IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
*Plaintiff-Respondent,*
*v.*
RYAN CHARLES CORCILIUS,
*Defendant-Appellant.*

Multnomah County Circuit Court
15CR14489; A160771

Stephen K. Bushong, Judge.

Submitted July 27, 2017.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Vanessa McDonald, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and

Jacob Brown, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Hadlock, Judge, and Schuman, Senior Judge.

ORTEGA, P. J.

Reversed.

Hadlock, J., dissenting.

**ORTEGA, P. J.**

Defendant appeals a judgment of conviction for violating ORS 164.805(1)(a), which prohibits offensive littering by "creat[ing] an objectionable stench" by intentionally "[d]iscarding or depositing any rubbish, trash, garbage, debris or other refuse upon *** any public way." He contends that the trial court erred when it denied his motion for a judgment of acquittal in which he argued that ORS 164.805(1)(a) does not encompass his conduct, public urination. The question presented is an issue of statutory interpretation, and we therefore review for legal error by employing the methodology set out in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 611, 859 P2d 1143 (1993), and *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). Because we agree with defendant that ORS 164.805(1)(a) does not prohibit public urination, we reverse.[1]

The facts relevant to this appeal are not in dispute. Defendant was on a cross-country road trip and, coming from California, stopped in downtown Portland late in the day. By the time he got to Portland and parked, it was already an "emergency" for him to use a restroom. He attempted to use a gas station restroom, but was informed that it was not available to the public. He then tried a Subway restaurant, but that restroom was available only to paying customers and the line for sandwiches was long. He began to panic because of the intense pressure of having to urinate. He found a spot that he believed was secluded and urinated on the side of a building.

Sam, employed by a private security company engaged by local businesses to help enforce city ordinances and assist with nonemergency situations, saw defendant urinate and observed the urine flowing across the sidewalk toward the street. Sam knew it was urine because of the stench. Sam approached defendant, and defendant responded, "I couldn't find a better spot." Sam then radioed a police officer, who arrived shortly thereafter and issued defendant a citation for misdemeanor offensive littering, a

[1] Given our disposition of defendant's claim of error as to the motion for the judgment of acquittal, we need not reach his remaining assignments.

Class C misdemeanor, ORS 164.805(1). That statute provides, as relevant here:

> "A person commits the crime of offensive littering if the person creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property by intentionally:
>
> "(a) *Discarding or depositing any rubbish, trash, garbage, debris or other refuse* upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility[.]"[2]

(Emphasis added.)

At trial, defendant moved for a judgment of acquittal, asserting that the statute did not encompass his conduct. The trial court denied the motion on the basis that the terms of the offensive littering statute were broad enough to include human urine, and the jury found him guilty. This appeal ensued. Defendant reprises his argument that the statute was never intended to prohibit urinating on a public street, mainly asserting that the dictionary definitions of the terms "rubbish, trash, garbage, debris or other refuse" indicate their plain meaning. In his view, those plain meanings do not cover his conduct. Moreover, among other arguments, he contends that the act of urinating does not constitute either "discarding" or "depositing." The state, also looking to the dictionary definitions, argues that the terms can be read to cover defendant's conduct.

As noted, the question presented poses the task of statutory interpretation. We thus use the *PGE*/*Gaines*

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[2] Offensive littering under ORS 164.805(1) can be committed in two other ways:

> "(b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or
>
> "(c) Permitting any rubbish, trash, garbage, debris or other refuse to be thrown from a vehicle that the person is operating. This subsection does not apply to a person operating a vehicle transporting passengers for hire subject to regulation by the Department of Transportation or a person operating a school bus described under ORS 801.460."

A public way "includes, but is not limited to, roads, streets, alleys, lanes, trails, beaches, parks and all recreational facilities operated by the state, a county or a local municipality for use by the general public." ORS 164.805(2)(b).

methodology that requires us to examine the text of ORS 164.805(1)(a) in context, along with any relevant legislative history or other aids to construction. *Gaines*, 346 Or at 171-72. But before turning to that task, we pause to make a point about the use of dictionary definitions.

When a case involves terms that are not statutorily defined, we typically resort to dictionary definitions to discern their meaning. Further, as a general rule, we give "words of common usage" their "plain, natural, and ordinary meaning," *PGE*, 317 Or at 611, and the "ordinary meaning of a word is presumed to be what is reflected in a dictionary."[3] *State v. Shifflett*, 285 Or App 654, 661, 398 P3d 383 (2017) (citing *Jenkins v. Board of Parole*, 356 Or 186, 194, 335 P3d 828 (2014)). Bear in mind, however, that when we construe statutes, "we do not simply consult dictionaries and interpret words in a vacuum." *State v. Cloutier*, 351 Or 68, 96, 261 P3d 1234 (2011). Put differently, "dictionary definitions are guides for discernment, not blunt instruments." *State v. Carlton*, 361 Or 29, 36, 388 P3d 1093 (2017). That is because dictionaries "do not tell us what words mean, only what words *can* mean, depending on their context and the particular manner in which they are used." *Cloutier*, 351 Or at 96 (emphasis in original); *see also State v. Fries*, 344 Or 541, 546, 185 P3d 453 (2008) (context determines which of multiple definitions is the one the legislature intended). Thus, "[w]hen the dispute 'centers on the meaning of a particular word or words, a dictionary definition—although providing some evidence of meaning—should not be relied on to resolve a dispute about plain meaning without critically examining how the definition fits into the context of the statute itself.'" *Shifflett*, 285 Or App at 661 (quoting *State v. Gonzalez-Valenzuela*, 358 Or 451, 461, 365 P3d 116 (2015)).

[3] When the legislature has not otherwise defined a term or used a term of art, our method of statutory interpretation ordinarily proceeds to give "words of common usage" their "plain, natural, and ordinary meaning." Such meanings are likely the ones intended by the legislature, and their use is concomitant with its obligation to provide fair warning of what the law prohibits. That is, because "the ordinary citizen must be presumed to know and understand the general parameters of *** [terms]" in a statute, *State v. Illig-Renn*, 341 Or 228, 241-42, 142 P3d 62 (2006), it is imperative that, absent clear indication to the contrary by the legislature, we determine the meaning of those terms within the confines of their ordinary meaning, so that anyone can reasonably understand what conduct our statutes criminalize.

Here, we frame the relevant question as whether public urination—defendant's conduct in creating an objectionable stench as a result of urinating on a public sidewalk—is proscribed by the statute, not merely whether urine falls under the terms "rubbish, trash, garbage, debris or other refuse." The framing matters because, under ORS 164.805(1)(a), in addition to the requirement that the thing that creates an objectionable stench must be "rubbish, trash, garbage, debris or other refuse," the defendant must also "discard" or "deposit" the thing. As we explain, those terms have particular meanings that limit the conduct contemplated by the offensive littering statute and also inform the meaning of "rubbish, trash, garbage, debris or other refuse." Although we focus this part of the discussion on the meaning of "discarding or depositing," we are mindful that those words must be considered in relation to things that must be discarded or deposited to run afoul of ORS 164.805 (1)(a)—"rubbish, trash, garbage, debris or other refuse." And, when considered in that broader context, we are not persuaded that the legislature intended public urination to constitute the crime of offensive littering.

"Discard" means "to drop, dismiss, let go, or get rid of *as no longer useful, valuable, or pleasurable*." *Webster's Third New Int'l Dictionary* 644 (unabridged ed 2002) (emphasis added). The act of urination, however, is a bodily function in which urine is eliminated; it does not function to get rid of something that is "no longer useful, valuable, or pleasurable." That is, urine is not something formerly useful that one chooses to get rid of. Rather, one *discharges* urine, rather than discarding it. *See id.* at 2522 (defining "urinate" as to "discharge urine"). Hence, the ordinary meaning of "discarding" does not include the act of urinating.

If the act of urinating is not an act of "discarding," then is it an act of "depositing"? The definition for "deposit" has multiple senses,[4] and, because the state characterizes urinating as a "natural process," it posits that the best sense of "deposit" is the one that means "to lay down or let

[4] The Supreme Court explained in *Carlton* that definitions in *Webster's* include separate senses and subsenses (separated by boldface arabic numerals and boldface lowercase letters, respectively) when a definition has more than one sense. 361 Or at 36-37.

fall or drop by a natural process." *Id.* at 605. That sense of the word, however, is ill-suited to the act of urination and not the way we would expect the legislature to describe that act.[5] The illustrations for that sense of the word are: "the intervening seasons had *deposited* a thick layer of refuse over the vacant lot"; "the wind *deposited* a film of dust over the furniture"; and "in … hogs fed on copra … the cocoanut oil globules had been *deposited* by nature in the tissues—V. G. Heiser." (Emphases in original.) *Id.* Those illustrations suggest a natural process that is often gradual and not a result of an individual's personal act, very unlike the process of urination. Again, we doubt that the legislature would have understood terms more commonly associated with littering to capture the act of public urination.

The dissent looks to the definitional sense in which "deposit" means "to set down or place esp[ecially] carefully or safely or in care or custody." *Id.* Recognizing, as do we, that that meaning does not "comfortably fit a statute that criminalizes the act of littering," the dissent suggests that that sense is better construed without an emphasis on care and safety. 294 Or App at 34-35 (Hadlock, J., dissenting). That sense and construction of it—to set down or place—comes closest to describing the act of littering as used in the statute. However, the "'best sense is the one that most *aptly fits the context of an actual genuine utterance*.'" *Carlton*, 361 Or at 36 (quoting *Webster's* at 17a (note 12.4) (emphasis added)). Viewing our task in that light, even though in an abstract sense a person "sets down or places" urine when urinating, we are hard-pressed to see that the word "deposit" fairly encompasses the act of urination when used in ordinary conversation or other settings. In any event, we need not decide whether the ordinary meaning of "deposit" could be read to include urination because, as we explain below, the immediate product of defendant's conduct that created the offensive stench—urine—does not fit within any of the terms that are included in ORS 164.805(a) as litter—"rubbish, trash, garbage, debris or other refuse."

[5] There are, of course, many common descriptions in the English language for urine and the act of urinating, none of which the legislature included in ORS 164.805(1)(a).

We thus turn to the relevant dictionary definitions for "rubbish, trash, garbage, debris or other refuse," but we first observe that the dictionary used here, *Webster's Third New Int'l Dictionary*, has a synonymy for each of those words, which provides a helpful guidepost to discern their ordinary meaning.[6] *Webster's* at 1910. A "synonymy" is "a list or collection of synonyms or words of similar meaning often defined and discriminated from each other." *Webster's* at 2321. That is, the dictionary

> "contains over a thousand paragraphs in which synonymous words are briefly discriminated and given verbal illustrations. Each paragraph follows the entry of one of the words of a group under consideration and is signaled by the boldface abbreviation **syn** indented. The paragraph is a synonymy."

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[6] The synonymy under the dictionary definition for "refuse" states:

"**syn** WASTE, RUBBISH, TRASH, DEBRIS, GARBAGE, OFFAL: REFUSE applies to any matter or materials rejected as useless and fit only to be thrown out or away <there was a huge stinking heap of week-old *refuse* … old clothes, sad boots with calloused heels, and hats that were just misshapen basins of felt; old books and magazines, stained with tea leaves and the sodden heterogeneous mass of household garbage –Ruth Park> WASTE is also comprehensive; it may indicate that unused or rejected in one operation but possible for use in another capacity or under different circumstances <mechanics using cotton *waste* to clean their hands> <*waste* in lumbering, the parts of trees that could be used but are not> <barnyard wastes> <tea *waste*—slack bushes, waste leaf, and crushed sugarcane leaf and pulp –Eve Langley> RUBBISH now is likely to indicate a heterogeneous accumulation of worn-out, used-up, broken, rejected, or worthless materials or things <*rubbish*. This material includes the household and business wastes that are not classified as garbage or ashes. It includes paper, rags, excelsior and other packing, wood, glass, crockery, and metals –V. M. Ehlers & E. W. Steel> TRASH in general use has about the same suggestion as RUBBISH; it may refer to a somewhat lighter welter of discarded material and may be less likely to suggest separate objects and more likely to suggest a crumpled mass <cleaning the old newspapers, rags, tin cans and other *trash* out of the cellar> DEBRIS is likely to indicate broken fragments of bricks, rocks, walls, or buildings <cleaning up the *debris* after the fire> <the *debris* left after mining operations> GARBAGE now usu. indicates animal or vegetable refuse from the processes of shipping, preparing, and serving food <egg shells, orange peels, coffee grounds and the rest of the *garbage* after breakfast> OFFAL may refer to anything cut off or allowed to fall off in processing (as animal entrails or feet or fish heads or chicken heads); it may suggest the offensive but does not always do so, since such meat offal as hearts and livers may be sought for eating <'Offal!' she gasped. 'Take that carrion out' –Kenneth Roberts>."

*Webster's* at 1910.

*Webster's* at 18a (note 18.1). We understand that including together the words "rubbish," "trash," "garbage," "debris," and "refuse" in the synonymy means that the dictionary's lexicographers decided it necessary, or helpful, to provide an explanation for a group of words that are similar in meaning yet different enough to require careful distinguishing because they lack a complete equivalency.

Understood in that way, the legislature's inclusion of those same words—"rubbish, trash, garbage, debris or other refuse"—in ORS 164.805(1)(a) suggests two things: (1) that those words have a particular definitional relationship to each other that is indicated in the synonymy, and (2) that the legislature intentionally selected each word because, although they are related in meaning, their meaning varies enough to make it necessary to include all of them to encompass the conduct which the legislature intended to proscribe. That understanding leads us to consider separately each word in the phrase "rubbish, trash, garbage, debris or other refuse" to discern whether urine as a result of public urination fits within those words' ordinary meaning.

We turn to the meaning of "rubbish," which is relevantly defined as "miscellaneous useless valueless waste or rejected matter **:** TRASH, DEBRIS." *Webster's* at 1983. Under that definition, rubbish is either "miscellaneous useless valueless waste" or "rejected matter." But urine does not fit naturally under either alternative meaning. Under the first part, rubbish is "miscellaneous useless valueless waste." "Miscellaneous" is defined as "comprising members or items of different kinds **:** grouped together without system." *Id.* at 1442. That is, if rubbish involves "miscellaneous useless valueless waste," it describes an assorted collection of items—not one thing, like urine. As to the second part of the definition, because the human body eliminates urine from the body as a necessity, urine is not something that is rejected. That reading of rubbish is consonant with the explanation provided in the aforementioned synonymy, which explains that "RUBBISH now is likely to indicate a heterogeneous accumulation of worn-out, used up, broken, rejected, or worthless materials or things." *Id.* at 1910. Urine is indeed "valueless waste" or "worthless material," but it is

not a material that is commonly described as having been rejected because it is no longer useful.

As for the remaining words, "trash" is relevantly defined as "something worth relatively little or nothing *** JUNK, RUBBISH." *Id.* at 2432. The synonymy describes that the meaning of trash "in general use has about the same suggestion as RUBBISH; it may refer to a somewhat lighter welter of discarded material and may be less likely to suggest separate objects and more likely to suggest a crumpled mass <cleaning the old newspapers, rags, tin cans and other *trash* out of the cellar." *Id.* at 1910. "Debris" is relevantly defined as "the remains of something broken down or destroyed" and further explained in the synonymy as "likely to indicate broken fragments of bricks, rocks, walls, or buildings <cleaning up the *debris* after the fire> <the *debris* left after mining operations>." *Id.* at 582, 1910. "Garbage" means "refuse resulting from the preparation, cooking, and dispensing of food **:** SCRAPS <scrape the plates and take out the garbage>" and it is further explained that the word "now usu[ally] indicates animal or vegetable refuse from the processes of shipping, preparing, and serving food <egg shells, orange peels, coffee grounds and the rest of the *garbage* after breakfast>." *Id.* at 935, 1910. As noted, our task is to discern the *ordinary* meaning of common words given the context and the particular manner they are used in a statute, and urine does not fit within any of the preceding descriptions.[7]

With that said, the state emphasizes "refuse" as the word in ORS 164.805(1)(a) that best describes urine. The word "refuse," considered alone, means "the worthless or useless part of something **:** LEAVINGS, DREGS, DROSS" or is synonymous with "RUBBISH, TRASH, GARBAGE." *Id.* at 1910. The synonymy supplies an explanation that

[7] The dissent states that the use of the word "any" is generally recognized to be broadly inclusive and that we must therefore consider the relevant dictionary terms in their broadest sense. 294 Or App at 32-33 (Hadlock, J., dissenting). Be that as it may, each word following "any" has a particular, ordinary meaning given its context, and although the range of things that fit within that meaning should be considered comprehensively, that consideration should not be so expansive that it exceeds each word's ordinary and specific meaning.

"refuse applies to any matter or materials rejected as useless and fit only to be thrown out or away <there was a huge stinking heap of week-old *refuse* … old clothes, sad boots with calloused heels, and hats that were just misshapen basins of felt; old books and magazines, stained with tea leaves and the sodden heterogeneous mass of household garbage –Ruth Park>." *Id*. About that relevant definition, we first observe two things. First, refuse is the "worthless or useless part of *something*." The elimination of urine from *someone* is not easily described by that definition. Second, although refuse applies to "any matter or materials," that matter or materials is something that is "*rejected* as useless and fit only to be thrown out or away." Again, as we noted earlier, urinating is not commonly understood as an act of rejecting something as useless.

"[R]efuse," however, is not an isolated word in the statute. Rather, the series of things proscribed is "rubbish, trash, garbage, debris or other refuse," and "or other refuse" is the final, nonspecific part of that phrase. "In construing the text of a statute in context, one of the relevant maxims is '*ejusdem generis*,' which indicates that, when a nonspecific phrase follows a list of items, the nonspecific phrase refers to 'other items of the same kind.'" *State v. Essex*, 215 Or App 527, 530, 170 P3d 1094 (2007) (quoting *Vannatta v. Keisling*, 324 Or 514, 533, 931 P2d 770 (1997)). That is, we ordinarily assume that a nonspecific term in a series "'shares the same qualities as the specific terms that precede it.'" *State v. James*, 266 Or App 660, 668, 338 P3d 782 (2014) (quoting *ZRZ Realty Co. v. Beneficial Fire and Casualty Ins.*, 349 Or 117, 140-41, 241 P3d 710 (2010), *adh'd to as modified on recons*, 349 Or 657, 249 P3d 111 (2011)). In this context, including the phrase "or other refuse" suggests that the terms preceding it are a kind of refuse and that the legislature wanted to provide a term in the series that encompasses material or matter that the preceding terms may not describe. However, the maxim of *ejusdem generis* instructs that the phrase—"or other refuse"—may not be construed so broadly that it ceases to share the same qualities as the preceding terms—"rubbish, trash, garbage, [and] debris." The common characteristic of those terms is captured by the ordinary meaning of refuse: the part of something or matter

or materials rejected as useless. That common characteristic does not include urine.[8]

As for the context of ORS 164.805(a), there are a few things worth mentioning. Paragraph (b) of the offensive-littering statute prohibits "[d]raining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way." Although we agree with the dissent that "causing or permitting to be drained" sewage or human waste separates that conduct from the conduct that the dissent concludes is prohibited by paragraph (a), that paragraph (b) also prohibits "draining" means that there is overlap between the two paragraphs under the dissent's interpretation of paragraph (a). That is, if any act of getting rid of urine or, by implication, other excrement, is prohibited under paragraph (a), then that paragraph would already prohibit the draining of human waste and render paragraph (b) largely superfluous. Further, both paragraphs are punished as Class C misdemeanors, which would lead to the strange result that, under the dissent's conclusion, a single act of public urination carries the same penalty as the unlawful disposal of a waste reservoir.

In sum, when each relevant word in ORS 164.805 (1)(a) is properly considered in the context and the particular manner it is used, the ordinary meaning of those words do not proscribe defendant's conduct. Urine—the immediate product of defendant's conduct—does not fit within any of the ordinary meanings of the terms "rubbish, trash, garbage, debris or other refuse." Consequently, the trial court

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[8] Our conclusion is consistent with our holding in *Essex*. There, we held that the words "similar refuse" in subsection (2) of ORS 164.775, which makes it "unlawful for any person to discard any glass, cans or other similar refuse in any waters of the state, as [statutorily defined]," included fishing line and tackle discarded into the Columbia River. 215 Or App at 531. In doing so, we rejected the defendant's arguments that fishing line and tackle did not share similar characteristics as glass or cans by using the definition of "refuse" that we use here and concluded that the fishing line and tackle came within that definition because, in the defendant's case, he had *discarded* or *rejected* items that *ceased* to have value when confronted by the police. *Id*. at 532.

erred in denying defendant's motion for judgment of acquittal, and we therefore reverse defendant's conviction.

Reversed.

**HADLOCK, J.,** dissenting.

In my view, the statutory term "any *** other refuse"—as used in ORS 164.805(1)—is broad enough to encompass urine, whether from a human or another animal. I also view the term "deposit"—as used in the same statute—as broad enough to encompass the act of urination. Accordingly, I disagree with the majority's holding that the acts prohibited by ORS 164.805(1) do not include the act of public urination. I respectfully dissent.

As accurately described by the majority, the pertinent facts in this case are few. Defendant urinated on the side of a building, causing a stench. He was cited for violating ORS 164.805(1), which creates the crime of offensive littering. Defendant testified at trial that he had tried without success to obtain permission to use restrooms at two businesses. He urinated against the building because he was panicked and feared that he could not hold his urine any longer. Defendant unsuccessfully argued to the trial court that he was entitled to a judgment of acquittal because urine is not "rubbish, trash, garbage, debris or other refuse" as those terms are used in the offensive-littering statute.

I agree with the majority that, in reviewing the trial court's denial of defendant's motion, our task is one of statutory interpretation. ORS 164.805(1) provides that a person can commit the crime of offensive littering in several ways, including when the person "creates an objectionable stench or degrades the beauty or appearance of property or detracts from the natural cleanliness or safety of property" by intentionally "[d]iscarding or depositing any rubbish, trash, garbage, debris[,] or other refuse" on a public way. The majority begins its analysis by framing the initial question as "whether public urination *** is proscribed by the statute." 294 Or App at 23-24. I start at a different place, by attempting to discern, more generally, what conduct the statute prohibits; I then turn to the question of whether

public urination is encompassed within the scope of that prohibited conduct.

I begin with the words of the statute, considered in their context. The words "rubbish, trash, garbage, debris[, and] refuse" are not statutorily defined and are not terms of art, so we give them their ordinary meaning. *State v. Rankins*, 280 Or App 673, 678, 382 P3d 530 (2016). Although the dictionary aids us in that endeavor, *id*., we must be mindful that dictionaries "do not tell us what words mean, only what words *can* mean, depending on their context and the particular manner in which they are used." *State v. Cloutier*, 351 Or 68, 96, 261 P3d 1234 (2011) (emphasis in original). Accordingly, in considering dictionary definitions of the statutory terms, I examine how each possible definition "fits into the context of the statute itself." *State v. Gonzalez-Valenzuela*, 358 Or 451, 461, 365 P3d 116 (2015).

Looking to the definitions most relevant in this context, *Webster's* defines "rubbish" both in a specific way—"useless fragments of stone or other material left over in building or broken from ruined buildings"—and also in a more general way—"miscellaneous useless valueless waste or rejected matter." *Webster's Third New Int'l Dictionary* 1983 (unabridged ed 2002). "Trash" similarly has a particularized definition—"something in a crumbled or broken condition or mass"—and a more general definition—"something worth relatively little or nothing." *Id.* at 2432. The same is true of "garbage," which is defined to specifically include "refuse resulting from the preparation, cooking, and dispensing of food" and to include, more generally, "refuse of any kind: WASTE." *Id.* at 935. "Debris," too, has context-specific definitions—*e.g.*, "organic waste from dead or damaged tissue"—and one that could be considered more broad—"the remains of something broken down or destroyed." *Id.* at 582. Finally, *Webster's* defines the noun "refuse" to include "the worthless or useless part of something" and (as with the definitions of "garbage" and "rubbish") indicates that the term can mean "waste." *Id.* at 1910. "Waste," in turn, is defined to include unusable or worthless material. *Id.* at 2580.

In determining which (if any) of those meanings the legislature intended the statutory terms to carry, we must consider the particular context in which the terms are used. *Cloutier*, 351 Or at 96. The legislature began its description of the materials that the statute covers by using the word "any." That is, the statute prohibits the improper discarding or depositing of "*any* rubbish, trash, garbage, debris or other refuse." ORS 164.805(1)(a) (emphasis added). The term "any" is generally recognized to be "broadly inclusive," suggesting that the legislature intended the statutory terms to be given their most general, rather than narrow, meanings. *See Oregon State Denturist Ass'n v. Board of Dentistry*, 172 Or App 693, 702, 19 P3d 986 (2001) (use of the term "any" in a statutory definition "indicates that that definition is broadly inclusive"); *see also Totten v. New York Life Ins. Co.*, 298 Or 765, 771-72, 696 P2d 1082 (1985) (by using the term "any aircraft," instead of just "aircraft," in an insurance policy, the parties gave the clause "a broad meaning").

Taking into account the statutory terms' broad dictionary definitions, along with the legislature's use of the word "any," I conclude that the common characteristic of all the statutory terms—including the general term "other refuse"—is that they describe, in varying ways and with different emphases, material that lacks value or is "waste." *Cf. State v. Kurtz*, 350 Or 65, 74, 249 P3d 1271 (2011) (describing the principle of *ejusdem generis* as serving "to confine the interpretation of [a] general [statutory] term according to one or more common characteristic of * * * listed examples").[1]

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[1] I thus disagree with the majority's conclusion that the terms reflect "the part of something or matter or materials rejected as useless." 294 Or App at 29-30. By determining that improperly discarded or deposited material can be "refuse" only if it once was part of something that had value or if it was consciously rejected as valueless, the majority gives the statute an overly narrow reading that is, in my view, inconsistent with the most natural understanding of the statutory terms.

In any event, I am uncertain why urine would not fit even within the majority's conception of matter "rejected as useless." A person at least theoretically has choices about what to do with his or her own urine, including providing it to a medical professional or scientist for testing or another use. In that narrow circumstance, the urine has a kind of value. By urinating against a wall, instead of collecting the urine for a purpose, defendant demonstrated his own rejection of the urine as useless (as he would have had he urinated into a toilet or urinal).

I turn to a consideration of statutory context. Significantly, the legislature has specified that a person's improper discarding or depositing of refuse constitutes offensive littering only if it "creates an *objectionable stench* or degrades the beauty or appearance of property or detracts from the *natural cleanliness* or safety of property." ORS 164.805(1) (emphases added). The majority focuses on dictionary definitions that describe *items* or *objects* that may constitute "rubbish, trash, garbage, debris or other refuse." 294 Or App at 26-30. But the legislature's attention to offensive smells and lack of cleanliness strongly suggest that it was not concerned only with the improper discarding of those kinds of objects. Smells and uncleanliness often are associated with liquid materials, even (or perhaps particularly) those liquids—like urine—that may dry and leave an offensive and unsanitary residue. That context, too, leads me to conclude that the term "refuse" should be construed broadly to include any waste material that is susceptible to being improperly discarded or deposited in a way that causes uncleanliness or an objectionable stench.

That takes me to another part of the statute that I construe differently than the majority does. The conduct that the statute prohibits is the intentional "[d]iscarding or depositing" of certain materials in a way that results in uncleanliness or unsightliness of property, that degrades property's beauty or appearance, or that causes an objectionable stench. ORS 164.805(1). I agree with the majority that the ordinary meaning of "discarding" does not cover the act of urination (although I believe that a person can "discard" urine in other ways, such as by emptying a container in which urine has been collected). However, for the reasons set out below, I do not agree with the majority's suggestion that the term "depositing" may not encompass the act of urination. 294 Or App at 25. In my view, it can.

*Webster's* suggests that the most common use of the word "deposit" is to place "carefully or safely." *Webster's* at 605. That meaning does not, however, comfortably fit a statute that criminalizes the act of littering. 294 Or App at 24-25. Accordingly, I would look instead to dictionary definitions reflecting word usage that may be less common, but that makes more sense in this statutory context. One such

definition is "to set down or place"—but without the emphasis on care and safety. *Webster's* at 605. Another is "to lay down or let fall or drop by a natural process."[2] Thus, I would construe the word "deposit" to encompass the acts of setting or laying down, placing, or letting fall or drop by a natural process.

Even when it is only a necessary act of excretion, urination involves letting something fall or drop by a natural process. That alone is reason enough to conclude that "depositing" encompasses what happened here. But it is important to acknowledge that a person can intentionally urinate for purposes that are not benignly excretory. A person can decide to urinate in a particular location for reasons that range from being merely inconsiderate (such as urinating publicly when other options are available) to being deliberately offensive or aggressive (such as urinating on the doorstep of an individual or business with whom the person is unhappy). In those kinds of situations, the person has intentionally caused his or her urine to land in a specific desired spot, with a specific desired effect. In my view, the person has "deposited" urine, as that term is used in the offensive-littering statute, because the person has "placed" it where the person wishes it to land.

In sum, I would conclude that the term "other refuse" encompasses urine and that the act of urination can constitute "depositing" that urine within the meaning of the offensive-littering statute. Accordingly, I would hold that the trial court did not err when it denied defendant's motion for judgment of acquittal.[3]

The majority's contrary conclusion raises interesting questions. Significantly, the majority holds that urine

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[2] As the majority points out, *Webster's* gives examples of what it means by "let fall or drop by a natural process" that describe "the accretion or accumulation of as a natural deposit." *Webster's* at 605. I acknowledge that those examples do not align with the act of urination. However, given that none of the dictionary definitions of "deposit" fit easily into the offensive-littering statute, I do not view the "let fall or drop" definition as any less apt than the others.

[3] Because I would reject defendant's challenge to the denial of his motion for judgment of acquittal, I would—unlike the majority—need to address his two other assignments of error. I would reject the second assignment of error as unpreserved and not presenting an appropriate circumstance to correct any plain error (without deciding whether the court plainly erred in the way that defendant suggests) and would reject the third assignment of error without discussion.

can *never* be "refuse" for purposes of ORS 164.805(1)(a). 294 Or App at 30-31 ("Urine *** does not fit with any of the meanings of the terms 'rubbish, trash, garbage, or other refuse'".). If that is so, a person would not violate the statute by collecting urine and then intentionally discarding or depositing it on a public way, a public transportation facility, or another person's land. The same must be true of solid excrement, as I perceive nothing in the majority opinion that would treat feces differently from urine. Thus, under the majority's analysis, it seems likely that a person does not commit the crime of offensive littering when the person collects feces and later puts it on the sidewalk, in a bus shelter, or on another person's doorstep. More questions inevitably will arise: What about other bodily fluids or solids, such as phlegm or blood, that a person may intentionally transfer directly from the body onto a public way or private property? Is dog feces "refuse" for purposes of this statute?

Of course, our role is not to decide as a policy matter what behavior ought to be criminalized, but to determine the best we can what behavior the legislature *has* prohibited in a particular criminal statute. The majority has thoughtfully engaged in that task; although I disagree with its ultimate interpretation of the statute for the reasons I have set forth in this dissent, I acknowledge that the question is close. In contemplating what conduct might not be covered by the statute as construed by the majority, I do not mean to convey any opinion about whether that conduct should be criminalized. Rather, I seek only to explain part of the reason that I disagree with the majority's interpretation of the statute. In my view, the terms the legislature chose to use in ORS 164.805(1)(a) reveal its intention to broadly prohibit people from creating offensively smelly, unsightly, unsanitary, or unsafe situations by improperly ridding themselves of waste material on a public way or on the land of others. Construing the statutory terms narrowly, so as to exclude public urination, runs counter to that legislative intent.

I respectfully dissent.