremonial language brings; (4) plain language prevents parties from using deliberately vague language as part of a compromise; (5) plain language undermines the efficiencies of mass-use or modular documents; (6) clients may prefer old language to plain language; and (7) implementing plain language requires costly rewrites.¹⁸⁸ Such criticisms provoked forceful responses from plain language advocates.¹⁸⁹ Notably, it is often difficult to distinguish criticisms targeted at the concept of plain language from those targeted at particular ways of implementing plain language.

Opposition to plain language is not new. In 1975, Citibank revised a promissory note using plain language despite strong resistance from its executives and attorneys.¹⁹⁰ Similar resistance resurfaced in the 1990s when 1,600 attorneys attended the largest-ever meeting of the ABA Business Law Section to criticize the SEC's plain language proposal, in part because some felt plain language was too simplistic for financial disclosures.¹⁹¹ When a plain language expert redesigned NYC Department of Transportation forms,

¹⁸⁶ *Id.* at 62 (describing criticism and then responding to it).

¹⁸⁷ David Crump, *Against Plain English: The Case for a Functional Approach to Legal Document Preparation*, 33 RUTGERS L. J. 713, 728 (2002).

¹⁸⁸ *Id.* at 725–43.

¹⁸⁹ See generally Wayne Schiess, *What Plain English Really Is*, 9 SCRIBES J. LEGAL WRITING 43 (2004) (responding to Crump); Kimble, *supra* note 184 at 51–52 (responding to criticisms generally).

¹⁹⁰ Kali Jensen, *The Plain English Movement's Shifting Goals*, 13 J. GENDER RACE & JUST. 807, 810–11 (2010).

¹⁹¹ Serafin, *supra* note 100, at 707–10.

the legal team refused the revisions because the revised forms did not use the same legal language as the originals.¹⁹²

While the most common opposition contests the concept of plain language, separate reasoning may justify opposition to codifying plain language into law.¹⁹³ Consider Michigan, where businesses blocked attempts to pass a plain language consumer protection law for thirteen years despite multiple revisions applying different standards.¹⁹⁴ Driven by a worry that the laws would cause litigation, the real estate and banking industry blocked plain language mortgage reform in “an area in which archaic language still reigns supreme.”¹⁹⁵ Litigation spikes aside, passing a plain language law creates other business risks and costs.¹⁹⁶ Depending on its design, a plain language law could become a source of liability if the business does not comply.¹⁹⁷ Also, a plain language law may require an affected business to change more quickly, rather than at the business’s own pace. A plain language law might also elicit opposition from plain language supporters if its design is inconsistent with the concept of plain language.

E. *The Need for Plain Language Law Research*

In the seventy-plus years since Rudolph Flesch created his formula,¹⁹⁸ plain language has evolved. Decades of empirical and normative research from social scientists focus on plain language.¹⁹⁹

¹⁹² WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 34.

¹⁹³ Nick Ciaramitaro, *The Plain English Bills . . . Ten Years Later*, 73 Mich. B.J. 34, 34–35 (1994).

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 35.

¹⁹⁶ J. Scott Colesanti, *Demanding Substance or Form? The SEC’s Plain English Handbook as a Basis for Securities Violations*, 18 FORDHAM J. CORP. & FIN. L. 95, 97 (2012).

¹⁹⁷ When the SEC rolled out its plain language requirements, some opposed them because once codified these former writing guidelines become enforceable and produce liability. *Id.* at 121–22.

¹⁹⁸ Friman, *supra* note 44, at 107.

¹⁹⁹ See Karen A. Schriver, *Plain Language in the US Gains Momentum: 1940–2015*, 60 IEEE TRANSACTIONS ON PRO. COMM’N 343, 343 (2017) (tracking history of plain language scientific research alongside major legal developments); WILLIAM H. DUBAY, *THE PRINCIPLES OF READABILITY* 25–57 (2004), <https://files.eric.ed.gov/fulltext/ED490073.pdf> (detailing history of literacy studies in the U.S. and research in readability and the readability formulas).

Robust discussions on plain language thrive in fields ranging from accounting and finance,²⁰⁰ to healthcare,²⁰¹ to social justice.²⁰² Despite robust scholarship in other fields, legal scholarship on plain language is lacking. Two massive gaps hold scholarship development back, which in turn hold back plain language's evolution.

First, the effects of plain language on legal documents needs more study. So far, much of the research has been case studies into documents written for particular readers in specific contexts, like a government agency letter on a particular topic, a hospital billing statement to patients in one region, or a series of pro se court forms in another area.²⁰³ While this research yields consistent results that suggest widespread applicability,²⁰⁴ no research has shown mass market benefits across all documents, industries, and contexts. Success in hospital billing statements and government agency letters does not necessarily translate to the same benefits and costs with quintessential, lengthy, and complex legal documents like contracts. No study shows a business adopted a consistent approach to plain language in all documents, written for experts, lawyers, non-lawyers, employees, and the general public, on all topics and across all regions, with consistent benefits across the board. The absence of mass market research is no slight to plain language advocates. They

²⁰⁰ See, e.g., Samuel B. Bonsall IV, et al., *A Plain English Measure of Financial Reporting Readability*, 63 J. ACCT. AND ECON. 329, 329 (2017) (proposing new measure of readability of financial disclosures).

²⁰¹ See, e.g., Sue Stableford & Wendy Mettger, *Plain Language: A Strategic Response to the Health Literacy Challenge*, 28 J. PUB. HEALTH POL'Y 71, 75–86 (2007) (identifying and refuting myths about plain language and proposing plain language as a tool to promote health literacy).

²⁰² Michela Sims, *Overcoming Tools of Oppression: Plain Language and Human Centered Design for Social Justice*, CORNERSTONE MINN. STATE UNIV. MANKATO 11–19 (2020), <https://cornerstone.lib.mnsu.edu/cgi/viewcontent.cgi?article=2052&context=etds> (discussing research into how plain language in technical communications effects social justice).

²⁰³ See, e.g., WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 104–28 (detailing private sector and government studies); *Plain English: A Charter for Clear Writing*, *supra* note 1, at 25–27; Dyer, et al, *supra* note 100, at 1083 (describing revisions to Washington court family law forms); Maria Mindlin, *Is Plain Language Better? A Comparative Readability Study of Court Forms*, 10 SCRIBES J. L. WRITING 55, 55 (2005–2006) (investigating effect of plain language on California court pro se forms).

²⁰⁴ Mindlin, *supra* note 203, at 55; see also WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 104–28.

cannot measure what does not exist or what they cannot access. But the absence of empirical evidence in meaty complex legal documents may prevent skeptics from converting to plain language. Thus, there is an immense need for empirical research on plain language.

But effective empirical research must control for variables.²⁰⁵ A sample set is ineffective if it cannot account for whether a document drafter has free range or must abide by a plain language law.²⁰⁶ And, if a law applies, what does that law require? Knowledge of plain language laws' coverage and standards allows empiricists to account for these variables and reach conclusions about whether the benefits and costs of plain language vary depending on the kind of document, kind of industry, kind of reader, or kind of plain language standard.²⁰⁷ Likewise, the research can compare the results in jurisdictions with plain language laws to those without such laws.²⁰⁸

Without such research, lawyers and clients are left to guess. More case studies and anecdotes are unlikely to convert supporters, skeptics, and opponents who await dispositive research to change their minds. Meanwhile, each group carries risks if they adhere to their respective insufficiently tested status quo. Plain language supporters may be failing to maximize the benefits of plain language by not advocating for or applying the optimal versions of plain language, or they may inadvertently be creating risks and confusion for clients by using plain language. Skeptics and opponents risk continuing to use untested templates that will not withstand litigation or do not optimize the document's goals.²⁰⁹

Second, there is a gap in normative assessments of plain language laws. Much of the legal scholarship has been commentary on plain language as a concept.²¹⁰ Very little has focused on plain language laws, their goals, or their designs, perhaps because no one knows how many there are and what they say. In fact, the only other

²⁰⁵ See WRITING FOR DOLLARS, WRITING TO PLEASE, *supra* note 8, at 104.

²⁰⁶ See Dyer, *supra* note 100, at 1072–77 (discussing a recent study that showed that fourteen states have mandated the use of plain language in court forms).

²⁰⁷ See Hoffman, *supra* note 4, at 49–50.

²⁰⁸ See Dyer, *supra* note 100, at 1069, 1073–78.

²⁰⁹ Plain Language and Good Business, *supra* note 71.

²¹⁰ See *e.g.*, Jensen, *supra* note 190, at 809.

attempt to count plain language laws was by Professor Joseph Kimble in 1992.²¹¹ Although the precise methodology is not stated, with the aid of research assistants, information supplied by organizations, and his tenure in the field, Professor Kimble provided “Selective Developments in Plain English,” listing eighty-nine laws covering insurance, consumer protection, and election documents.²¹² Knowing the full scale of plain language laws and their requirements opens the door for discourse on their role. As the above history shows, plain language is not a legal solution to a legal problem. Rather, lawmakers imported plain language from the social sciences.²¹³ Moreover, they imported it to solve many different legal problems from explaining laws to nonlawyers, to protecting consumers, to improving markets.²¹⁴ As the below survey results show, lawmakers deploy plain language in a massive variety of contexts like election ballots, governor reports, court hearing notices, tobacco contracts, food labels, insurance policies, and apartment leases.²¹⁵ The intended audience and goals of plain language in these contexts likely vary significantly. Moreover, important questions remain about the efficacy of design choices lawmakers make when converting plain language from a recommendation into a requirement, whether and when codifying plain language is a better decision than free market pressures, and whether lawmakers’ implementation of plain language aligns with the views of legal plain language scholarship or social science scholarship.

Ultimately, research on plain language laws can resolve longstanding unsettled questions about legal writing’s effects on law and society and what, if any, role plain language plays in those effects.

II. NATIONAL PLAIN LANGUAGE LAW SURVEY METHODOLOGY

As the first systematic empirical investigation of plain language laws, this Article invented a survey methodology to find, count, and categorize plain language laws.

²¹¹ *Plain English: A Charter for Clear Writing*, *supra* note 1, at 31–38.

²¹² *Id.*

²¹³ *See supra*, Section I.C.

²¹⁴ *See supra*, Section I.C.

²¹⁵ Blasie, *supra* note 2, at Appendix P.

A. *Finding and Counting Plain Language Laws*

To define the potential universe of plain language laws, I began by defining what qualifies as a “law.”²¹⁶ I considered constitutions, statutes, regulations, court rules, and procedural rules as “laws.”²¹⁷ I excluded other sources like executive orders, trade association guidelines, legislative manuals, and guidance from government agencies.²¹⁸

Next, I determined how to distinguish plain language laws from all other laws. Drawing on the plain language definition used in this Article, I only considered a law to be a plain language law if it set a writing standard that could affect a reader’s understanding of the drafter’s intended message. For example, the survey excludes laws that might use the below search terms exclusively to set a standard for legibility or visibility, like specifying the dimensions and font size for a sign. Although a plain language law may contain some legibility or visibility requirements, to satisfy the threshold set in this research, the law must also contain writing standards concerning reader understanding.²¹⁹

Next, I devised a way to find plain language laws. With no prior methodologies to examine, I drew search terms from plain language legal literature. I searched for laws containing the terms “plain language,” “plain English,” “readable,” “readability,” or “Flesch.”²²⁰ Plain language scholarship regularly used the terms “plain language” and “plain English.” The rare scholarship on plain language

²¹⁶ See Blasie, *supra* note 2, at Summary of Methodology.

²¹⁷ See *id.*

²¹⁸ See, e.g., Wash. Exec. Order No. 05-03 (Mar. 24, 2005), https://www.governor.wa.gov/sites/default/files/exe_order/eo_05-03.pdf (identifying legislative drafting manuals and model jury instructions).

²¹⁹ Technical literature supports this distinction. The concept of “readability” concerns how writing affects the ease of understanding or comprehension, which differs from legibility. See DUBAY, *supra* note 199, at 3, 25, 27; see also Jonathan M. Barnes, *Tailored Jury Instructions: Writing Instructions That Match a Specific Jury’s Reading Level*, 87 MISS. L. J. 193, 197–98 (2018) (noting scholars use the term “readability” in different ways and choosing to use the term to mean ease of understanding or comprehension).

²²⁰ See *infra* note 221–22.

laws often referred to these laws as using readability tests that incorporate formulas, hence the terms “readable” and “readability.”²²¹ The most common formula used the term “Flesch” (as in Rudolf Flesch) in its title.²²² I searched for these terms in both the “Statutes and Court Rules” and “Regulations” Westlaw databases for each state, the District of Columbia, and the federal government, for a total of 104 searches. To ensure consistent discretion, I ran the searches and reviewed the thousands of search results without the aid of research assistants, librarians, or anyone else. I then checked the “citing references” for any responsive search result to find other plain language laws or provisions that may be working in conjunction with the responsive result. I also examined neighboring statutory provisions to any responsive result to determine if lawmakers codified the plain language law in one section or across multiple sections.

After completing the searches, I then revisited legal scholarship citations to plain language laws to determine if the survey results included the laws prior scholars cited.²²³ As the first attempt at a nationwide survey, I expected the results to exceed footnote references in plain language law scholarship. This expectation proved true. The survey revealed 776 plain language laws, while the next largest estimate was eighty-nine.²²⁴ Most of the laws cited in earlier scholarship were a subset of the laws found in the survey.²²⁵ However, a handful were not: some prior scholarship cited laws like federal laws passed in the 1970s and 1980s that did not contain any of the survey search terms.²²⁶ I reviewed these laws to see if they satisfy this Article’s plain language law criteria. They did, so I added

²²¹ See, e.g., George D. Gopen, *I Know It When I See It: A New Way to Define the “Plain” in “Plain English”*, 45 LITIG. 21, 22 (2019) (describing readability formulas in plain language laws); Michael L. Rustad & Thomas H. Koenig, *Wolves of the World Wide Web: Reforming Social Networks’ Contracting Practices*, 49 WAKE FOREST L. REV. 1431, 1457–58 (2014) (same).

²²² Friman, *supra* note 44, at 107.

²²³ See *Plain English: A Charter for Clear Writing*, *supra* note 1, at 31–38; Black, *supra* note 4, at 267, 267 n. 50–56; Friman, *supra* note 44, at 105, 110 nn.35–52.

²²⁴ Compare Blasie, *supra* note 2, at Appendix P, with *Plain English: A Charter for Clear Writing*, *supra* note 1, at 31–38.

²²⁵ Blasie, *supra* note 2, at Appendices A–P.

²²⁶ Black, *supra* note 4, at 266–78 n.56.

them to the survey results to make the results as comprehensive as possible. The addition of these laws shows, to some degree, my search terms were underinclusive.

To count the laws, I used the following method. Any responsive law counted as one law regardless of how much of that law discussed plain language. For example, a twenty-page regulation that used the term “plain language” once in one clause counted as one law, just as a statute with ten subdivisions applying different plain language standards to different kinds of documents also counted as one law. If a series of consecutive laws all concerned the same standard being applied to the same kinds of documents, then the series counted as one law. But if nonconsecutive laws worked in conjunction to create a plain language standard, then each section counted as one law. To illustrate, if one statutory section defined the term “plain language” and the next explained which documents must use plain language, those two consecutive sections counted as one law. But if those same sections were nonconsecutive with unrelated sections in between, then they counted as two.²²⁷

B. *Categorizing Plain Language Laws*

After finding the plain language laws, I determined what data to track. I collected data on each law’s coverage and standards. There are other kinds of data in need of research, like the enforceability and penalties of these laws, but those are beyond this Article’s scope.

To categorize each law’s coverage, I used the following method. I began by identifying whether the law covered private sector documents or public sector documents. I determined which sector to place the law into based on the document’s drafter.²²⁸ Laws affecting documents drafted by government employees or entities covered

²²⁷ This approach highlights compliance challenges as parties may need to reference and cross-reference several different laws that work in conjunction. It also avoids adding an additional layer of judgment and research to determine which of the nonconsecutive laws warrant combination. Sometimes lawmakers may have different codes cross-reference the same definition of plain language. But the approach has limitations. Lawmakers can codify one legislative objective in multiple nonconsecutive sections. For example, my research revealed Texas has forty-four insurance plain language laws, but those laws do not cover forty-four different kinds of insurance. *See* Blasié, *supra* note 2, at Appendix A-4.

²²⁸ *See id.*

public sector documents.²²⁹ By contrast, laws affecting documents drafted by private individuals or entities covered private sector documents, even when the authors drafted those documents for government readers.²³⁰ Laws affecting both kinds of drafters fit into both categories. Distinguishing the two categories supports future research as the goals, benefits, and costs of plain language in each sector may differ, and so too may the kinds of documents covered.

Next, I slotted each law into a category describing its coverage. I examined patterns in the kinds of documents covered to determine the number and name of private sector document categories. One indicator was where lawmakers placed the law, like in an insurance code.²³¹ Another indicator was the industry and document covered. In total, my research revealed ten categories of private sector plain language laws: consumer protection, commercial contract, corporate and financial disclosures, employment, environment, healthcare, housing and property, individual consents and waivers, litigation, and wildlife records.²³²

To categorize public sector documents, I created five categories based on the covered document's function: all-government, executive function, judicial function, lawmaking function, and local government function.²³³ The all-government category includes broad laws that cover documents with executive, lawmaking, and judicial functions.²³⁴ If a document's function concerned the administration of laws, then it had an executive function; the creation of laws then it had a lawmaking function; the application of laws then it had a judicial function.²³⁵ These functions do not always align with the three branches of government. For example, the lawmaking function category includes laws governing how administrative agencies draft regulations.²³⁶ Likewise, the judicial function category includes

²²⁹ *See id.* at Appendices K–P.

²³⁰ *See id.* at Appendices A–J.

²³¹ *See id.* at Appendix A-4.

²³² *See id.* at Appendices A–J.

²³³ *See id.* at Appendices J–N.

²³⁴ *See id.* at Appendix K.

²³⁵ *See id.* at Appendices L–N.

²³⁶ *See id.* at Appendix N.

laws affecting the administrative hearing process.²³⁷ The local government function category includes laws that cover documents with uniquely local government functions.²³⁸

I created each category and determined which laws fit into each category without the aid of research assistance. When a law fit into multiple categories, I placed the law into each category it fit. Because some laws fit into multiple categories, the Appendices list 873 plain language laws across all categories, even though the survey revealed only 776 plain language laws.²³⁹

The next design choice I tracked was the standards plain language laws apply. Prior legal scholarship divided plain language laws into three standards: objective standards based on a document's design, subjective standards based on how a reader reacts to a document, and a hybrid standard that combines the two.²⁴⁰ But my survey results show significant variation amongst objective standards, and considerable uncertainty as to whether any law would examine a reader's subjective reaction to a document to determine compliance.²⁴¹ Therefore, I created the following four classes of plain language law standards to foster a more precise and robust analysis.

Descriptive Standard: Descriptive Standards describe the resulting document without describing the process to achieve the result. Most commonly, these standards are abstract terms or phrases.²⁴² For example, Descriptive Standards might require a document use "plain language"²⁴³ or "plain English"²⁴⁴ without defining either term; or the standard might require the document to be "clear and

²³⁷ See *id.* at Appendix M.

²³⁸ See *id.* at Appendix O.

²³⁹ See *id.* at Appendix P.

²⁴⁰ See, e.g., Friman, *supra* note 44, at 106; David M. LaPraire, *Taking the "Plain Language" Movement Too Far: The Michigan Legislature's Unnecessary Application of the Plain Language Doctrine to Consumer Contracts*, 45 WAYNE L. REV. 1927, 1929, 1931–33 (2000).

²⁴¹ See generally Blasic, *supra* note 2.

²⁴² See *id.*

²⁴³ See, e.g., 26 DEL. ADMIN. CODE. § 3001-5.2 (West, Westlaw through 25 Del. Reg. Regs. 4, Oct. 1, 2021).

²⁴⁴ See, e.g., N.Y. COMP. CODES R. & REGS. tit. 19, § 201.11(a)(8)(A) (West, Westlaw through XLIII N.Y. Reg. 42 (Oct. 20, 2021)) (mausoleum construction notice).

coherent”²⁴⁵ or “understandable by a person of average intelligence and education.”²⁴⁶ Interestingly, some Descriptive Standards focus on characteristics of the intended reader. For example, Minnesota agricultural contracts must be understandable to the average person with experience in the industry.²⁴⁷

Readability Standard: Readability Standards require a document to satisfy one or more readability tests. Readability tests usually apply a formula that measures objective document features. Scholars estimate there are between 75 and 200 tests lawmakers can choose from.²⁴⁸ The most common test in Readability Standards is the Flesch Reading Ease Test developed in 1949.²⁴⁹ That readability test scores a document based on the number of syllables in words and the number of words in a sentence, and assumes shorter sentences and shorter words are easier to understand.²⁵⁰ The score is from 0 to 100 with 0 being very difficult and 100 being very easy to read.²⁵¹ A typical Readability Standard sets a minimum numerical score on the test.²⁵² Some Readability Standards import external formulas like the Flesch Reading Ease Test, while others detail their own hyper-precise formula, often going as far as explaining how to count contractions or numerals.²⁵³

²⁴⁵ See, e.g., KY. REV. STAT. ANN. § 446.015 (West, Westlaw through 2021 Regular and Special Sess. And Nov. 2020 election) (statutory drafting).

²⁴⁶ See, e.g., MINN. STAT. ANN. § 80D.04 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (continuing care facility disclosure statement).

²⁴⁷ See, e.g., MINN. STAT. ANN. §§ 17.943–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (agricultural contract must be “understandable by a person of average intelligence, education, and experience within the industry”).

²⁴⁸ Friman, *supra*, note 44, at 107 (estimating there are 75 tests); Long & Christensen, *supra* note 118, at 148–49 (by 1980s there were 200 formulas).

²⁴⁹ *Id.*

²⁵⁰ *Id.* Other tests use a close variation. For example, the Dale-Chall Readability Test measures sentence length and the difficulty of words used based on a 1993 list of 3000 words fourth graders recognized. Louis J. Sirico, Jr., *Readability Studies: How Technocentrism Can Compromise Research and Legal Determinations*, 26 QUINNIPIAC L. REV. 147, 162–64 (2007) (detailing evolution of formula).

²⁵¹ Veronica J. Finkelstein & Nicole E. Crossey, *Making Every Word Count: Using Strategic Editing to Increase the Readability of Your Appellate Brief*, 67 DOJ J. FED. L. & PRAC. 85, 90 (2019).

²⁵² *Id.*

²⁵³ See, e.g., ARIZ. ADMIN. CODE § R20-6-213(c)(2) (2019).

Some Readability Standards have a grade level requirement instead of a numerical score.²⁵⁴ Usually, such standards use the Flesch-Kincaid Grade Level formula, which assigns a grade level based on the text.²⁵⁵ Kincaid developed this test in 1974 as a way for the Navy to make technical manuals more understandable.²⁵⁶

Features Standard: Features Standards are the most specific of these standards. They require using or avoiding specific writing features that can affect the structure, design, or language of a document. Features Standards usually list a series of features, but there is no uniform or predominant content to these lists.²⁵⁷ New Jersey's consumer contracts law provides a good illustration. That law considers whether a document contains confusing cross-references, "[s]entences that are of greater length than necessary," "double negatives and exceptions to exceptions," confusing or illogically ordered sentences and sections, and "Old English," "middle English," Latin, French or "words with obsolete meanings or words that differ in their legal meaning from their common ordinary meaning."²⁵⁸ Oregon's equivalent law requires consumer contracts to use "words that convey meanings clearly and directly," "present tense and active voice," "simple sentences," and "frequent section headings, in a narrative format."²⁵⁹

Conceptually, the main distinction between Features Standards and Descriptive Standards is who has discretion.²⁶⁰ Features Standards reflect lawmakers' determination of precisely which features a document must contain or avoid.²⁶¹ Drafters have less discretion and must follow the criteria, regardless of whether the criteria helps or hurts reader understanding.²⁶² By contrast, Descriptive Standards grant drafters maximum discretion to achieve the required result

²⁵⁴ Finkelstein & Crossey, *supra* note 251, at 90.

²⁵⁵ *Id.*

²⁵⁶ Sirico, *supra* note 250, at 159–62 (detailing research and findings leading to creation of formula).

²⁵⁷ See Blasie, *supra* note 2, at Appendices A–P.

²⁵⁸ N.J. STAT. ANN. § 56:12-10(1)–(6) (West, Westlaw through 2021 Chapter 209).

²⁵⁹ OR. REV. STAT. ANN. § 180.545(1) (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

²⁶⁰ See generally Blasie, *supra* note 2.

²⁶¹ See generally *id.*

²⁶² See generally *id.*

while offering little guidance on how to do so.²⁶³ Functionally, whether Descriptive Standards produce different documents than Features Standards is an issue in need of research that is beyond this Article's scope. Research has yet to investigate whether drafters subject to Descriptive Standards apply the same criteria contained in Features Standards. Likewise, research is needed to determine whether Features Standards yield documents that would satisfy a Descriptive Standard.

Hybrid Standard: Hybrid Standards combine a Readability Standard with a Features Standard, or offer a choice between the two.²⁶⁴ There are many kinds of Readability Standards and Features Standards. Any combination of the two is a Hybrid Standard and there is no dominant pairing.²⁶⁵ An Arizona insurance law is a great example. Part of the law is a Readability Standard: covered policies must have a minimum readability test score of forty.²⁶⁶ The rest of the law lays out a Features Standard: covered policies must organize sections logically, place exclusions in the section they apply to, group general provisions together, cut non-essential provisions, and place defined terms upfront.²⁶⁷ They must use “everyday, conversational language,” “short, simple sentences and words in common usage,” “an easy-to-read style, personal pronouns, and present tense active verbs.”²⁶⁸ Three laws use unusual Hybrid Standards.²⁶⁹ While most laws with a Hybrid Standard require satisfying both a Readability Standard and a Features Standard, one Connecticut law per-

²⁶³ See generally *id.*

²⁶⁴ See generally *id.*

²⁶⁵ See generally *id.*

²⁶⁶ ARIZ. ADMIN. CODE § R20-6-210(C)(2) (West, Westlaw through rules published in Ariz. Admin. Register Volume 27, Issue 40, Oct. 1, 2021).

²⁶⁷ ARIZ. ADMIN. CODE § R20-6-210(D)(1) (West, Westlaw through rules published in Ariz. Admin. Register Volume 27, Issue 40, Oct. 1, 2021).

²⁶⁸ ARIZ. ADMIN. CODE § R20-6-210(D)(3) (West, Westlaw through rules published in Ariz. Admin. Register Vol., Issue 40, Oct. 1, 2021).

²⁶⁹ CONN. GEN. STAT. ANN. §§ 42-151-152 (West, Westlaw through 2021 Regular Sess. and 2021 June Special Sess.); 7 TEX. ADMIN. CODE § 25.4 (West, Westlaw Current through 46 Tex. Reg. 6602, Oct. 1, 2021); MINN. STAT. ANN. §§ 17.942-.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

mits covered documents to comply with either a Readability Standard or a Features Standard.²⁷⁰ A Texas law covering funeral contracts uses a Features Standard and multiple Readability Standards.²⁷¹ Finally, a Minnesota law on agricultural contracts uses a Hybrid Standard but does not specify a specific score or test for its Readability Standard.²⁷²

Authorizing Law: Rather than create a plain language standard, Authorizing Laws direct other parties (usually government agencies) to create a plain language standard.²⁷³ Because these laws do not create a standard, they are not one of the four standards recognized in this Article. However, the below discussions occasionally refer to this fifth category to provide a complete statistical breakdown.

III. PLAIN LANGUAGE LAWS IN THE UNITED STATES

This section unveils the first national survey of plain language laws. The survey provides a nationwide overview that explains where plain language laws have the highest and lowest concentrations, what kinds of documents these laws cover, and what kinds of standards they apply.

There are at least 776 plain language laws in the United States.²⁷⁴ Every state, the District of Columbia, and the federal government have plain language laws.²⁷⁵ Ninety-five percent are laws of states or the District of Columbia, and five percent are federal laws.²⁷⁶ They include statutes, regulations, court rules, and state constitutional provisions.²⁷⁷ About seventy-seven percent of the

²⁷⁰ CONN. GEN. STAT. ANN. §§ 42-151 to-152 (West, Westlaw through 2021 Regular Sess. and 2021 June Special Sess.).

²⁷¹ 7 TEX. ADMIN. CODE § 25.4 (West, Westlaw through 46 Tex. Reg. 6602, Oct. 1, 2021).

²⁷² MINN. STAT. ANN. §§ 17.942-944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

²⁷³ *See, e.g.,* Blasie, *supra* note 2, at Appendix A-4; S.C. CODE ANN. § 37-11-35.

²⁷⁴ *See* Blasie, *supra* note 2, at Appendices A-P.

²⁷⁵ *See id.* at Appendix P.

²⁷⁶ *See id.* at Appendices A-P.

²⁷⁷ *See id.*

kinds of documents covered by plain language laws are private sector documents, while twenty-three percent are public sector documents.²⁷⁸

Coverage: The research yielded fourteen categories of plain language laws: ten private sector law categories and five public sector law categories.²⁷⁹ Some laws fit into multiple categories. By category of document covered, here are the concentrations of plain language laws:

Category	Number of Plain Language Laws	Percentage of Total Number of Plain Language Laws Across All Categories ²⁸⁰
Consumer Protection	509	58.3%
Executive Function	105	12%
Judicial Function	53	6.1%
Housing and Property	44	5%
Healthcare	38	4.4%
Lawmaking Function	33	3.8%
Corporate and Financial Disclosures	31	3.6%
Commercial Contracts	13	1.5%
Litigation	13	1.5%
Local Government Function	11	1.3%
Individual Consents and Waivers	9	1%
Wildlife Records	5	<1%
Environment	4	<1%
Employment	3	<1%
All-Government	2	<1%

²⁷⁸ See *id.* at Appendix P.

²⁷⁹ See *id.* at Appendices A–P.

²⁸⁰ Because some plain language laws fit into multiple categories, the total number of laws across all categories (873) exceeds the total number of individual plain language laws discovered (776).

Coverage varies considerably by jurisdiction.²⁸¹ One metric to measure coverage is the number of plain language laws across all categories. Texas has the most (sixty-seven), followed by Connecticut (forty-eight), Hawaii (thirty-six), and the federal government (thirty-five).²⁸² Mississippi has the fewest laws (two), with Kansas and Nebraska close behind (three).²⁸³

But numbers alone are misleading because they do not account for each law's scope.²⁸⁴ Many jurisdictions have multiple plain language laws with similar coverage.²⁸⁵ Consider federal laws, where about one half cover corporate or financial disclosures (sixteen laws; 45.7%) and almost one-quarter are consumer protection laws focused on banking, loans, debt, or credit (eight laws; 22.9%).²⁸⁶ Take a look at Texas. While Texas has the most plain language laws across all categories, sixty-six percent (forty-four laws) cover insurance documents.²⁸⁷ By contrast, one of Nebraska's three plain language laws covers multiple kinds of insurance policies.²⁸⁸ Indiana's plain language laws fall into eight categories, but one of those laws is a state constitutional provision covering the drafting of every statute.²⁸⁹

When balancing both numbers and scope, plain language law coverage still varies considerably nationwide.²⁹⁰ It is virtually nonexistent in Mississippi, which has only two plain language laws, both of which are narrow uniform commercial code provisions.²⁹¹ Not far off is Kansas, which has only three plain language laws: the same pair of narrow uniform commercial code provisions and one on car rental waivers.²⁹² The most robust plain language law coverage is in Connecticut, California, Hawaii, New Jersey, Texas, and Vermont, which have between thirty-one and sixty-seven laws

²⁸¹ See *Blasie, supra note 2*, at Appendices A–P.

²⁸² See *id.*, at Appendix P.

²⁸³ *Id.*

²⁸⁴ See, e.g., *id.* at Appendix A–P.

²⁸⁵ See *id.* at Appendices A–O.

²⁸⁶ See *id.* at Appendices A-1, C, P.

²⁸⁷ See *id.* at Appendix P.

²⁸⁸ See *id.* at Appendices A-4, P.

²⁸⁹ See *id.* at Appendices K, P.

²⁹⁰ See *id.* at Appendix P.

²⁹¹ See *id.* at Appendices A-5, P.

²⁹² See *id.* at Appendices A-5, A-7, P.

spread across twelve to twenty different categories and subcategories of private sector and public sector documents.²⁹³ Interestingly, neither Mississippi nor Kansas have plain language laws covering insurance documents and no, or very limited, coverage of other consumer documents.²⁹⁴ In contrast, the states with the largest embrace of plain language laws all have laws covering insurance and other consumer documents.²⁹⁵ It may be that because the original plain language law surge was in consumer protection and insurance, wherever that surge fell short plain language laws never caught on.²⁹⁶

Standards: Although the survey revealed a mix of plain language law standards, Descriptive Standards command the clear majority.

Standard	Number of Plain Language Laws	Percentage of Total Number of Laws Across All Categories
Descriptive	696	79.8%
Readability	71	8.1%
Hybrid	48	5.5%
Features	41	4.7%
Authorizing ²⁹⁷	16	1.8%

The distribution of standards has a few trends. Nearly all Hybrid Standards occur in laws that cover insurance documents.²⁹⁸ In fact,

²⁹³ See *id.* at Appendices A–P.

²⁹⁴ See *id.* at Appendices A-1–8, P.

²⁹⁵ See *id.* at Appendices A-5, A-7, P.

²⁹⁶ See *id.* at Appendices A-5, A-7, P (noting this research does not measure the actual use of plain language; it may be that in a jurisdiction, governments, businesses, and individuals voluntarily adopted plain language, or that despite the passing of these laws they rarely use plain language).

²⁹⁷ These laws do not set a plain language standard; rather, they authorize government agencies to create a plain language standard. See *supra* note 273 and accompanying text.

²⁹⁸ See Blasie, *supra* note 2, at Appendix A-4.

only three non-insurance plain language laws use Hybrid Standards.²⁹⁹ Likewise, all the Authorizing Laws cover insurance documents, except one.³⁰⁰

Recall that Readability Standards require documents to satisfy a score on a particular test (usually on a 1 to 100 scale) or to meet a certain grade level threshold on a test.³⁰¹ And Hybrid Standards incorporate Readability Standards.³⁰² Below is a breakdown of the test scores and grade levels required.

²⁹⁹ CONN. GEN. STAT. ANN. §§ 42-151 to 158 (hybrid; consumer contracts for residential leases, for buying or leasing up to \$25,000 in property or services, or for up to \$25,000 in credit must satisfy either features test or readability test); MINN. STAT. ANN. §§ 17.942 to 17.944 (hybrid for agricultural contract but no specific readability test score required); 7 TEX. ADMIN. CODE § 25.4 (hybrid; features and multiple readability tests for non-model prepaid funeral contract).

³⁰⁰ See Blasié, *supra* note 2, at Appendix A-4; S.C. CODE ANN. § 37-11-35.

³⁰¹ See *supra*, Section II.B.

³⁰² See *id.*

Test Score	Number of Readability Standard Laws	Percentage of Total Readability Standard Laws Across All Categories (71)	Number of Hybrid Standard Laws	Percentage of Total Hybrid Standard Laws Across All Categories (48)	Percentage of Total Readability and Hybrid Standard Laws (119) Across All Categories
40	42	59.2%	24	50%	55.5%
45	1	1.4%	11	22.9%	10.1%
50	9	12.7%	4	8.3%	10.9%
60	3	4.2%	0	0%	2.5%
70	1	1.4%	0	0%	<1%
Grade Level	15	21.1%	3	6.3%	15.1%
Custom ³⁰³	0	0%	6	12.5%	5%

Thirty-two plain language laws include unique descriptions about the intended reader.³⁰⁴ For example, the broadest description requires the document to be understandable to the average person;³⁰⁵ these laws require the document to be understandable to the “general

³⁰³ *See id.* (the Custom category accounts for the three unique Hybrid Standard laws mentioned above, which fit within multiple coverage categories).

³⁰⁴ *See infra* nn. 305–19.

³⁰⁵ *See, e.g.*, ME. REV. STAT. ANN. tit. 5, § 8061 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (“All rules and any other materials required by this subchapter to be provided to the public or to the Legislature shall, to the maximum extent feasible, use plain and clear English, which can readily be understood by the general public.”).

public,”³⁰⁶ a “person of average intelligence and education,”³⁰⁷ or a “layperson.”³⁰⁸ Other laws describe the subset of the general public that will use the document. They use phrases like the average or ordinary consumer,³⁰⁹ medical plan participant,³¹⁰ “person affected by

³⁰⁶ *Id.* (agency rules); ME. REV. STAT. ANN. tit. 5, § 9051–A(3)(A)(1) (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (public notice of environmental agencies hearing); *see also* ALASKA ADMIN. CODE tit. 7, § 86.090(a) (LEXIS through Reg. 239, Oct. 2021) (defining “plain language” as “accurate word usage and communicates in a way that helps the public to easily understand the information”); *see also* OKLA. STAT. ANN. tit. 34, § 9(B)(2)–(3) (West, Westlaw through 2021 1st Regular Sess.) (ballot title of voter petition must “explain in basic words, which can be easily found in dictionaries of general usage, the effect of the proposition;” and cannot “contain any words which have a special meaning for a particular profession or trade not commonly known to the citizens of this state”).

³⁰⁷ MINN. STAT. ANN. § 80D.04 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (continuing care facility disclosure statement); MINN. STAT. ANN. § 176.235 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (labor commissioner brochure); MINN. STAT. ANN. § 116J.0124(a) (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (human services agency program); *see also* ALA. CODE § 22-21-368 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) (“Any proposed [dental services] contracts issued to subscribers to the plan shall be written in a form that is readable and comprehensible by a layman of reasonable and ordinary intelligence . . .”).

³⁰⁸ N.J. STAT. ANN. § 52:27D-336 (West, Westlaw through 2021, Ch. 209) (continuing care facility disclosure); N.J. ADMIN. CODE § 5:19-4.1(b) (LEXIS through 53 N.J. Reg. 20, Oct. 18, 2021) (continuing care retirement facility disclosure); N.J. STAT. ANN. § 52:27D-344(a) (West, Westlaw through 2021 N.J. Laws 209) (continuing care facility contract).

³⁰⁹ TEX. FIN. CODE ANN. § 154.151(d) (West, Westlaw through 2021 Regular Sess. and called Sess. of 87th Legis.) (sale contract for prepaid funeral benefits must be in “plain language designed to be easily understood by the average consumer.”); VT. STAT. ANN. tit. 9, § 2482i(1) (LEXIS through 2021 Sess.) (finance lease for credit card terminal must use plain language understood by ordinary consumers).

³¹⁰ 048-0037-45 WYO. CODE R. § 10(h) (LexisNexis, LEXIS through Oct. 18, 2021) (Medicaid plan of care).

the document,”³¹¹ or the “average reader.”³¹² The most precise laws identify specific characteristics about the intended reader. For example, several laws require documents to be understandable to a reader who has no specialized knowledge or has not consulted third parties.³¹³ On the other hand, some laws require considering the intended reader’s specialized knowledge.³¹⁴ Several laws account for a reader’s language abilities by requiring a document to be in plain language in the reader’s primary language.³¹⁵ One of Idaho’s health

³¹¹ CAL. GOV’T CODE § 11342.580 (West, Westlaw with urgency legislation through Ch. 770 of 2021 Regular Sess.) (defining “Plain English” as described in CAL. GOV’T CODE § 11349 “written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them”); *see also* W. VA. CODE § 77-6-3.2.a (2002) (human rights act waiver must be “in plain English and in a manner calculated to be understood by the average person with a similar educational and work background as the individual in question”).

³¹² COLO. REV. STAT. § 2-2-801 (LEXIS through 2021 Regular Sess. legislation) (laws should be “understandable to the average reader”); ALA. CODE § 17-6-81(b)–(c) (LEXIS through Acts 2021, No. 21-545, excluding 2021 Sess. Laws) (summary and ballot statements must be “understandable to the average reader”); *see also* N.J. STAT. ANN. § 19:3-6 (West, Westlaw through 2021, Chapter 272.) (public questions must be “easily understood by the voter”).

³¹³ ALASKA STAT. § 18.23.400(a)–(b) (LEXIS through 2021 legis.) (health care information must be “in plain language that an individual with no medical training can understand.”); VA. CODE ANN. § 38.2-2608(B)(1) (LEXIS through 2021 Regular Sess. And 1st. and 2nd Special Sess.) (home protection insurance contracts must be “understandable without special insurance knowledge or training”); WASH. REV. CODE ANN. § 19.144.020(2) (LEXIS through 2021 Regular Sess.) (residential mortgage loan material terms disclosure summary must be reasonably understandable to average person without third-party resources).

³¹⁴ MINN. STAT. ANN. § 17.943 (West, Westlaw through 2021 Regular Sess. And 1st Special Sess.) (agricultural contract must be “understandable by a person of average intelligence, education, and experience within the industry”); N.J. STAT. ANN. § 52:14B-4.1a(b) (West, Westlaw through 2021, Chapter 221) (notice of regulatory change must “provide adequate notice to affected persons and interested persons with some subject matter expertise”).

³¹⁵ WASH. REV. CODE ANN. § 19.162.030(2)(d) (LEXIS through 2021 Regular Sess.) (pay-per-call program message must be “in plain English or the language used to promote the information delivery service”); VT. STAT. ANN. tit. 15A, § 2-406(a) (LEXIS through 2021 Sess.) (consent or relinquishment of parent or guardian must be in plain English or native language of signer); W. VA. CODE § 48-22-303(a) (LexisNexis, LEXIS through the 1st sess. of the 85th Legis.) (adoption consent or relinquishment must in plain English or signatory’s “primary language”); CAL. FAM. CODE § 17406(c) (LEXIS through Ch. 1-100, 102, 103, 105-112, 114, 115, 117-123, 125-142, 145-160, 164, 173, 174, 177, 180-184, 276, 294, and 307

insurance laws requires documents to be understandable to patients with disabilities and persons with limited English proficiency.³¹⁶ Most of these characteristics are in Descriptive Standards. But one plain language law with a Features Standard³¹⁷ and two with a Readability Standard³¹⁸ also require the document to be understandable to a person of average age and intelligence.³¹⁹

IV. PRIVATE SECTOR LAWS

Seventy-five percent of the laws across all categories (658 laws) are private sector laws.³²⁰ These laws concentrate in nine categories:

Category	Number of Laws	Percentage of Total Number of Laws Across All Categories of Private Sector Laws
Consumer Protection	509	76.1%
Housing and Property	44	6.6%
Healthcare	38	5.7%
Corporate and Financial Disclosures	31	4.6%
Commercial	13	1.9%

of 2021 Regular Sess.) (child support notices explaining government does not represent child or have attorney-client relationship with requestor must be in plain English and will be “translated into the language understandable by the recipient when reasonable”).

³¹⁶ IDAHO ADMIN. CODE r. 16.03.10.316.03 (LEXIS through Idaho Admin. Bull., Jul. 7, 2021) (Medicaid documents).

³¹⁷ 31 PA. CODE § 151.9(b)(1) (LEXIS through Oct. 2021 supp. effective through 51 Pa. B. 4250) (continuing care resident agreements and disclosures).

³¹⁸ 7 TEX. ADMIN. CODE § 84.801–.809 (West, Westlaw through 46 Tex.Reg. No. 8144, dated Nov. 26, 2021) (non-standard car installment contracts must “be easily understood by the average consumer” and not exceed an eleventh-grade reading level); 7 TEX. ADMIN. CODE § 90.101–.105 (West, Westlaw through 46 Tex.Reg. No. 8144, dated Nov. 26, 2021) (non-standard loans contracts must “be easily understood by the average consumer” and not exceed an eighth, ninth, or tenth grade reading levels).

³¹⁹ 31 PA. CODE § 151.9(b)(1) (LEXIS); 7 TEX. ADMIN. CODE §§ 84.801–.809 (Westlaw); 7 TEX. ADMIN. CODE §§ 90.101–.105 (Westlaw).

³²⁰ Blasie, *supra* note 2, at Appendix A–I.

Litigation	13	1.9%
Individual Consents and Waiver	9	1.3%
Wildlife Records	5	< 1%
Environment	4	< 1%
Employment	3	< 1%

A. *Consumer Protection Plain Language Laws*

Consumer protection is the hub of plain language laws. With 509 laws, consumer protection plain language laws account for 76.1% of private sector plain language laws across all categories and 58.3% of all plain language laws across all categories.³²¹ This Article classifies them as “consumer protection” laws because they all involve documents for products or services commonly purchased by individuals from large businesses where the individual is unlikely to have any bargaining power. Most of these documents are standardized forms individual consumers cannot negotiate.³²²

The scale of consumer protection plain language laws revealed concentrations in the following sub-categories.

³²¹ See *id.* at Appendix P.

³²² See *id.* at Appendix A (identifying consumer protection laws that apply to standard form contracts that are likely not negotiated); see e.g., CONN. GEN. STAT. ANN. § 36a-719g(a) (West, Westlaw through 2021 Regular Sess. and 2021 June Special Sess.) (mortgage explanation of fees); COLO. REV. STAT. ANN. § 25-49-103(1)(b)(II) (West, Westlaw through 1st Regular Sess. of the 73rd General Assembly) (healthcare provider description of charged services).

Sub-Category	Total Number of Laws	Percentage of Total Consumer Protection Laws Across All Sub-Categories
Insurance	212	41.7%
Uniform Commercial Code	80	15.7%
Utilities and Telecommunication	43	8.5%
Banking, Loans, Debt, and Credit	41	8%
Housing	34	6.7%
Healthcare	23	4.5%
Multi-Industry	17	3.3%
Miscellaneous	15	2.9%
Automotive	11	2.2%
Privacy	9	1.8%
Food	8	1.6%
Funerals and Cemeteries	8	1.6%
Professional Services	4	<1%
Transportation	4	<1%

Of the 509 consumer protection plain language laws, 72.7% use Descriptive Standards (370 laws), 11.6% use Readability Standards (59 laws), 9% use Hybrid Standards (46 laws), and 3.7% use Features Standards (19 laws).³²³ An additional 2.9% (15 laws) use no standards; rather, they are laws authorizing insurance agencies to create plain language standards.³²⁴

1. OVERVIEW OF CONSUMER PROTECTION LAWS

In 1981, Bernard Black wrote what may be the first proposed model plain language law in part because many consumer contracts

³²³ See Blasié, *supra* note 2, at Appendices A-1-7.

³²⁴ *Id.*

are mass-produced, non-negotiable forms consumers cannot understand even if they did read them.³²⁵ Black contended formatting affects understanding.³²⁶ Font, spacing, and margins can make a document difficult to read.³²⁷ He worried important clauses may be indistinguishable from clauses covering remote contingencies, and customers may be unable to find the provisions they are looking for.³²⁸ Black noted companies might use fine print, confusing formatting, jargon, and difficult grammar to hide pro-consumer clauses.³²⁹

Some lawmakers may have agreed. The concentration of plain language consumer protection laws in several areas may reflect a response to consumer complaints or consumer activist lobbying.³³⁰ Eight states have laws focused on the renting or purchasing of cars.³³¹ Three of those states even have laws specific to collision damage waivers in car rental contracts.³³² Another concentration is banking, loans, debt, and credit.³³³ Seventeen states, the federal government, and the District of Columbia have such laws, with the largest grouping covering mortgage documents.³³⁴ A hefty concentration of twenty-four states have laws covering utilities and telecommunications documents involving telephone, electrical, water, sewage, or gas services.³³⁵ Finally, thirty-nine states and the District of Columbia have a pair of model uniform commercial code provisions that use plain language in a sale of collateral notice.³³⁶

Perhaps the most notable concentration is multi-industry contracts, where fourteen states and the federal government have passed

³²⁵ Black, *supra* note 4, at 255.

³²⁶ *Id.* at 256 (“Fine print, low-contrast type, long lines, narrow margins, and inadequate spacing between clauses make forms physically hard to read.”).

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.* at 256–57.

³³⁰ *See infra* Sections IV.F, IV.G (the consumer protection plain language law concentrations in housing and healthcare are a subset of the housing and healthcare laws discussed more fully below).

³³¹ Blasie, *supra* note 2, at Appendix A-7.

³³² *Id.*

³³³ *Id.* at Appendix A-1.

³³⁴ *Id.*

³³⁵ *Id.* at Appendix A-6.

³³⁶ *Id.* at Appendix A-5.

laws.³³⁷ Of all the plain language laws in the country, multi-industry plain language laws cover the largest variety and largest number of private-sector contracts.³³⁸ As the name suggests, these laws span multiple industries.³³⁹ Maine's law covers loans and leases of goods for up to \$100,000.³⁴⁰ Pennsylvania's law covers contracts for up to \$50,000 for loans, the purchase or rental of property or services, or credit.³⁴¹

At the same time, some of the narrowest plain language laws are consumer protection laws.³⁴² Some cover product labels like kosher food labels.³⁴³ West Virginia has four such laws covering labels for medical cannabis, frozen desserts, dairy products, and milk products.³⁴⁴ Another interesting grouping is in funeral and cemetery contracts where four states have acted.³⁴⁵ Three states, the federal government, and the District of Columbia have plain language laws on privacy notices or consent forms for the release of confidential information.³⁴⁶ Sometimes even accountants and lawyers get special attention. Nevada has a plain language law focused on accountant disclosures, while Oregon requires contingency agreements to use plain language, and Wisconsin requires a plain language disclosure to clients from law firms that are limited liability companies.³⁴⁷ The federal government and two states have laws specific to the transportation industry, like charter bus safety information or documents involving the transportation of household goods.³⁴⁸

Two of the consumer protection plain language laws use unusual Hybrid Standards. Texas created a nationwide anomaly in a law re-

³³⁷ *Id.* at Appendix A-8.

³³⁸ *See id.* at Appendices A–I.

³³⁹ *See id.* at Appendix A-8.

³⁴⁰ ME. REV. STAT. ANN. tit 10, §§ 1121–1126.

³⁴¹ 73 PA. Stat. and Cons. Stat. § 2204 (West, Westlaw through 2021 Regular Sess. Act 80).

³⁴² Blasie, *supra* note 2, at Appendix A (listing consumer protection laws which deal with limitations and exclusions).

³⁴³ *Id.* at Appendix A-7.

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

quiring non-model prepaid funeral contracts to use plain language.³⁴⁹ Its custom Hybrid Standard applies two readability tests: a minimum Flesch Reading Ease Test score of forty-seven and a maximum Flesch-Kincaid grade level score of eleventh grade.³⁵⁰ The law's Features Standard also contains numerical requirements: a maximum average sentence length of nineteen words, and a maximum use of passive voice in twenty-one percent of sentences.³⁵¹

Then there is Connecticut's consumer contracts law, another nationwide anomaly. Its custom Hybrid Standard requires consumer contracts to satisfy either a Features Standard or a Readability Standard.³⁵² The law's unique design runs deeper. Its readability test does not apply an external test like the Flesch Reading Ease Test.³⁵³ Instead, the statute lays out its own test: the average number of words per sentence is less than 22; no sentence exceeds 50 words; the average number of words per paragraph is less than 75; no paragraph exceeds 150 words; and the average number of syllables per word is less than 1.55.³⁵⁴

2. INSURANCE PLAIN LANGUAGE LAWS

As the largest concentration of consumer protection plain language laws and of any kind of plain language law, insurance plain language laws warrant special discussion. Forty-six states and the District of Columbia combine to offer 212 plain language insurance laws, which account for 41.7% of all consumer protection plain language laws and 24.3% of plain language laws across all categories.³⁵⁵ Only Kansas, Mississippi, Utah, Washington, and the federal government have none.³⁵⁶

Nationwide, insurance plain language law standards vary considerably. Of these laws, 42.9% use Descriptive Standards (ninety-one laws), 26.9% apply Readability Standards (fifty-seven laws),

³⁴⁹ 7 TEX. ADMIN. CODE § 25.4 (West, Westlaw through 46 Tex.Reg. No. 8144, dated Nov. 26, 2021).

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² CONN. GEN. STAT. ANN. § 42-152(b)–(c) (West, Westlaw through 2021 Reg. and June Special Sess.).

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ Blasie, *supra* note 2, at Appendix A-4.

³⁵⁶ *See id.*

3.8% use Features Standards (eight laws), and 19.8% use Hybrid Standards (forty-two laws).³⁵⁷ Within these categories there is even more variation. Of the laws with Readability or Hybrid Standards that require a numerical score on a readability test (107 laws), 62.7% require a minimum score of forty (66 laws), 11.2% require a minimum score of forty-five (12 laws), 12.1% require a minimum score of fifty (13 laws), and 1% require a minimum score of seventy (1 law).³⁵⁸ The South Carolina law that requires the minimum score of seventy on certain insurance documents is the highest Readability Standard score of any plain language law in the country.³⁵⁹ Amongst insurance plain language laws, grade level Readability Standard thresholds range from sixth to ninth grade.³⁶⁰

The prevalence of insurance plain language laws is unsurprising. At least since 1966 even courts have recognized confusing insurance policies cause problems.³⁶¹ In 1978, the National Association of Insurance Commissioners proposed a model plain language law governing life and health insurance policies.³⁶² Legislatures responded by passing many insurance plain language laws.³⁶³ The laws made insurance policies “more readable and understandable to the purchaser,” and “protect[ed] the consumer from an insurance company

³⁵⁷ Blasie, *supra* note 2, Appendix A-4 (6.6% (fourteen laws) authorize insurance departments to create plain language laws and therefore do not contain any standard).

³⁵⁸ *Id.*

³⁵⁹ S.C. CODE ANN. § 38-71-1940(C) (West, Westlaw through 2021 Act No. 116) (health carrier external review notices, statements, and forms).

³⁶⁰ *See e.g.*, Blasie, *supra* note 2, Appendix A-4.

³⁶¹ Consider a 1966 Wisconsin Supreme Court decision that described an insurance policy’s language as “unnecessarily cumbersome, complex and hard to read.” *Heater v. Fireman’s Fund Ins. Co.*, 141 N.W. 2d 178, 180–81 (Wis. 1966) (“After a disciplined and careful reading” the Court found the language at issue was not ambiguous, but nonetheless recommended simplifying insurance contracts to make them “more readily understood by the average purchaser,” which would “avoid confusion and litigation.”).

³⁶² NAT’L A INS. COMM’RS, LIFE AND HEALTH INSURANCE POLICY LANGUAGE SIMPLIFICATION MODEL ACT (1995), <https://content.naic.org/sites/default/files/model-law-575-life-health-language.pdf>.

³⁶³ Blasie, *supra* note 2, at Appendices A–4.

improperly refusing to pay policy claims.”³⁶⁴ Sometimes states lagging behind received a judicial nudge.³⁶⁵

Despite national momentum, insurance plain language laws played out differently across jurisdictions. Some chose to have their insurance department draft regulations, while others used the legislature to draft statutes.³⁶⁶ That difference could affect design. Regulations are often procedurally easier to change.³⁶⁷ By contrast, statutory amendments must pass the legislature and governor.³⁶⁸ Substance might also vary. Agency regulations may include agency deference or judgment.³⁶⁹ And a governor has more influence over an agency regulation, while the legislature has more influence over a statute.³⁷⁰

Interestingly, a few insurance plain language laws encourage third-party consultation.³⁷¹ For example, a Texas regulation encourages insurance companies to use plain language in certain policies and to “experiment with new language in these areas” to “increase

³⁶⁴ *Daly v. Paul Revere Variable Annuity Ins. Co.*, 489 A.2d 1279, 1282–83 (N.J. Super. Ct. Law Div. 1984), *aff’d*, 502 A.2d 48 (N.J. Super. Ct. 1985).

³⁶⁵ In 1980, the New Hampshire Supreme Court recognized that “[i]n response to increased litigation spawned by the almost incomprehensible language found in many insurance policies, some states have reacted by enacting plain language laws requiring clear, simple policy language.” *Shea v. United Servs. Auto. Ass’n*, 411 A.2d 1118, 1119–20 (N.H. 1980) (prodding the legislature, the Court quoted policy language revised under another state’s plain language law “as an example of a plain language provision in effect in Massachusetts that would have avoided the issue raised in this case”); *see, e.g.*, N.H. REV. STAT. ANN. § 420-H:5 (West, Westlaw through 2021 Regular Sess.) (message received after *Shea*, years later, the New Hampshire legislature passed an insurance plain language law).

³⁶⁶ *See, e.g.*, Blasié, *supra* note 2, at Appendix A-4.

³⁶⁷ *See State-Level Administrative Law*, JUSTIA (April 2018), <https://www.justia.com/administrative-law/state-level-administrative-law/>.

³⁶⁸ *See* Black, *supra* note 4, at 281 n.106.

³⁶⁹ *See id.* at 286–87 (suggesting that agencies can choose whether or not to implement a law).

³⁷⁰ *See* Miriam Seifter, *Gubernatorial Administration*, 131 HARV. L. REV. 483, 486–87 (2017) (describing examples of governors’ influence over agencies); *see also* *Bill Signing Deadlines*, STATESCAPE, <http://www.statescape.com/resources/legislative/bill-signing-deadlines/> (last visited Dec. 18, 2021) (describing some states do not need the governor’s signature for the legislation to become law).

³⁷¹ *See* 28 TEX. ADMIN. CODE § 3.3100(a) (West, Westlaw through 46 Tex. Reg. No. 6602); *see also* S.C. CODE ANN. § 38-61-50 (West, Westlaw through 2021 Act No. 116).

policyholder understanding.”³⁷² A South Carolina statute requires the insurance director to create plain language standards by consulting with the department of education and other state agencies.³⁷³

In addition to interstate variance, there is also intrastate variance. Several states apply different plain language standards to different kinds of insurance documents.³⁷⁴ For example, in Virginia, a credit life insurance form must meet a Readability Standard with a minimum score of forty,³⁷⁵ while life and health insurance forms must meet a Hybrid Standard with a minimum score of fifty.³⁷⁶ Arizona uses a Readability Standard with a minimum score of forty for life and disability policies, but a Hybrid Standard with a minimum score of forty for auto, homeowner, and personal line dwelling insurance policies.³⁷⁷

Variations in standards may cause problems for nationwide industries, like the insurance industry. Many insurance companies do not draft their policies. Instead, a national insurance organization drafts template policies for nationwide distribution.³⁷⁸ Unlike a contract rider that can amend a standard form contract to incorporate state-specific language, no rider can fix a contract that does not satisfy a plain language law because the whole policy must conform. Thus, to be useful, any template policy must satisfy the plain language law of any state, which means satisfying the most stringent standard.³⁷⁹ Sure, an insurer could choose to not offer insurance in a state with a particularly strict standard, but access to a market is likely worth the low costs of having a trade association use plain

³⁷² 28 TEX. ADMIN. CODE § 3.3100(a) (Westlaw).

³⁷³ S.C. CODE ANN. § 38-61-50 (Westlaw).

³⁷⁴ *Id.*

³⁷⁵ VA. CODE ANN. § 38.2-3735(F) (West, Westlaw through end of the 2021 Regular Session).

³⁷⁶ 14 VA. ADMIN. CODE § 5-101-70(F) (West, Westlaw through 37:23 VA.R July 5, 2021).

³⁷⁷ ARIZ. ADMIN. CODE § R20-6-210(C)(2) (West, Westlaw through rules published in Ariz. Admin. Register Vol. 27, Issue 40, October 1, 2021) (auto, homeowner, and personal line dwelling); ARIZ. ADMIN. CODE § R20-6-213 (West, Westlaw through rules published in Arizona Admin. Register Volume 27, Issue 40, October 1, 2021) (life and disability).

³⁷⁸ *See* Hartford Fire Ins. Co. v. California, 509 U.S. 764, 772 (1993) (Insurance Services Office consists of 1,400 property and casualty insurers and drafts standard policy forms).

³⁷⁹ *See* Blasie, *supra* note 2, at Appendix A-4.

language. Therefore, it may be that regardless of what standard a jurisdiction chooses, template policies must satisfy the most stringent plain language standard even if that standard comes from the smallest market. Indeed, the most stringent plain language insurance law might affect policies in states with no plain language insurance laws.

B. *Commercial Contract Plain Language Laws*

Many plain language laws do not cover commercial transactions—transactions between two businesses or between a government and a business.³⁸⁰ But thirteen laws from nine states and the District of Columbia do.³⁸¹ They make up just 1.5% of all plain language laws across all categories.³⁸²

About eighty-five percent (eleven laws) use Descriptive Standards.³⁸³ Just one law uses a Readability Standard: Illinois requires agricultural production contracts to not exceed a twelfth-grade reading level.³⁸⁴ None use Features Standards. Meanwhile, Minnesota's plain language law on agricultural contracts applies a one-of-a-kind custom Hybrid Standard.³⁸⁵ That law requires the Commissioner of Agriculture to review the “readability” of certain agricultural contracts by considering “at least” certain factors, which include several plain language features and a readability test score.³⁸⁶ But the law does not contain a minimum score needed on the readability test.³⁸⁷ And each feature and the readability test score are independent factors.³⁸⁸ Essentially, the law is a balancing test based on the score and the presence or absence of multiple features.³⁸⁹

³⁸⁰ See, e.g., 73 PA. STAT. AND CONS. STAT. ANN. § 2204(b)(8) (West, Westlaw through 2021 Regular Sess. Act 80) (exempting commercial leases from consumer contract plain language law).

³⁸¹ Blasie, *supra* note 2, at Appendix B.

³⁸² See *id.* at Appendix P.

³⁸³ See *id.*

³⁸⁴ 505 ILL. COMP. STAT. ANN. 17/20 (West, Westlaw through 2021 Regular Sess.).

³⁸⁵ MINN. STAT. ANN. §§ 17.943–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

³⁸⁶ *Id.*

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*

These commercial contract laws target very specific contracts within certain industries. For example, the District of Columbia's law targets the sale of interest in a renewable energy facility and Georgia's law covers tobacco contracts between a grower and a supplier.³⁹⁰ Texas is the only jurisdiction with multiple commercial contract plain language laws: four laws covering private prison contracts with the government.³⁹¹

No two jurisdictions have laws covering the same kind of commercial contract.³⁹² Thus, these laws may stem from special histories in each state, narrow policy objectives, or targeted lobbying efforts.³⁹³

C. *Corporate and Financial Disclosure Plain Language Laws*

The thirty-one plain language laws governing corporate and financial disclosures account for 3.6% of plain language laws across all categories.³⁹⁴ Of these laws, 51.6% are federal and 48.4% are from a state or the District of Columbia.³⁹⁵ The breakdown of standards in these laws is unusual. 58.1% use Features Standards, 41.9% use Descriptive Standards, and none use Readability or Hybrid Standards.³⁹⁶ These laws contain the largest concentration of Features Standards, are the only category where the majority of laws use Features Standards, and are the only category where the majority of laws do not use Descriptive Standards.³⁹⁷

While unusual, that concentration is unsurprising. Half the laws in this group are SEC regulations.³⁹⁸ The SEC rolled out a plain language push in the 1990s,³⁹⁹ chose the Features Standard, and applied that standard consistently across regulations. To help lawyers meet

³⁹⁰ D.C. CODE ANN. § 34-1521(a) (West, Westlaw through Nov. 13, 2021) (sale of interest in renewable energy facility) and GA. CODE ANN. § 10-4-107.1(b)(2) (West, Westlaw through legis. passed at the 2021 Regular Sess.) (tobacco contracts between grower and company).

³⁹¹ See Blasie, *supra* note 2, at Appendix B.

³⁹² See *id.*, at Appendix B.

³⁹³ See *id.*

³⁹⁴ See *id.* at Appendix P.

³⁹⁵ See *id.* at Appendix C.

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ SEC Staff Legal Bulletin No. 7, *supra* note 21.

the standard, the SEC issued an eighty-three-page plain language handbook.⁴⁰⁰

Yet no states matched the SEC's stance.⁴⁰¹ Only ten states and the District of Columbia have plain language laws covering corporate and financial disclosures.⁴⁰² And some are very narrow, like New York's law that targets franchise offering prospectuses.⁴⁰³ The limited traction amongst states may be because of limited securities regulation amongst states. But another explanation is decreased need. If a company must make a public disclosure at the state and federal level that covers the same content, then there is no need for a state law as the company will use the same disclosure. The only reason for a state law would be if the state applied a different plain language standard than the federal regulation or covered a different kind of disclosure. Whatever a state's position, the SEC's regulations may nonetheless affect state filings because the federal regulations have forced lawyers who craft these documents to learn and apply plain language. They likely will not "turn off" the plain language skillset for a state filing.

D. *Employment Plain Language Laws*

Three laws spread across Oregon, South Carolina, and Washington form the only employment plain language laws in the private sector.⁴⁰⁴ They constitute less than one percent of plain language laws across all categories. All of them use Descriptive Standards.⁴⁰⁵

Scarcity aside, the laws' substance is unique. Oregon's and Washington's laws require employers to convey information in plain language about worker rights, like unemployment benefits or discrimination policies.⁴⁰⁶ Discussed below, while many public sector plain language laws involve explanations of rights or of the law,

⁴⁰⁰ See generally OFF. INV. EDUC. AND ASSISTANCE, *supra* note 162.

⁴⁰¹ Blasie, *supra* note 2, at Appendix C.

⁴⁰² *Id.*

⁴⁰³ N.Y. COMP. CODES R. & REGS. tit. 13, § 200.2(c) (West, Westlaw through Vol. XLIII, Issue 42 dated Oct. 20, 2021).

⁴⁰⁴ Blasie, *supra* note 2, at Appendix D.

⁴⁰⁵ See, e.g., *id.*

⁴⁰⁶ OR. REV. STAT. ANN. § 657.260(2) (West, Westlaw through 2021 Regular Sess.) (statements in workplace describing potential disqualification from unemployment benefits for voluntarily leaving work or being discharged); WASH. REV.

these employment laws are the only ones requiring private sector companies to explain laws or legal policies to employees.⁴⁰⁷ The third law from South Carolina affects employers who elect not to use a government form to record information about workplace injuries and illnesses. These employers must record that information on a custom form that uses plain language.⁴⁰⁸ Like the wildlife records discussed below, this South Carolina law is unusual because it requires a private business to use plain language in a document that likely only government employees will review.⁴⁰⁹

E. *Environment Plain Language Laws*

Four laws from four states, all with Descriptive Standards, account for less than one percent of all plain language laws across all categories but make up all the environment plain language laws covering the private sector.⁴¹⁰ Some laws are very specific: Florida's law focuses on biosolids⁴¹¹ and Kentucky's law on redesignation of surface area water.⁴¹² Such specificity prompts questions about why lawmakers felt the need to target environmental documents on these particular subjects, but not others. On the other hand, other states have much broader laws: Pennsylvania's law covers summaries in environmental cleanup investigation and assessment plans,⁴¹³ and Washington's law covers environmental impact statements.⁴¹⁴ Environment is a category of private sector laws and a sub-category of

CODE ANN. § 49.95.020(c) (West, Westlaw through 2021 Regular Sess.) (long term care facility employee discrimination and abuse policies).

⁴⁰⁷ Blasie, *supra* note 2, at Appendix D.

⁴⁰⁸ See SC CODE ANN REGS 71-329 (West, Westlaw through State Register Volume 45, Issue 10, Oct. 22, 2021).

⁴⁰⁹ See *id.*; see also Blasie, *supra* note 2, at Appendix D.

⁴¹⁰ See Blasie, *supra* note 2, at Appendix E.

⁴¹¹ FLA. ADMIN. CODE ANN. r. 62-640.210(1)(i) (LEXIS through Dec. 29, 2021) (recommending regulated parties consult EPA plain English guide on biosolids).

⁴¹² 401 KY. ADMIN. REGS. 10:026 (West, Westlaw through Admin. Register of Kentucky, Volume 48, No. 3, dated Sept. 1, 2021) (summary of effect of proposed re-designation of surface area waters on community and other users).

⁴¹³ 35 PA. STAT. AND CONS. STAT. ANN. § 6026.901 (West, Westlaw through 2021 Regular Sess.) (summary in environmental cleanup investigation and assessment plans, reports, and notices).

⁴¹⁴ WASH. ADMIN. CODE § 197-11-425(2) (West, Westlaw through 21-16 Washington State Register, Aug. 18, 2021) (environmental impact statements).

public sector executive function laws.⁴¹⁵ The laws mentioned above are unique in that they govern documents created by private individuals or entities for government and public readers.⁴¹⁶

F. *Healthcare Plain Language Laws*

Thirty-eight healthcare plain language laws spread across fifteen states, the District of Columbia, and the federal government comprise 4.4% of plain language laws across all categories.⁴¹⁷ These laws cover documents from privacy notices and facility information, to cost disclosures and medical labels, to hearing aid sales and medical consent forms.⁴¹⁸ All of these laws apply Descriptive Standards except for a Minnesota law that requires health plan educational materials to not exceed a seventh-grade reading level.⁴¹⁹ The breadth and spread of these laws may come from complaints about difficulties navigating healthcare systems or recognition of patient vulnerabilities. Or perhaps lawmakers may see plain language's purported efficiency benefits as a way to decrease healthcare costs while increasing trust and transparency in the healthcare industry. Indeed, the Department of Health and Human Services recommends using plain language to promote health literacy.⁴²⁰

G. *Housing and Property Plain Language Laws*

Forty-four plain language housing laws account for five percent of plain language laws across all categories; they are in twenty-three states and the District of Columbia.⁴²¹

Of all plain language housing laws, 86.6% use Descriptive Standards (thirty-nine laws).⁴²² Just 4.5% use a Features Standard

⁴¹⁵ See Blasie, *supra* note 2, at Appendix E.

⁴¹⁶ See *id.*

⁴¹⁷ *Id.* at Appendices F, O.

⁴¹⁸ See *id.*

⁴¹⁹ MINN. R. 9500.1460(14) (West, Westlaw through Minn. State Register Vol. 46, No. 14, October 4, 2021).

⁴²⁰ U.S. DEP'T HEALTH AND HUMAN SERVICES, PLAIN LANGUAGE: A PROMISING STRATEGY FOR CLEARLY COMMUNICATING HEALTH INFORMATION AND IMPROVING HEALTH LITERACY (2005), https://www.michigan.gov/documents/mdch/LiteracyHHSarticle_205541_7.pdf.

⁴²¹ Blasie, *supra* note 2, at Appendices G, O.

⁴²² *Id.* at Appendix G.

(two laws).⁴²³ The only law with a Readability Standard is an Oregon law that requires publishing residential building codes in a way that does not exceed a ninth-grade reading level.⁴²⁴ Likewise, a Connecticut Law governing leases is the only one to apply a Hybrid Standard.⁴²⁵ A South Carolina law requiring a government agency to create a plain language standard for continuing care contracts is the only authorizing plain language statute outside the insurance context.⁴²⁶

Housing plain language laws concentrate on particular types of housing.⁴²⁷ One common kind of law covers specialty housing, like veterans housing⁴²⁸ and assisted-living or nursing homes.⁴²⁹ These laws may reflect a consumer-focused policy to ensure residents of these specialty homes make informed decisions or have greater access to information. Another concentration is leases.⁴³⁰ These laws may reflect a tenant protection policy. Many, but not all, housing plain language laws reflect consumer protection policies.⁴³¹

H. *Individual Consent and Waiver Plain Language Laws*

The uniqueness of nine laws that all use Descriptive Standards and cover consents and waivers—which account for barely one percent of plain language laws across all categories—reflects an expansion of the role plain language laws play.⁴³²

⁴²³ *Id.*

⁴²⁴ OR. REV. STAT. ANN. § 455.085(1) (West, Westlaw through 2021 Regular Sess.).

⁴²⁵ CONN. GEN. STAT. ANN. § 42-151 to–158 (West, Westlaw through 2021 Regular Sess. and June Special Sess.).

⁴²⁶ S.C. CODE ANN. § 37-11-35 (West, Westlaw through 2021 Act No. 116).

⁴²⁷ *Id.* at Appendix G.

⁴²⁸ *See, e.g.*, CAL. MIL. & VET. CODE § 1035.6 (West, Westlaw through Chapter 770 of 2021 Regular Sess.) (veterans home quarterly accounting of costs).

⁴²⁹ *See, e.g.*, 16 DEL. ADMIN. CODE § 3225-10.0(10.4.2) (Westlaw through amendments included in the Del. Register of Regulations, Volume 25, Issue 4, dated Oct. 1, 2021) (assisted living facility contract).

⁴³⁰ *See, e.g.*, HAW. REV. STAT. ANN. § 516D–11 (West, Westlaw through 2021 Special Sess.) (residential condominium and cooperative leases).

⁴³¹ *See, e.g.*, N.Y. GEN. BUS. LAW § 777-b(4) (McKinney, Westlaw through 2021, Ch. 1 to 440) (alteration of housing merchant implied warranty); W. VA. CODE ANN. § 46A-6-107(b) (LexisNexis, LEXIS Dec. 29, 2021 1st Special Sess.) (waiver of warranty on manufactured home).

⁴³² *See* Blasie, *supra* note 2, at Appendices H, O.

Some individual consent and waiver laws have consumer protection roots, ensuring the informed release of private information or contractual protections.⁴³³ But others go further. North Dakota requires plain language in a marital agreement's explanation of rights and obligations being waived or modified.⁴³⁴ Vermont has a similar requirement in agreements to relinquish parental rights.⁴³⁵ West Virginia does the same for adoption agreements and human rights acts waivers.⁴³⁶ Unlike consumer protection waivers, these consents and waivers have a very different context.⁴³⁷ The signatories are not at a lack of bargaining power, they may be contracting with another individual, and they are likely represented by counsel. These laws may reflect a policy to require plain language whenever individuals contractually waive or alter high-stakes rights. That same policy also arises in several government plain language laws that require notices to explain rights, like privacy rights or how adoption proceedings can affect an individual's rights.⁴³⁸ A worthy inquiry beyond the scope of this Article is why lawmakers singled out these particular rights as needing a plain language explanation, and whether plain language plays a role in procedural Due Process or a contractual meeting of the minds.

I. *Litigation Plain Language Laws*

Thirteen plain language laws from ten jurisdictions cover litigation-related documents and account for 1.5% of plain language laws across all categories.⁴³⁹ All of them use Descriptive Standards.⁴⁴⁰

The kinds of documents covered vary. Some cover pleadings, like a complaint or answer.⁴⁴¹ But, in a peculiar fashion, the laws all

⁴³³ See *id.* at Appendix H.

⁴³⁴ N.D. CENT. CODE ANN. § 14-03.2-08(1) (West, Westlaw through 2021 Regular Sess.).

⁴³⁵ VT. STAT. ANN. tit.15A, § 2-406(a) (LEXIS through Sept 30, 2021, comprising updates through the 2021 Sess.).

⁴³⁶ W. VA. CODE ANN. § 48-22-303(a) (LEXIS through 1st Sess. of 85th Legis.); W. VA. CODE § 77-6-3.2.a (2002).

⁴³⁷ Blasie, *supra* note 2, at Appendix H.

⁴³⁸ See *id.* at Appendices L, N.

⁴³⁹ See *id.* at Appendices I, P.

⁴⁴⁰ See *id.* at Appendix I.

⁴⁴¹ See, e.g., ALASKA ADMIN. CODE tit. 3, § 48.130(a)(2) (2000) (statement of facts and circumstances in formal complaint or protest to regulatory commission);

target only certain kinds of assertions in pleadings. For example, two of the laws cover the category of products in a complaint before the U.S. Court of International Trade,⁴⁴² and the statement of jurisdictional facts in a Washington juvenile dependency petition.⁴⁴³ Curiously, the laws do not govern other statements and assertions in those pleadings. Another kind of covered document is litigation notices. Applying plain language standards to litigation notices may serve Due Process-related purposes, like informing parties of the nature of the proceeding: a West Virginia law covers the part of a notice of adoption proceeding that explains the potential loss of parental rights and the ability to appear and defend those rights.⁴⁴⁴ Some laws even cover litigation contracts: New York litigators must use plain language to draft two different kinds of settlement agreements.⁴⁴⁵ Like commercial contracts, these laws stand out because they cover documents capable of being written by any individual but most likely drafted by lawyers. The intended readers include opposing counsel, an opposing or related party, and/or judges. Why these laws target such specific litigation documents, or specific parts of those documents, is an interesting question worthy of future research.

J. *Wildlife Records Plain Language Laws*

One Pennsylvania law and four West Virginia laws apply Descriptive Standards to wildlife records, and make up less than one percent of plain language laws across all categories.⁴⁴⁶ These otherwise obscure laws are unique in two respects.

HAW. CODE R. § 3-170-7 (LexisNexis 2008) (facts of alleged election violation in complaint before elections commission).

⁴⁴² 19 C.F.R. § 210.12(a)(12) (2018).

⁴⁴³ WA. JUV. CT. R 3.3(e) (1997).

⁴⁴⁴ *See, e.g.*, W. VA. CODE ANN. § 48-22-602(b) (West 2001) (notice of adoption proceeding explanation of potential termination of parental rights and right to appear and defend parental rights).

⁴⁴⁵ N.Y. GEN. OBLIG. LAW § 5-1706(e) (McKinney, Westlaw through 2021 Chapter 1 to 440) (transfer of structured settlement payment rights); N.Y. GEN. OBLIG. LAW § 5-336(1)(b) (McKinney, Westlaw through 2021 Chapter 1 to 440) (confidentiality terms and conditions of employment discrimination claim settlement).

⁴⁴⁶ Blasie, *supra* note 2, at Appendix J.

First, government employees are likely the only people to read these records. Pennsylvania's law covers wildlife preserve records the state Game Commission inspects.⁴⁴⁷ West Virginia's laws cover hunting records that, presumably, game wardens or officers inspect.⁴⁴⁸ It is unclear why these states targeted these documents and not the thousands of other documents the government reviews. Perhaps the laws respond to issues game wardens encountered with records.

Second, West Virginia's wildlife plain language laws are the only plain language laws in the country that cover documents created by any individual—anyone who happens to be transporting hunted wildlife—regardless of whether they are businessowners, professionals, or government employees.⁴⁴⁹ Admittedly, the wildlife records are likely not lengthy documents with much writing. Nonetheless, these laws break new ground as they apply a plain language standard to individuals who may have no legal or government training on plain language.

V. PUBLIC SECTOR LAWS

Often overlooked, many plain language laws cover documents drafted by the government.⁴⁵⁰ Apart from the Plain Writing Act of 2010,⁴⁵¹ scholarship rarely mentions such laws. Yet the 216 public sector plain language laws account for 24.8% of all plain language laws.⁴⁵² Two of the three largest categories of plain language laws are public sector laws.⁴⁵³ Public sector plain language laws contain

⁴⁴⁷ 58 PA. CODE § 147.286(e) (West, Westlaw through Pa. Bulletin, Volume 51, No. 41, dated Oct. 23, 2021).

⁴⁴⁸ See, e.g., W. VA. CODE R. § 58-47-3(11) (LEXIS through regulations in effect as of Nov. 2021).

⁴⁴⁹ *Id.* (“It is illegal to transport or possess wildlife or parts of wildlife, which were killed by another hunter unless the wildlife is accompanied by a paper or tag filled out in plain English bearing the information from the hunter that killed the wildlife. The hunter’s signature, address, hunting license number (if required), game tag number (if required), the date of kill, the species, and the number, and/or quantity of wildlife.”). See generally Blasie, *supra* note 2, at Appendices A–O.

⁴⁵⁰ Blasie, *supra* note 2, at Appendices K–O.

⁴⁵¹ Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (2010).

⁴⁵² Blasie, *supra* note 2, at Appendices K–P.

⁴⁵³ See *id.*

some of the broadest and oldest plain language laws in the country.⁴⁵⁴ Even some state constitutions incorporate plain language standards.⁴⁵⁵

Category	Number of Plain Language Laws	Percentage of Total Public Sector Laws Across All Categories
Executive Function	105	51.2%
Judicial Function	53	26%
Lawmaking Function	33	16.2%
Local Government Function	11	5.4%
All Government Documents	2	<1%

A. *All-Government Plain Language Laws*

Two states have plain language laws that apply to the entire state government.⁴⁵⁶ In 1978, Hawaii enshrined plain language into its constitution: “Insofar as practicable, all governmental writing meant for the public, in whatever language, should be plainly worded, avoiding the use of technical terms.”⁴⁵⁷ Illinois is the newcomer. It adopted the Plain Language in Government Act in 2017, with sections coming into effect in 2018 and 2019.⁴⁵⁸ After years of research by a task force,⁴⁵⁹ the Act requires the legislature, and “advises” the

⁴⁵⁴ See *id.* at Appendix O.

⁴⁵⁵ See *id.* at Appendices K–O.

⁴⁵⁶ *Id.* at Appendix K.

⁴⁵⁷ HAW. CONST. art. XVI, § 13.

⁴⁵⁸ 20 ILL. COMP. STAT. ANN. 4090/1–99 (West, Westlaw through P.A. 102-78 of the 2021 Regular Sess.).

⁴⁵⁹ 20 ILL. COMP. STAT. ANN. 4090/15 (West, Westlaw through P.A. 102-78 of the 2021 Regular Sess.) (the Act had the backing of The Chicago Bar Foundation who revitalized a Plain Language Task Force created in 2009); Chicago Bar Foundation, *Say What You Mean, and Mean What You Say*, THE CHICAGO BAR FOUND. (Sept. 28, 2018), <https://chicagobarfoundation.org/blog/say-what-you-mean-and-mean-what-you-say/> (“[P]lain language increases the public’s understanding of rights and benefits as well as compliance with responsibilities and

executive and judicial branches, to use plain language whenever possible in laws and public-facing documents.⁴⁶⁰ The Act went further by charging the task force with designing training requirements and assistance to implement plain language, and to study and propose other legislation to maximize plain language benefits in government documents and contracts between private parties.⁴⁶¹ These laws effectively require all state government employees to acquire a new writing skillset and to apply that skillset for the public benefit.⁴⁶² The laws affect, and will continue to affect, thousands of documents.

B. *Executive Function Plain Language Laws*

The 105 laws covering executive function documents are the most common kind of public sector plain language laws (51.2% of total) and the second most common kind of plain language laws (12% of plain language laws across all categories).⁴⁶³ About 91.4% of executive function laws use Descriptive Standards (96 laws), 6.7% use Readability Standards (7 laws), and 1.9% use Features Standards (2 laws).⁴⁶⁴ None use Hybrid Standards.

The laws tend to concentrate on particular subjects:

requirements. Clear communication leads to the successful and efficient achievement of legislative and administrative goals and also promotes the rule of law, making it an essential piece of the access to justice puzzle.”).

⁴⁶⁰ 20 ILL. COMP. STAT. ANN. 4090/30 (West, Westlaw through P.A. 102-78 of the 2021 Regular Sess.) (the distinction between “requiring” and “advising” may be irrelevant if the law cannot be enforced. But the use of “advises” may suggest the legislature was trying to respect the separation of powers).

⁴⁶¹ 20 ILL. COMP. STAT. ANN. 4090/5 (West, Westlaw through P.A. 102-78 of the 2021 Regular Sess.).

⁴⁶² *Id.*

⁴⁶³ Blasie, *supra* note 2, at Appendix L.

⁴⁶⁴ *Id.*

Subcategory	Number of Plain Language Laws	Percentage of Total Executive Function Laws Across All Categories
Miscellaneous	32	30.5%
Election Materials and Process	22	21%
Government Reports and Information	13	12.4%
Environment	10	9.5%
Privacy Rights	9	8.6%
Taxes	7	6.7%
Education	6	5.7%
Administrative Agency	4	3.8%
Multi-Subject	2	1.9%

The scope of these laws ranges from vast to surprisingly specific. At one end of the spectrum, the federal government, California, Maine, and Oregon have laws requiring their agencies to use plain language in many of their public-facing documents.⁴⁶⁵ California's law drives home the need for extensive use of plain language by covering agency contracts, forms, licenses, announcements, manuals, memoranda, and communications.⁴⁶⁶ But other laws are far more granular. For example, a New York law targets department of education documents while a Rhode Island law is even more specific, focusing on school safety plan documents.⁴⁶⁷

⁴⁶⁵ See *id.* at Appendix L (specifically the Administrative Agency Documents section).

⁴⁶⁶ CAL. GOV'T CODE § 6219 (West, Westlaw through Chapter 770 of 2021 Regular Sess.).

⁴⁶⁷ N.Y. EDUC. LAW § 305(26) (McKinney, Westlaw through 2018 Chapters 1 to 522); 16 R.I. GEN. LAWS ANN. § 16-21-24 (West, Westlaw through Chapter 424 of the 2021 Regular Sess. of the R.I. Legis.).

Whether broad or specific, executive function plain language laws often focus on similar kinds of documents.⁴⁶⁸ The largest concentration is elections.⁴⁶⁹ Sixteen states have twenty-two plain language laws on election documents, like ballots, ballot issue explanations, and voting instructions.⁴⁷⁰ Another theme is explanations of citizen rights or obligations.⁴⁷¹ Illustrating this theme, some laws require using plain language in tax forms or explanations of privacy rights.⁴⁷² Another trend is using plain language to explain prior or future government actions, like environmental reports and notices, statewide health reports, and governor budget reports.⁴⁷³

The effects of executive function plain language laws are significant. These laws likely require huge numbers of government employees to change how they write, including lawyers and non-lawyers, and effect a wide swath of documents.

C. *Judicial Function Plain Language Laws*

The fifty-three laws that apply to judicial function documents constitute 26% of all categories of public sector plain language laws and 6.1% of all plain language laws across all categories (the third largest concentration).⁴⁷⁴ Nearly all judicial function plain language laws use Descriptive Standards.⁴⁷⁵ The sole exception is a Maine notice explaining a finding that a complaint of child abuse or neglect is substantiated; the notice cannot exceed a sixth-grade reading level.⁴⁷⁶

The judicial function plain language laws fall within seven sub-categories:

⁴⁶⁸ See Blasie, *supra* note 2, at Appendix L.

⁴⁶⁹ See *id.*

⁴⁷⁰ See *id.*

⁴⁷¹ See *id.*

⁴⁷² See, e.g., *id.*

⁴⁷³ See *id.*

⁴⁷⁴ See *id.* at Appendix M; see also *supra* Part III.

⁴⁷⁵ See Blasie, *supra* note 2, at Appendix M.

⁴⁷⁶ 10-148-201 ME. CODE R. § X (LEXIS through Oct. 1, 2021).

Subcategory	Number of Plain Language Laws	Percentage of Total Judicial Function Laws Across All Categories
Administrative Hearings	28	52.8%
Explanation of Rights	8	15.1%
Judicial Forms	6	11.3%
Trial Procedure	5	9.4%
Child Support and Adoption	3	5.7%
Case Resolutions	2	3.8%
Multi-Subject	2	3.8%

Among these laws, the largest concentration governs the administrative hearing process.⁴⁷⁷ 52.8% (twenty-eight laws) from ten states require administrative hearing documents to use plain language.⁴⁷⁸ Some laws apply to initiating documents like complaints.⁴⁷⁹ But most apply to hearing notices.⁴⁸⁰ Kentucky is the only state with a lone plain language law covering all agency hearing notices.⁴⁸¹ Other states have agency-specific statutes.⁴⁸² For example, Idaho's only administrative hearing plain language law applies to racing commission disciplinary hearing notices.⁴⁸³ By contrast, Hawaii has fourteen plain language laws covering different administrative hearing notices or complaints.⁴⁸⁴ Why a state would regulate one kind of hearing notice but not another is unclear. To the extent plain language has Due Process overtones, Kentucky's approach is the best choice. Singling out particular hearings may be because plain language has more traction with some agencies than others, or

⁴⁷⁷ See Blasie, *supra* note 2, at Appendix M.

⁴⁷⁸ See *id.*

⁴⁷⁹ See *id.*

⁴⁸⁰ See *id.*

⁴⁸¹ KY. REV. STAT. ANN. § 13B.050(3) (West, Westlaw through 2021 Regular and Special Sess. and Nov. 2020 election).

⁴⁸² See Blasie, *supra* note 2, at Appendix N.

⁴⁸³ See IDAHO ADMIN. CODE r. 11.04.04.071 (LEXIS through Idaho Administrative Bulletin dated Apr. 7, 2021).

⁴⁸⁴ See Blasie, *supra* note 2, at Appendix M.

perhaps because there was a history of complaints with the notices at a particular hearing.

Another concentration centers on explanations of the judicial process or of an individual's rights. For example, two states require plain language in notices involving child support or custody.⁴⁸⁵ Three states require victims of sexual assault, victims of crimes, or employees injured at work to receive plain language information about their rights.⁴⁸⁶ Several states require plain language in court forms.⁴⁸⁷ Michigan targets forms for pro se parties,⁴⁸⁸ while Utah requires all court forms to use plain language.⁴⁸⁹ These laws may reflect a policy to use plain language to aid individuals, especially individuals without lawyers, on how to navigate the justice system.

Some judicial plain language laws affect judges and lawyers. Delaware's guide for self-represented litigants encourages judges to use plain language,⁴⁹⁰ while Virginia requires certain court orders to state an election ballot question in plain language.⁴⁹¹ Utah requires plain language in certain juvenile court notices and filings.⁴⁹² Here again, the origin behind selective coverage is unclear and worth future investigation.

The effect of plain language on the American judicial system goes well beyond laws. On their own initiative, many judiciaries

⁴⁸⁵ *See id.*

⁴⁸⁶ *See id.*

⁴⁸⁷ *See id.*

⁴⁸⁸ MICH. COMP. LAWS ANN. § 600.2950b(1) (West, Westlaw through P.A.2021, No. 91, of the 2021 Regular Sess., 101st Legis.) (pro se forms for personal protection orders); MICH. COMP. LAWS ANN. § 600.8401a(1) (West, Westlaw through P.A.2021, No. 91, of the 2021 Regular Sess., 101st Legis.) (instruction forms for small claims court); MICH. COMP. LAWS ANN. § 600.8409(2) (West, Westlaw through P.A.2021, No. 91, of the 2021 Regular Sess., 101st Legis.) (instructions enforcing small claims court judgment).

⁴⁸⁹ UTAH R. JUD. ADMIN. 3-117(3)(b) (West, Westlaw through Oct. 15, 2021).

⁴⁹⁰ DEL. JUD. GUIDELINES FOR CIV. HEARINGS INVOLVING SELF-REPRESENTED LITIGANTS GUIDELINE 2 (West, Westlaw through July 1, 2021).

⁴⁹¹ VA. CODE ANN. § 24.2-684 (West, Westlaw through end of the 2021 Regular Sess. and 2021 Special Sess.).

⁴⁹² UTAH CODE ANN. § 75-5-309(2) (West, Westlaw through 2021 First Special Sess.) (guardianship proceeding notices); UTAH R. JUV. P. 17(b)(1) (West, Westlaw through Oct. 15, 2021) (juvenile delinquency petition statement of jurisdiction, facts supporting jurisdiction, and relief sought).

adopted plain language.⁴⁹³ Sometimes those initiatives focused on court rules.⁴⁹⁴ The federal system is nearing completion of a thirty-year project to restyle every set of federal rules with plain language.⁴⁹⁵ Some states followed suit.⁴⁹⁶

Another common voluntary initiative is revising court forms.⁴⁹⁷ The Washington Pro Se Project rewrote 211 family law forms in plain language to make them more accessible to pro se litigants.⁴⁹⁸ Fourteen states have similar projects.⁴⁹⁹ But form revisions are not just for pro se clients. The Michigan Supreme Court's State Court Administrative Office created fourteen divorce proceeding forms as part of a larger project to publish over 400 plain language court forms for voluntary use by Michigan lawyers.⁵⁰⁰

In many ways, courts have been the most receptive group to voluntarily adopt plain language.⁵⁰¹ Michigan judges revised their orders' certification pages to use plain language.⁵⁰² The Federal Judicial Center has a guide on plain language in class action notices.⁵⁰³ In 2018, the Illinois Supreme Court issued a Policy on Plain Language "to provide guidance to judges, court staff, circuit clerks, law

⁴⁹³ See *An Overview of Plain English*, *supra* note 68, at 27; see also FED. JUD. CENTER, JUDGES' CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 5–6 (2010), <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf> [hereinafter FED. JUD. CENTER].

⁴⁹⁴ See WRIGHT & MILLER ET AL., *supra* note 150, at 7–10.

⁴⁹⁵ *Id.*

⁴⁹⁶ See, e.g., Ariz. R. Civ. P. prefatory cmt. to the 2017 amendments (West, Westlaw through Oct. 15, 2021) (noting 2017 amendments sought to use "plain English" where possible); ME. R. UNIFIED CRIM. P. 6 n. 3 (West, Westlaw through Sept. 1, 2021) (2015 amendment helped "eliminate the awkward overuse of the term 'attorney for the State' and to replace passive voice language with more readable active voice language."); ME. R. CIV. P. 120 (West, Westlaw through Sept. 1, 2021) (2016 amendment changed numbering "to improve the readability of the rule"); 5 COLO. CODE REGS. § 1001-2:V.I (Westlaw current through Volume 44, Issue 17, Sept. 10, 2021) (describing revisions to make regulations more readable); S.C. CODE ANN. REGS. 61-9.122.30 (West, Westlaw through Volume 45, Issue 10, Oct. 22, 2021) (same).

⁴⁹⁷ Dyer, *supra* note 100, at 1068.

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.* at 1073.

⁵⁰⁰ *An Overview of Plain English*, *supra* note 68, at 28.

⁵⁰¹ See *id.*; see also FED. JUD. CENTER, *supra* note 493, at 5.

⁵⁰² *An Overview of Plain English*, *supra* note 68, at 28.

⁵⁰³ FED. JUD. CENTER, *supra* note 493, at 5–6.

librarians and other justice partners when developing written materials and when communicating to members of the public about legal information, court process, rules and forms.”⁵⁰⁴ The Policy requires all informational documents and instructions to use plain language whenever practicable.⁵⁰⁵ The Policy recognizes that “plain language increases and aids the public to understand their rights and choices so they may make informed decisions and fully participate in our legal system,” and determines plain language affects “procedural fairness and access.”⁵⁰⁶

Other initiatives focus on using plain language to enhance the fairness of trials. In 2004, Alabama’s Civil Pattern Jury Instructions Committee concluded if jurors do not understand jury instructions, then the verdict and the justice system lose credibility.⁵⁰⁷ The Committee applied a Hybrid Standard with a seventh- to ninth-grade metric.⁵⁰⁸ Around the same time, California completed a similar project.⁵⁰⁹ Studies have found significant improvement in juror comprehension when instructions use plain language.⁵¹⁰

Whether a jurisdiction should pursue judicial function plain language laws as opposed to voluntary court-driven initiatives is an issue in need of research.

⁵⁰⁴ *Illinois Supreme Court Policy*, *supra* note 70.

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.*

⁵⁰⁷ Hon. Arthur J. Hanes, Jr. et. al., *The “Plain English” Project of the Alabama Pattern Jury Instructions Committee—Civil*, 68 ALA. L. 369, 371–72 (2007). Other states reached similar conclusions. *See also* *State v. Martinez*, 854 P.2d 147, 153 (Ariz. Ct. App. 1993) (finding prosecutor erred by quoting evidentiary standard in supreme court decision during closing argument, noting “we have long discouraged jury instructions that quote verbatim from appellate opinions. Such language is seldom, if ever, in its raw form appropriate for delivery to a jury either in a jury instruction or in closing argument”) (citations omitted).

⁵⁰⁸ Hanes, *supra* note 507, at 374–75.

⁵⁰⁹ Peter M. Tiersma, *Toward More Understandable Jury Instructions—The California Experience*, 21 CRIM. JUST. 5, 8 (2006).

⁵¹⁰ Dylan Lager Murray, *Plain English or Plain Confusing?*, 62 MO. L. REV. 345, 347–48 (1997).

D. *Lawmaking Function Plain Language Laws*

Thirty-three laws, which make up 16.1% of public sector plain language laws and 3.8% of all plain language laws apply to lawmaking function documents.⁵¹¹ Of those, 66.7% (twenty-two laws) cover administrative lawmaking documents, 27.3% (nine laws) cover legislative lawmaking documents, and 6% (2 laws) cover multi-subject lawmaking documents.⁵¹²

All the jurisdictions with plain language laws covering the lawmaking function use Descriptive Standards except one: Oregon.⁵¹³ The Oregon legislature set the most precise and rigorous standard for itself.⁵¹⁴ An Oregon law applies a Readability Standard that requires all legislative digests and summaries to have a minimum score of sixty.⁵¹⁵

When it comes to administrative lawmaking, many administrative procedure acts have plain language requirements. During the process of drafting, circulating, adopting, and amending regulations, thirteen states require their agencies to use plain language.⁵¹⁶ Where in the process the agency must use plain language varies. For example, Alaska requires its agencies to use plain language in the notice of proposed rulemaking.⁵¹⁷ California goes further by requiring it in the new regulation's text.⁵¹⁸ But other times, the laws are narrower. Consider New Mexico, whose only lawmaking plain language law

⁵¹¹ See Blasie, *supra* note 2, at Appendices N, P.

⁵¹² *Id.*

⁵¹³ OR. REV. STAT. ANN. § 171.134 (West, Westlaw through 2021 Legis. Sess.) (“Any measure digest or measure summary prepared by Legislative Assembly shall be written in a manner that results in a score of at least 60 on the Flesch readability test . . .”).

⁵¹⁴ *See id.*

⁵¹⁵ *Id.*

⁵¹⁶ Blasie, *supra* note 2, at Appendix N; Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 18, 2011) (Although no federal law requires agencies to draft regulations using plain language, this executive order declared the regulatory system “must ensure that regulations are accessible, consistent, written in plain language, and easy to understand.”).

⁵¹⁷ ALASKA STAT. ANN. § 44.62.200(d) (West, Westlaw through Chapters 23 and 33 of the 2021 1st Regular. Sess. of the 32nd Legis.).

⁵¹⁸ CAL. GOV'T CODE § 11346.2(a)(1) (West, Westlaw through Chapter 770 of 2021 Regular Sess.).

concerns commission regulations implementing a particular mining law.⁵¹⁹

Other jurisdictions regulate the legislature's lawmaking process.⁵²⁰ Six states and the District of Columbia require plain language in statutes or other legislative documents like digests or legal summaries.⁵²¹ Colorado stands out with one law requiring the legislature to draft statutes in plain language, and another allowing plain language suggestions to citizen petitions to amend the state constitution.⁵²²

Oregon is the only state with laws requiring plain language in administrative and legislative lawmaking.⁵²³

Plain language laws governing legislative lawmaking are the oldest in the United States and have the highest concentration of state constitutional law.⁵²⁴ Since 1851,⁵²⁵ Indiana's Constitution required every legislative act to use plain language.⁵²⁶ In 1857, Oregon did the same for every legislative act or joint resolution.⁵²⁷

⁵¹⁹ N.M. STAT. ANN. § 69-25A-5 (West, Westlaw through the end of the First Regular Sess. and First Special Sess., 55th Legis. 2021).

⁵²⁰ Even when no law requires using plain language in the drafting process, the Movement has gained traction in legislative drafting circles. For example, several amendments to Pennsylvania statutes revised sentence and paragraph structure to improve readability. *See, e.g.*, 16 PA. STAT. AND CONS. STAT. ANN. § 1605 cmt. (West, Westlaw through 2021 Regular Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1999 cmt. (West, Westlaw through 2021 Regular Sess. Act 80); 68 Pa. Cons. St., pt. II, subpt. B, Refs & Annos. Unif. L. cmt. (West, Westlaw through 2021 Reg. Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1731 cmt. (West, Westlaw through 2021 Reg. Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1720 cmt. (West, Westlaw through 2021 Reg. Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1751 cmt. (West, Westlaw through 2021 Reg. Sess. Act 80); 16 PA. STAT. AND CONS. STAT. ANN. § 1702 cmt. (West, Westlaw through 2021 Reg. Sess. Act 80).

⁵²¹ *See* Blasie, *supra* note 2, at Appendix N.

⁵²² COLO. REV. STAT. § 2-2-801 (LEXIS through 2021 Regular Sess. legislation); COLO. REV. STAT. ANN. § 1-40-105(1) (West, Westlaw through the end of the Second Reg. Sess. of the 71st General Assembly).

⁵²³ *See* Blasie, *supra* note 2, at Appendix N.

⁵²⁴ *See id.*

⁵²⁵ IND. CONST. of 1951 art. IV, § 20.

⁵²⁶ *Id.*

⁵²⁷ OR. CONST. art. IV, § 21; OR. CONST. of 1857, art. IV, § 21.

Idaho followed in 1890 with a nearly identical provision.⁵²⁸ Including Hawaii, four state constitutions require plain language in the legislative lawmaking process.⁵²⁹

Some jurisdictions are dipping their toes in plain language lawmaking. When the District of Columbia created a commission to reform its criminal code, it charged the commission with incorporating “clear and plain language” into the code.⁵³⁰ Maine permits retroactive review of its regulations for plain language.⁵³¹

In addition to the large number of documents impacted, lawmaking plain language laws have the broadest effects. They impact members of legislatures and their staff, administrative agencies, and lobbyists.⁵³² The resulting legislative acts affect citizens, businesses, agencies, and lawyers who read them.⁵³³ While the effects have not been thoroughly studied, according to the SEC, these effects are beneficial: when laws do not use plain language, compliance becomes more expensive because people have to hire lawyers to determine their meaning.⁵³⁴ That complexity increases the chance people who are trying to comply will not because they do not fully understand the law.⁵³⁵ “So the government gets less of the behavior that it wants; the people trying to be good and do what government wants get frustrated and angry; our economy is less efficient because of all the expense involved; and overall, confidence in government is eroded, because when the poorly written laws and rules are enforced, people view it as unfair and arbitrary.”⁵³⁶ Such effects may be more significant for small businesses or individuals who cannot consult a lawyer for every legal decision.⁵³⁷

⁵²⁸ IDAHO CONST. art. III, § 17; 2 PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF IDAHO 1889 2054 app. (1912).

⁵²⁹ See Blasie, *supra* note 2, at Appendix N.

⁵³⁰ D.C. CODE ANN. § 3-152(a)(1) (West, Westlaw through Sept. 22, 2021).

⁵³¹ ME. REV. STAT. ANN. tit. 3, § 973 (West, Westlaw through 2021 First Regular Sess. and 2021 First Special Sess. of the 130th Legis.).

⁵³² See Blasie, *supra* note 2, at Appendix N.

⁵³³ The Benefits to Small Business *supra* note 140.

⁵³⁴ *Id.*

⁵³⁵ *Id.*

⁵³⁶ *Id.*

⁵³⁷ *Id.* The SEC received positive feedback when it began making plain language translations of important acts for those affected. *Id.*

E. *Local Government Function Plain Language Laws*

1.2% of plain language laws across all categories consist of eleven laws spread across ten states and require local governments to use plain language.⁵³⁸ Most of these laws apply to documents that explain government actions, like zoning change notices,⁵³⁹ finance board budget summaries,⁵⁴⁰ or school budgets.⁵⁴¹ All the local government function laws use Descriptive Standards.⁵⁴²

These laws stand out in two respects. First, all of these laws are state statutes passed by state legislatures to govern local government.⁵⁴³ So, they reflect one government affecting how another government functions.⁵⁴⁴ Second, these laws extend plain language to local governments, which are smaller than, and thus likely have fewer resources than, state and federal governments. The time and costs of implementing plain language public sector laws is beyond this Article's scope, but is ripe for inquiry.

VI. CONCLUSION

The United States' plain language experiment currently consists of 776 laws spread across fifty-two jurisdictions that take fifty-two different approaches.⁵⁴⁵ The results of that experiment will inform decisions on whether the United States needs more, fewer, or different plain language laws. But reaching those results requires greater scholarly attention.

With the benefit of knowing the national landscape and having a taxonomy of shared terminology and classifications, scholarship on plain language laws can flourish. This Article sets the stage for three areas begging for greater discourse.

⁵³⁸ See Blasie, *supra* note 2, at Appendix O; see also *supra* Part III.

⁵³⁹ ME. REV. STAT. ANN. tit. 30-A, § 4352(9)(B) (West, Westlaw through 2021 1st Regular Sess. and 2021 1st Special Sess. of the 130th Legis.).

⁵⁴⁰ N.J. STAT. ANN. § 40A:5-48(a) (West, Westlaw through 2021, Chapter 209).

⁵⁴¹ N.C. GEN. STAT. ANN. § 115C-105.25(c) (West, Westlaw through 2019 Regular Sess. of the General Assembly).

⁵⁴² See Blasie, *supra* note 2, at Appendix O.

⁵⁴³ See *id.*

⁵⁴⁴ See *id.*

⁵⁴⁵ See *id.* at Appendices A–P.

First, scholars should conduct empirical research on the effects of plain language. Questions remain about whether plain language delivers the benefits its supporters suggest and, if so, at what cost. Empirical research can also determine whether those benefits and costs vary depending on context, like the kind of document or reader. Building off the survey results, empirical research can investigate these questions to chart plain language's domestic and international future. With the benefit of this Article, researchers can collect the missing mass-market data on costs and benefits while controlling for jurisdiction, coverage, and standards. Currently, we are stuck in circular logic: some are reluctant to deploy plain language on a massive scale (especially to complex legal documents) because of the absence of empirical research on the costs and benefits of using plain language in these documents. But if no one implements plain language in these documents or on this scale, no one can measure the costs and benefits. Plain language laws force the change on a large scale, so the documents they cover may provide the missing empirical data. Future research can adopt the terms and conceptual framework provided by this Article. Relatedly, even if plain language has many benefits, another open question is whether to convert plain language into law or to leave its adoption to the free market or to bar reform. And if converting plain language into law, should that law be codified or develop in common law fashion. This Article detailed the previously unknown and extensive codified plain language laws. Future research will explore if and how courts have implemented plain language requirements by common law.

Second, scholars should investigate the normative basis for plain language. If plain language improves communication, what is the doctrinal value of improved communication? Alternatively phrased, when does the law care whether readers understand legal documents? This Article reveals that plain language is not just a tool for consumer protection.⁵⁴⁶ Plain language laws first appeared in state constitutions in the 1800s, well before Rudolf Flesch created his formula, Mellinkoff published his book, or the 1970s consumer movement occurred.⁵⁴⁷ Moreover, lawmakers imported plain language

⁵⁴⁶ See *supra* Section I.E.

⁵⁴⁷ See, e.g., IND. CONST. of 1851 art. IV, § 20.

from social sciences into the legal contexts outside consumer protection, like commercial contracts, securities filings, environmental filings, and a massive array of government documents.⁵⁴⁸ Future scholarship needs to explore how plain language fits into so many doctrines and what value it adds.

Third, scholars should research the design of plain language. The survey reveals that “plain language” has different meanings to different lawmakers.⁵⁴⁹ There are four different standards that set very different criteria.⁵⁵⁰ Most jurisdictions apply one standard in some contexts, and a different standard in another context.⁵⁵¹ Sometimes two jurisdictions have laws covering the same kind of document but apply different standards.⁵⁵² After reviewing empirical and normative scholarship, the next stage is determining which approach to plain language works best in which contexts.

⁵⁴⁸ See Blasie, *supra* note 2, at Appendix P.

⁵⁴⁹ See *id.* at Appendices A–P.

⁵⁵⁰ See *supra* Section II.B.

⁵⁵¹ Compare Minn. Stat. Ann. §§ 17.943–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.) with MINN. STAT. ANN. §§ 17.942–.944 (West, Westlaw through 2021 Regular Sess. and 1st Special Sess.).

⁵⁵² See, e.g., Blasie, *supra* note 2, at Appendix A-4 (depicting how different states treat insurance documents differently).