RECENT CASES

STATUTORY INTERPRETATION — STARE DECISIS — SEVENTH CIRCUIT USES METHODOLOGICAL STARE DECISIS TO REVERSE SUBSTANTIVE PRECEDENT. — *FTC v. Credit Bureau Center, LLC*, 937 F.3d 764 (7th Cir. 2019).

Stare decisis — the idea that courts are bound by precedent — is a bedrock principle of our legal system.[1] But when applying precedent, how should judges define the scope of a prior holding? Roughly speaking, judges presume that they are bound by the substance of prior caselaw but reject the idea that they are bound by prior interpretive methodology.[2] In other words, judges generally embrace *substantive* stare decisis but reject *methodological* stare decisis. Recently, in *FTC v. Credit Bureau Center, LLC*,[3] the Seventh Circuit held that section 13(b) of the Federal Trade Commission Act[4] (FTC Act) does not contain an implied right to restitution,[5] reversing its own precedent and splitting with eight other circuits.[6] To justify the court's flip, the panel in *Credit Bureau Center* relied on methodological stare decisis. By prioritizing interpretive methodology over substantive precedent, the court inverted standard statutory interpretation doctrine. Ironically, this practice

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[1] *See, e.g.*, Michigan v. Bay Mills Indian Cmty., 134 S. Ct. 2024, 2036 (2014) (describing stare decisis as a "foundation stone of the rule of law, necessary to ensure that legal rules develop 'in a principled and intelligible fashion'" (quoting Vasquez v. Hillery, 474 U.S. 254, 265 (1986))).

[2] *See, e.g.*, Kisor v. Wilkie, 139 S. Ct. 2400, 2444 (2019) (Gorsuch, J., concurring in the judgment) ("[W]e do not regard statements in our opinions about such generally applicable interpretive methods, like the proper weight to afford historical practice in constitutional cases or legislative history in statutory cases, as binding future Justices with the full force of horizontal *stare decisis*."); Abbe R. Gluck & Richard A. Posner, *Statutory Interpretation on the Bench: A Survey of Forty-Two Judges on the Federal Courts of Appeals*, 131 HARV. L. REV. 1298, 1344 (2018) ("Although the federal courts, including the Supreme Court, generally 'give "super strong" stare decisis effect to *substantive* statutory precedents' (interpretations about what a statute substantively means), the federal courts generally do not treat the methodology (the rules, presumptions, or other tools it applies) as precedential for the next case, even where the same statute is being construed." (footnotes omitted) (quoting Abbe R. Gluck, *Intersystemic Statutory Interpretation: Methodology as "Law" and the* Erie *Doctrine*, 120 YALE L.J. 1898, 1917 (2011))).

[3] 937 F.3d 764 (7th Cir. 2019).

[4] 15 U.S.C. §§ 41–58 (2012).

[5] *Credit Bureau Ctr.*, 937 F.3d at 767.

[6] *Compare id.*, *with* FTC v. AMG Capital Mgmt., LLC, 910 F.3d 417, 426 (9th Cir. 2018), FTC v. Ross, 743 F.3d 886, 890–92 (4th Cir. 2014), FTC v. Bronson Partners, LLC, 654 F.3d 359, 365–67 (2d Cir. 2011), FTC v. Magazine Sols., LLC, 432 F. App'x 155, 158 n.2 (3d Cir. 2011), FTC v. Direct Mktg. Concepts, Inc., 624 F.3d 1, 15 (1st Cir. 2010), FTC v. Freecom Commc'ns, Inc., 401 F.3d 1192, 1202 n.6 (10th Cir. 2005), FTC v. Gem Merch. Corp., 87 F.3d 466, 468–70 (11th Cir. 1996), *and* FTC v. Sec. Rare Coin & Bullion Corp., 931 F.2d 1312, 1314–15 (8th Cir. 1991). But recently, some judges have raised doubts about the FTC's interpretation of section 13(b). *See* FTC v. Shire ViroPharma, Inc., 917 F.3d 147, 161 (3d Cir. 2019) (holding that section 13(b) only applies to "current[]" or "foreseeable" violations of the law); *AMG Capital Mgmt.*, 910 F.3d at 429 (O'Scannlain, J., specially concurring) (urging the Ninth Circuit to rehear the case en banc and narrow the scope of section 13(b)).

undermines the values stare decisis is meant to protect — including reliance interests, fidelity to Congress, and the separation of powers.

Credit Bureau Center, an online credit-monitoring service owned by Michael Brown, offered customers a "free" credit score and credit report.[7] But this "free" report came with a catch. Customers who signed up for the report were automatically enrolled in a recurring $29.94 monthly subscription plan.[8] What's more, Brown hired a contractor who posted fake real estate listings on Craigslist and instructed unsuspecting renters to register for Credit Bureau Center's "free" report.[9]

The Federal Trade Commission (FTC) has broad authority to protect consumers from these sorts of "unfair or deceptive acts or practices."[10] For decades, the Commission's preferred enforcement tool has been section 13(b) of the FTC Act.[11] Section 13(b) provides that "in proper cases the Commission may seek, and after proper proof, the court may issue, a permanent injunction."[12] Notably, section 13(b) does not explicitly mention restitution or other forms of equitable relief. Nevertheless, there is more than three decades of precedent holding that section 13(b) implicitly grants the Commission a wide range of equitable remedies, including restitution.[13] The FTC sued Brown and Credit Bureau Center under section 13(b), seeking both restitution and a permanent injunction limiting Brown's involvement in the credit-monitoring industry.[14]

The district court granted the FTC's motion for summary judgment, imposing a permanent injunction and awarding five million dollars in restitution.[15] First, the court held that Credit Bureau Center's deceptive schemes violated consumer protection laws.[16] Second, the court

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[7] *Credit Bureau Ctr.*, 937 F.3d at 766.

[8] *Id.*

[9] *Id.*

[10] FTC Act § 5(a)(1)–(2), 15 U.S.C. § 45(a)(1)–(2) (2012).

[11] 15 U.S.C. § 53(b). In theory, the FTC can obtain similar relief by (1) seeking a preliminary injunction to freeze assets, (2) obtaining a cease-and-desist order after an administrative hearing, and (3) returning to district court to seek restitution. David M. FitzGerald, Former Assistant Dir. for Litig., FTC's Bureau of Consumer Prot., The Genesis of Consumer Protection Remedies Under Section 13(b) of the FTC Act 11–12 (Sept. 23, 2004), https://www.ftc.gov/sites/default/files/documents/public_events/FTC%2090th%20Anniversary%20Symposium/fitzgeraldremedies.pdf [https://perma.cc/2DWM-TT7R]. But section 13(b) is a "much more effective and efficient weapon against fraud." *Id.* at 19.

[12] FTC Act § 13(b), 15 U.S.C. § 53(b).

[13] *See* David C. Vladeck, *Time to Stop Digging: Failed Attacks on FTC Authority to Obtain Consumer Redress*, ANTITRUST, Fall 2016, at 89, 89 ("This grant of injunctive authority has long been construed to encompass a broad range of equitable remedies, including asset freezes, the appointment of receivers, restitution, rescission, and the disgorgement of ill-gotten gains.").

[14] *Credit Bureau Ctr.*, 937 F.3d at 766, 768.

[15] FTC v. Credit Bureau Ctr., LLC, 325 F. Supp. 3d 852, 867, 869–870 (N.D. Ill. 2018).

[16] *Id.* at 865. Specifically, the court held that Credit Bureau Center violated section 5 of the FTC Act, 15 U.S.C. § 45(a)(1); the Restore Online Shoppers' Confidence Act, 15 U.S.C. § 8403; and the Free Credit Report Rule, 12 C.F.R. § 1022.138 (2019), of the Fair Credit Reporting Act, 15 U.S.C. 1681j(g)(1). *Credit Bureau Ctr.*, 325 F. Supp. 3d at 858.

dismissed Credit Bureau Center's claim that the plain text of section 13(b) does not authorize restitution.[17] Thirty years earlier, in *FTC v. Amy Travel Service, Inc.*,[18] the Seventh Circuit held that section 13(b)'s "grant of authority . . . to issue permanent injunctions includes the power to order any ancillary equitable relief," including restitution.[19] As the district court explained, *Amy Travel* "continues to control the disposition of this issue."[20]

The Seventh Circuit affirmed the permanent injunction but vacated the restitution award.[21] Writing for the panel, Judge Sykes[22] held that there is no implied right to restitution in section 13(b), overturning the Seventh Circuit's decision in *Amy Travel*.[23] In most circuits, overturning a prior decision requires rehearing en banc.[24] But the panel relied on a local procedural rule — Circuit Rule 40(e)[25] — to reverse *Amy Travel* without rehearing by the full court.[26] Judge Sykes began with the text of section 13(b) and the structure of the statute. First, she explained that the plain meaning of the term "injunction" does not "encompass other discrete forms of equitable relief like restitution."[27] Next, Judge Sykes turned to the structure of the FTC Act. Two other provisions of the Act authorize equitable relief with more straightforward language than section 13(b).[28] The "conspicuous" omission of this sort of plain language in section 13(b) — when Congress included it in other provisions of the very same Act — led the panel to conclude that the FTC's reading of section 13(b) swept too broadly.[29] In contrast, Judge Sykes explained,

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[17] *Credit Bureau Ctr.*, 325 F. Supp. 3d at 868.

[18] 875 F.2d 564 (7th Cir. 1989).

[19] *Id.* at 571–72.

[20] *Credit Bureau Ctr.*, 325 F. Supp. 3d at 868.

[21] *Credit Bureau Ctr.*, 937 F.3d at 786.

[22] Judge Sykes was joined by Judges Manion and Brennan.

[23] *Credit Bureau Ctr.*, 937 F.3d at 785–86. Before turning to section 13(b), Judge Sykes quickly addressed two other arguments. First, Judge Sykes affirmed the lower court's determination that Credit Bureau Center violated consumer protection laws. *Id.* at 769–70. Second, Judge Sykes rejected the claim that the injunction violated the Eighth Amendment's Excessive Fines Clause. *Id.* at 770–71.

[24] Joseph W. Mead, *Stare Decisis in the Inferior Courts of the United States*, 12 NEV. L.J. 787, 794–95, 815 (2012).

[25] 7TH CIR. R. 40(e).

[26] *Credit Bureau Ctr.*, 937 F.3d at 767 n.1. Per Rule 40(e), a panel of three judges can overturn circuit precedent if they circulate a draft opinion to all active members of the court and "a majority of them do not vote to rehear en banc the issue of whether the position should be adopted." 7TH CIR. R. 40(e).

[27] *Credit Bureau Ctr.*, 937 F.3d at 772.

[28] *Id.* at 773. First, when a person violates a cease-and-desist order, the FTC can seek "injunctions and . . . further equitable relief." 15 U.S.C. § 45(*l*) (2012). Second, when a person violates a rule promulgated by the FTC, the agency can seek "the refund of money" and other forms of consumer redress. *Id.* § 57b(b).

[29] *Credit Bureau Ctr.*, 937 F.3d at 773–75.

"[s]ection 13(b) serves a different, forward-facing role" and is intended to enjoin "ongoing" or "imminent" violations of the law.[30]

But what of precedent? Thirty years earlier, the Seventh Circuit held in *Amy Travel* that section 13(b)'s permanent injunction authority also included broad power to grant equitable relief.[31] *Credit Bureau Center* overturned this holding. As the panel explained, "[s]tare decisis cannot justify adherence to an approach that Supreme Court precedent forecloses."[32] According to the panel, modern implied-remedies jurisprudence — exemplified in *Meghrig v. KFC Western, Inc.*[33] — demands a textualist "plain reading" of the statute.[34] In *Meghrig*, the Supreme Court narrowly construed a statute creating a private right of action to sue polluters.[35] *Meghrig* hinged on the textualist presumption that when a statute contains "elaborate enforcement provisions," courts should be wary of reading in additional remedies by implication.[36] Contrasting *Amy Travel* with *Meghrig*, Judge Sykes explained that "an exploration of statutory purpose is no longer the Supreme Court's polestar in cases raising interpretive questions about the scope of statutory remedies."[37] Rather, *Meghrig* and other precedents compelled the panel to focus on "a close analysis of statutory text and structure" and reject the FTC's broad reading of section 13(b).[38]

Chief Judge Wood[39] dissented from the Seventh Circuit's denial of rehearing en banc.[40] She began by criticizing the panel's use of Circuit Rule 40(e) to overturn *Amy Travel*.[41] As she explained, *Credit Bureau Center* was a "singularly inappropriate" case for Rule 40(e): given the difficult statutory interpretation questions and longstanding precedent in play, *Credit Bureau Center* deserved consideration by the full court.[42] Next, she turned to the panel's construction of section 13(b). In contrast to Judge Sykes, Chief Judge Wood took a capacious view of the plain meaning of "injunction": an "injunction" is simply an "order from the

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[30] *Id.* at 774.

[31] FTC v. Amy Travel Serv., Inc., 875 F.2d 564, 572 (7th Cir. 1989).

[32] *Credit Bureau Ctr.*, 937 F.3d at 767.

[33] 516 U.S. 479 (1996).

[34] *Credit Bureau Ctr.*, 937 F.3d at 780 (quoting *Meghrig*, 516 U.S. at 484); *see also id.* at 782.

[35] *Meghrig*, 516 U.S. at 487–88.

[36] *Id.* (quoting Middlesex Cty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n, 453 U.S. 1, 14 (1981)).

[37] *Credit Bureau Ctr.*, 937 F.3d at 782. Judge Sykes reviewed the "road to *Amy Travel*" in detail. *Id.* at 775; *see id.* at 775–79. According to Judge Sykes, *Amy Travel* — and the Supreme Court precedents it relies on — is typical of an earlier era where courts would "resolve ambiguities by identifying a statute's purpose," rather than focusing on the text and structure of the statute. *Id.* at 777.

[38] *Id.* at 782.

[39] Chief Judge Wood was joined by Judges Rovner and Hamilton.

[40] *Credit Bureau Ctr.*, 937 F.3d at 786 (Wood, C.J., dissenting from the denial of rehearing en banc).

[41] *Id.*

[42] *Id.*

court either to do something or to refrain from doing something."[43] And that "something" may include "requiring the enjoined party to return ill-gotten gains."[44] Chief Judge Wood went on to distinguish *Meghrig* from the issue here. Whereas *Meghrig* adjudicated the cause of action available to a private plaintiff, *Credit Bureau Center* involved the scope of the remedy available to the government.[45] Chief Judge Wood argued that courts should interpret statutes expressly granting the government a remedy more broadly than statutes creating an implied right of action for private plaintiffs.[46]

Credit Bureau Center highlights a destabilizing twist on stare decisis. In *Credit Bureau Center*, the Seventh Circuit reversed longstanding precedent and created a split with eight other circuits. According to the panel, Supreme Court precedent compelled this result. To reach this conclusion, the panel implicitly relied on methodological stare decisis — the assumption that methodological pronouncements bind future courts. By prioritizing interpretive methodology over substantive precedent, the court inverted standard statutory interpretation doctrine. Critically, this practice undermines the values stare decisis is meant to protect.

While substantive stare decisis is entrenched in our legal system, federal courts generally reject methodological stare decisis.[47] In other words, courts generally do not give precedential effect to statements about interpretive methodology.[48] For example, if a statute bans "vehicles in the park," a court might give stare decisis effect to a substantive holding banning scooters, but it would not treat the choice of interpretive methodology — such as using textualist canons of construction or legislative history — as binding in future cases.[49]

Stare decisis comes in two forms: horizontal stare decisis (a court bound by its own precedent), and vertical stare decisis (a court bound by a higher court's precedent).[50] Federal courts generally reject methodological stare decisis in both contexts. In 2008, the Supreme Court recognized that its methodological pronouncements do not

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[43] *Id.* at 787.

[44] *Id.*

[45] *Id.* at 792–93.

[46] *Id.* at 789.

[47] *See supra* note 2.

[48] Sometimes, there is a fuzzy boundary between methodological statements and substantive holdings. The *Chevron* doctrine is arguably the most important principle that straddles this line. *See* Gluck & Posner, *supra* note 2, at 1345–46. But the sort of textualist canon at issue here is a more straightforward example of methodology. *See infra* note 59.

[49] *See* Abbe R. Gluck, *The States as Laboratories of Statutory Interpretation: Methodological Consensus and the New Modified Textualism*, 119 YALE L.J. 1750, 1766 (2010). However, as Professor Abbe Gluck documents, at least four states have adopted methodological stare decisis. *Id.* at 1823. Of those four, only one regularly relies on methodological stare decisis to overturn preexisting substantive precedents. *Id.* at 1823–24.

[50] *See* BRYAN A. GARNER ET AL., THE LAW OF JUDICIAL PRECEDENT 27–43 (2016).

warrant reversing substantive precedent: "Principles of *stare decisis*, after all, demand respect for precedent whether judicial methods of interpretation change or stay the same. Were that not so, those principles would fail to achieve the legal stability that they seek and upon which the rule of law depends."[51] The Supreme Court was speaking of *horizontal* methodological stare decisis. But the same logic applies to *vertical* methodological stare decisis. The Court regularly makes inconsistent pronouncements regarding interpretive methodology, belying the notion that its methodological precedents are binding.[52] And in a study by Professor Abbe Gluck and Judge Posner, only a small minority of federal judges surveyed said that they were beholden to the Supreme Court's methodological pronouncements.[53] Nevertheless, though methodological precedents are not binding, methodology still matters. Methodological canons of construction are useful linguistic presumptions that help courts faithfully interpret the legislature's words.[54] While these canons do not carry the weight of precedent, they are pragmatic "rules of thumb that help courts determine the meaning of legislation."[55]

Despite this consensus that substance — not methodology — determines the scope of precedent, the *Credit Bureau Center* panel implicitly embraced methodological stare decisis by treating *Meghrig*'s interpretive approach as binding. Judge Sykes repeatedly characterized the holding in *Meghrig* in textualist terms: she explained that *Meghrig* compelled the court to focus on the "text and structure" of the FTC Act,[56] criticized *Amy Travel*'s "starkly atextual" approach to statutory interpretation,[57] and emphasized that "statutory purpose is no longer the Supreme Court's polestar."[58] The panel invoked the full weight of stare decisis to overturn *Amy Travel*, holding that *Meghrig* "forecloses" the FTC's interpretation of section 13(b).[59]

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[51] CBOCS W., Inc. v. Humphries, 553 U.S. 442, 457 (2008).

[52] *See* Sydney Foster, *Should Courts Give Stare Decisis Effect to Statutory Interpretation Methodology?*, 96 GEO. L.J. 1863, 1880–81 (2008).

[53] Gluck & Posner, *supra* note 2, at 1344–45.

[54] *See* William N. Eskridge, Jr., *Norms, Empiricism, and Canons in Statutory Interpretation*, 66 U. CHI. L. REV. 671, 675–78 (1999).

[55] Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253 (1992).

[56] *Credit Bureau Ctr.*, 937 F.3d at 782.

[57] *Id.* at 767.

[58] *Id.* at 782.

[59] *Id.* at 767. It is hard to read *Credit Bureau Center* as a simple case of a lower court bound by substantive vertical stare decisis. First, the substantive holding in *Meghrig* is distinguishable from *Amy Travel* — the remedies available to a government agency are not necessarily analogous to the causes of action available to a private plaintiff. *Id.* at 792–93 (Wood, C.J., dissenting from the denial of rehearing en banc). Second, *Meghrig* itself described the interpretive principle at issue as a canon of statutory construction, *not* an ironclad legal holding. 516 U.S. 479, 488 (1996) ("[I]t is an elemental *canon of statutory construction* that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." (alteration in original) (emphasis added) (quoting Middlesex Cty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n, 453 U.S.

This interpretive move cannot be justified as either a straightforward application of stare decisis or as a pragmatic application of methodological canons. Rather, *Credit Bureau Center*'s reliance on methodology to overturn substantive precedent undermines the values stare decisis is meant to protect.[60] First, consider reliance interests. Private citizens, corporations, and government agencies all rely on precedent to structure their affairs. Undermining settled expectations raises costs for litigants and courts by reopening settled questions.[61] *Credit Bureau Center* illuminates these costs. The FTC is not the only federal agency that relies on implied equitable remedies. Agencies such as the SEC, the CFTC, and the FDA all rely on similar statutory authority.[62] Each of these agencies — and the litigants before them — has to grapple with the uncertainty created by *Credit Bureau Center*. Furthermore, because interpretive methodologies have changed over time, reliance on methodological stare decisis could threaten a wide array of precedents. For much of the twentieth century, courts prioritized the "spirit" of a statute over its plain meaning.[63] Though this interpretive approach has fallen out of favor,[64] precedents from this era endure — precedents that could be destabilized by methodological stare decisis.[65]

Second, using methodological stare decisis to overturn existing precedent may disregard Congress's expectations. Congress has the power to revise a statute and correct a court's mistakes. Thus, Congress's decision to reenact a statute without explicitly overriding precedent provides "support for the conclusion that Congress [has] accepted and ratified" the courts' interpretation of the statute.[66] This reenactment

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1, 14–15 (1981))). Third, it is telling that of the seven circuit courts that have upheld the FTC's implied right to restitution after *Meghrig*, none even addressed how *Meghrig* impacted the court's reading of section 13(b). *See* cases cited *supra* note 6.

60 Some scholars have argued that courts should use methodological stare decisis to decide issues of first impression. *See, e.g.*, Foster, *supra* note 52, at 1897–98. The focus here is on a very different set of circumstances — the use of methodological stare decisis to reverse existing caselaw.

61 *See* Jonathan R. Macey, *The Internal and External Costs and Benefits of Stare Decisis*, 65 CHI.-KENT L. REV. 93, 106–10 (1989).

62 *See* Vladeck, *supra* note 13, at 94 n.33 (collecting similar statutory schemes).

63 John F. Manning, *The New Purposivism*, 2011 SUP. CT. REV. 113, 113 (quoting Church of the Holy Trinity v. United States, 143 U.S. 457, 459 (1892)).

64 *Id.* at 113–14.

65 For example, in *United Steelworkers v. Weber*, 443 U.S. 193 (1979), the Supreme Court held that the Civil Rights Act of 1964 allows certain forms of affirmative action in the private sector. *Id.* at 209. *Weber* relied on the purposivist maxim that "a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers." *Id.* at 201 (quoting *Church of the Holy Trinity*, 143 U.S. at 459). Using methodological stare decisis to strike down substantive precedent threatens reliance on decisions like *Weber*. *See* Stephen M. Rich, *A Matter of Perspective: Textualism, Stare Decisis, and Federal Employment Discrimination Law*, 87 S. CAL. L. REV. 1197, 1198–1201 (2014) (highlighting the Supreme Court's turn to textualism in more recent employment discrimination cases).

66 Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507, 2520 (2015); *see also id.* ("If a word or phrase has been . . . given a uniform interpretation by inferior courts . . . , a

canon will often trump other canons of construction, since it offers more specific insight into the meaning of the text. Once again, *Credit Bureau Center* is illustrative. For over thirty-five years, circuit courts unanimously held that section 13(b) grants the FTC the power to seek broad equitable relief.[67] Congress had ample opportunity to revisit the statute. Instead, it let section 13(b) stand while revisiting other portions of the FTC Act.[68]

Finally, this application of methodological stare decisis should be rejected because of its tendency to undermine judicial restraint and, therefore, the separation of powers. Unlike Congress, courts are countermajoritarian institutions that lack policymaking expertise. By compelling judges to follow precedent, stare decisis constrains judicial discretion.[69] But if courts can use methodological stare decisis to overturn substantive precedent, they have broad power to reverse longstanding caselaw. In many cases, there is plausible precedent for both sides of a methodological proposition, allowing judges to justify a wide range of outcomes.[70] For example, *Credit Bureau Center* pits the textualist presumption that remedies should be expressly stated against the principle that "equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command."[71] Opening up this debate gives substantial discretion to the courts. In contrast, deference to an on-point precedent constrains judicial decisionmaking.

In *Credit Bureau Center*, the panel prioritized methodological stare decisis over substantive precedent, inverting standard statutory interpretation doctrine. Ironically, this peculiar use of stare decisis undermines the values stare decisis is meant to protect. And because interpretive methodologies have changed over time, the sort of maneuver used in *Credit Bureau Center* threatens a wide variety of substantive precedents. To respect reliance interests, congressional expectations, and the separation of powers, courts should reject the use of methodological stare decisis to overturn substantive precedent.

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later version of that act perpetuating the wording is presumed to carry forward that interpretation." (quoting ANTONIN SCALIA & BRYAN A. GARNER, READING LAW 322 (2012) (omissions in original)).

[67] In 1982, the Ninth Circuit became the first court to adopt this reading of the statute. *See* FTC v. H.N. Singer, Inc., 668 F.2d 1107, 1112–13 (9th Cir. 1982).

[68] Brief of the FTC at 32–34, *Credit Bureau Ctr.*, 937 F.3d 764 (Nos. 18-2847, 18-3310).

[69] *See* Boys Mkts., Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235, 257–58 (1970) (Black, J., dissenting) ("When the law has been settled by an earlier case then any subsequent 'reinterpretation' of the statute is gratuitous and neither more nor less than an amendment: it is no different in effect from a judicial alteration of language that Congress itself placed in the statute.").

[70] Professor Karl Llewellyn famously documented twenty-eight pairs of interpretive canons and counter-canons. Karl N. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 VAND. L. REV. 395, 401–06 (1950).

[71] Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946). Judge Sykes makes the case that modern implied-remedies jurisprudence has cabined this principle. *Credit Bureau Ctr.*, 937 F.3d at 779–82. On the other hand, the Supreme Court continues to favorably cite *Porter*. *See, e.g.*, Kansas v. Nebraska, 135 S. Ct. 1042, 1053 (2015).