STATUTORY INTERPRETATION — FREEDOM OF INFORMATION ACT — D.C. CIRCUIT ARTICULATES PARTICULARIZED "FORESEEABLE HARM" STANDARD FOR CERTAIN WITHHOLDINGS. — *Reporters Committee for Freedom of the Press v. FBI*, 3 F.4th 350 (D.C. Cir. 2021).

In 1966, Congress enacted the Freedom of Information Act[1] (FOIA) with the grand vision to "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny,"[2] providing that federal agencies, "upon any request for records . . . , shall make the records promptly available to any person."[3] However, Congress also included nine exemptions from disclosure,[4] highlighting the careful balance the law strikes between "the right of the public to know and the need of the Government to keep information in confidence."[5] The latest amendment to the statute, the FOIA Improvement Act of 2016,[6] provides that an agency can withhold information under an exemption only if it "reasonably foresees that disclosure would harm an interest protected by an exemption" or if "disclosure is prohibited by law."[7] Recently, in *Reporters Committee for Freedom of the Press v. FBI*,[8] the D.C. Circuit held that the foreseeable harm standard is not satisfied by

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[1] 5 U.S.C. § 552.

[2] Dep't of the Air Force v. Rose, 425 U.S. 352, 361 (1976) (quoting Rose v. Dep't of the Air Force, 495 F.2d 261, 263 (2d Cir. 1974)).

[3] 5 U.S.C. § 552(a)(3)(A).

[4] *Id.* § 552(b).

[5] John Doe Agency v. John Doe Corp., 493 U.S. 146, 152 (1989) (quoting H.R. REP. NO. 89-1497, at 6 (1966)). Since its enactment, this balance has shifted with the political wills of administrations, *compare, e.g.*, Memorandum from John Ashcroft, Att'y Gen., to Heads of All Fed. Dep'ts & Agencies (Oct. 12, 2001), https://www.justice.gov/archive/oip/011012.htm [https://perma.cc/Z3BG-7ZRK] ("[A] decision . . . to disclose information . . . should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated . . . ."), *with* Memorandum from Barack Obama, President, to Heads of Exec. Dep'ts & Agencies (Jan. 21, 2009), https://obamawhitehouse.archives.gov/the-press-office/freedom-information-act [https://perma.cc/X6AN-TBS9] ("The [FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails."), as well as from various statutory amendments, *see* MEGHAN M. STUESSY, CONG. RSCH. SERV., R41933, THE FREEDOM OF INFORMATION ACT (FOIA): BACKGROUND, LEGISLATION, AND POLICY ISSUES (2015); *see also* Antonin Scalia, *The Freedom of Information Act Has No Clothes*, REGULATION, Mar./Apr. 1982, at 14, 15 (describing the original 1966 statute as tipped too far towards the Executive's interests and the 1974 amendments as a way to remedy this).

[6] Pub. L. No. 114-185, 130 Stat. 538 (codified at 5 U.S.C. § 552).

[7] *Id.* at 539 (codified at 5 U.S.C. § 552(a)(8)(A)(i)). This language was taken from guidance from President Obama's Department of Justice (DOJ). *See* Memorandum from Eric Holder, Att'y Gen., to Heads of Exec. Dep'ts & Agencies (Mar. 19, 2009), https://www.justice.gov/sites/default/files/ag/legacy/2009/06/24/foia-memo-march2009.pdf [https://perma.cc/EE8Y-MP7W] ("[T]he [DOJ] will defend a denial of a FOIA request only if (1) the agency reasonably foresees that disclosure would harm an interest protected by one of the statutory exemptions, or (2) disclosure is prohibited by law.").

[8] Reps. Comm. for Freedom of the Press v. FBI (*Reps. Comm. IV*), 3 F.4th 350 (D.C. Cir. 2021).

"generalized and conclusory statements,"[9] but instead requires a rigorous and particularized showing of harm for each category of documents to be withheld.[10] In interpreting the statute, the court claimed that the meaning of the statutory text alone was apparent, but clarified no further and instead relied on its analysis of the amendment's legislative history.[11] By departing from the textualist approach to FOIA endorsed by the Supreme Court, the D.C. Circuit intensified the methodological dissonance between the courts and neglected an opportunity to derive the benefits that flow from greater interpretive uniformity.

In June 2007, the Federal Bureau of Investigation (FBI) investigated a series of high school bomb threats by using a surveillance program to monitor the suspect's electronic activities.[12] Seven years later, in October 2014, the media found out that this was done by having a special agent identify himself as an Associated Press reporter and ask the suspect for input on an article, baiting him into clicking a link that installed the tracking malware.[13] This discovery elicited widespread criticism from the press and members of Congress,[14] leading then–FBI Director James Comey to pen a letter to the editor in November 2014 in the *New York Times* defending the practice.[15] In September 2016, the Department of Justice's (DOJ) Inspector General revealed that the FBI had adopted an interim policy in June 2016 restricting agents impersonating members of the press.[16]

Meanwhile, back in October 2014, the Reporters Committee for the Freedom of the Press had submitted two FOIA requests to the FBI asking for records related to impersonation of the press.[17] In response to the first request, the FBI claimed to have not found any relevant records, and it ignored all other requests.[18] Unhappy with the response, the Reporters Committee and Associated Press ("News Organizations") sued the FBI and DOJ, alleging that the FBI engaged in wrongful withholding.[19] In 2017, the district court granted summary judgment for the

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[9] *Id.* at 370.

[10] *See id.* at 369–70.

[11] *See id.* at 369 & n.2.

[12] Kevin Poulsen, *FBI's Secret Spyware Tracks Down Teen Who Made Bomb Threats*, WIRED (July 18, 2007, 12:00 PM), https://www.wired.com/2007/07/fbi-spyware [https://perma.cc/V4JW-99TR].

[13] *Reps. Comm. IV*, 3 F.4th at 358.

[14] *Id.* at 358–59.

[15] James B. Comey, Letter to the Editor, *To Catch a Crook: The F.B.I.'s Use of Deception*, N.Y. TIMES (Nov. 6, 2014), https://www.nytimes.com/2014/11/07/opinion/to-catch-a-crook-the-fbis-use-of-deception.html [https://perma.cc/NJL9-PPVU].

[16] *Reps. Comm. IV*, 3 F.4th at 359. The new policy prohibited the behavior unless approved by a high-ranking official. *Id.*

[17] *Id.* The Associated Press submitted a similar FOIA request days later. *Id.*

[18] *Id.*

[19] Reps. Comm. for Freedom of the Press v. FBI (*Reps. Comm. II*), 877 F.3d 399, 401 (D.C. Cir. 2017). Plaintiffs alleged that the FBI conducted an inadequate search for records. *Id.*

government,[20] but the D.C. Circuit reversed and remanded on appeal.[21] In response, the FBI began releasing records, but still withheld some under several of the enumerated FOIA exemptions.[22]

Still unsatisfied, the News Organizations again challenged the validity of the exemptions.[23] Of particular note, the News Organizations argued the government did not justify its use of the deliberative process privilege under Exemption 5[24] for six categories of documents: (1) emails between FBI personnel and Director Comey discussing draft revisions of his *New York Times* letter, (2) drafts of the Inspector General's report, (3) the FBI's "Factual Accuracy Comments" on said draft report, (4) drafts of "PowerPoint slides allegedly concerning undercover operations," (5) the Inspector General's cover memo accompanying the final Inspector General report, and (6) emails between FBI attorneys and other personnel discussing recommendations for policy changes in the approval process for news media impersonation.[25] The district court noted that the new foreseeable harm standard from the FOIA Improvement Act applied to FOIA requests made after June 2016, and that while the D.C. Circuit had "not yet weighed in on [the] new requirement," the court agreed that agencies must at least "group together like records" and "explain the foreseeable harm of disclosure for each category."[26] The court then determined that the government provided "sufficient detail" on the foreseeable harm for each set of documents, granting summary judgment for the government and upholding all of the withholdings.[27] The News Organizations appealed.[28]

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[20] Reps. Comm. for Freedom of the Press v. FBI (*Reps. Comm. I*), 236 F. Supp. 3d 268 (D.D.C. 2017). The News Organizations appealed and, while their appeal was pending, submitted another FOIA request to the FBI. *Reps. Comm. IV*, 3 F.4th at 360. They asked for six categories of information: the first two were identical to the prior request, except they included records from after 2014, while the latter four concerned the DOJ Inspector General's 2016 report. *Id.* The FBI again failed to respond, the Reporters Committee filed another lawsuit, and the district court treated it as a related case. *Id.*

[21] *Reps. Comm. II*, 877 F.3d at 408. The court found that material factual questions remained as to the adequacy of the search. *Id.*

[22] *Reps. Comm. IV*, 3 F.4th at 360. *See generally* 5 U.S.C. § 552(b).

[23] *Reps. Comm. IV*, 3 F.4th at 360.

[24] 5 U.S.C. § 552(b)(5). Exemption 5 shields "documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 150 (1975) (internal quotation marks and citation omitted).

[25] *Reps. Comm. IV*, 3 F.4th at 360–61.

[26] Reps. Comm. for Freedom of the Press v. FBI (*Reps. Comm. III*), No. 15-1392, slip op. at 8 (D.D.C. Mar. 20, 2020) (quoting Rosenberg v. U.S. Dep't of Def., 342 F. Supp. 3d 62, 78 (D.D.C. 2018)).

[27] *Id.* at 2, 14. The district court accepted generalized findings of harm, such as a declaration that disclosure of the drafts of the Inspector General report would "reveal the thought and decision-making processes of the [Office of the Inspector General] and may not reflect the agency's final decisions," *id.* at 16, which simply repeated the rationale for Exemption 5.

[28] *Reps. Comm. IV*, 3 F.4th at 361.

The D.C. Circuit affirmed in part, reversed in part, and dismissed in part.[29] Writing for the court, Judge Millett[30] affirmed the district court's judgment as to the Comey emails and internal FBI emails discussing policy changes, but reversed the decision allowing the FBI to withhold drafts of the Inspector General's report, the Factual Accuracy Comments, and the draft PowerPoint presentations.[31] First, the court analyzed whether each set of documents was both predecisional and deliberative, the standard required to invoke the deliberative process privilege.[32] On this analysis, the court found that the emails concerning Comey's draft letter, the drafts of the Inspector General's report, and the internal FBI emails discussing revisions to the FBI's undercover tactics were both predecisional and deliberative,[33] while the Factual Accuracy Comments and the draft PowerPoint slides were not.[34]

However, the court did not end its inquiry there. Under the FOIA Improvement Act and the D.C. Circuit's decision in *Machado Amadis v. U.S. Department of State*,[35] to withhold documents, the government must also show that it "'reasonably foresees that disclosure would harm an interest protected by' the FOIA exemption."[36] The court held that this independent standard required "a focused and concrete demonstration" of why disclosing "the particular type of material at issue" would "actually impede" agency deliberations, given "the specific context of the agency action at issue."[37] The court pointed to the FOIA Improvement Act's legislative history to make this determination, highlighting Congress's "concern[] with increasing agency overuse and abuse of Exemption 5 and the deliberative process privilege."[38] Under the reasonable foreseeability test, the court found that the government failed to articulate a specific harm from the release of the draft Inspector General

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[29] *Id.* at 357.

[30] Judge Millett was joined by Judges Katsas and Walker. *Id.* at 356.

[31] *Id.* at 372. The appeal over the cover letter was dismissed as moot, as the government had released the full version of the letter while the appeal was pending. *Id.* at 367, 372.

[32] *Id.* at 362. Predecisional means "generated before the agency's final decision on the matter," while deliberative means "prepared to help the agency formulate its position." U.S. Fish & Wildlife Serv. v. Sierra Club, Inc., 141 S. Ct. 777, 786 (2021).

[33] *Reps. Comm. IV*, 3 F.4th at 362–65, 368–69.

[34] *Id.* at 365–67.

[35] 971 F.3d 364 (D.C. Cir. 2020). In this case, the court mentioned, in passing, that it had "no quarrel" with the proposition that "agencies, to justify withholding records under FOIA's foreseeable-harm provision, cannot simply rely on 'generalized' assertions that disclosure 'could' chill deliberations." *Id.* at 371 (quoting Brief for Plaintiff-Appellant at 31–32, *Amadis*, 971 F.3d 364 (No. 19-5088)).

[36] *Reps. Comm. IV*, 3 F.4th at 369 (quoting 5 U.S.C. § 552(a)(8)(A)(i)(I)).

[37] *Id.* at 370.

[38] *Id.* at 369 (citing H.R. REP. NO. 114-391, at 9–10 (2016)).

report, Factual Accuracy Comments, and draft PowerPoint slides,[39] instead making only "boilerplate and generic assertions" that were "wholly generalized and conclusory."[40] The court took particular exception to the fact that the "unparticularized" and "hypothesized" assertions of foreseeable harm were similar to those that predated the FOIA Improvement Act, despite the Act's foreseeability requirement.[41] Nonetheless, the court came to the opposite conclusion regarding the FBI emails, both concerning Comey's draft letter and revisions to undercover tactics.[42] For these categories, their sensitive context and nature established the foreseeability of harm.[43] Ultimately, while the drafts of the Inspector General's report were predecisional and deliberative, they did not meet the foreseeable harm standard and their withholding was reversed, along with the other sets of documents that were not predecisional and deliberative.[44]

In interpreting the FOIA Improvement Act, the D.C. Circuit briefly noted that the meaning of the statutory text alone was apparent but the court gave no further explanation and focused its analysis on the amendment's legislative history. By doing so while declaring the text clear rather than ambiguous, the D.C. Circuit departed from the Supreme Court's textualist approach to FOIA. This failure to conform perpetuates the methodological disjunction between the Supreme Court and the appellate courts beneath it and forgoes the benefits that come from greater interpretive uniformity.

In articulating its understanding of a particularized foreseeable harm standard, the D.C. Circuit did not analyze the statutory text of the FOIA Improvement Act,[45] mentioning only in a footnote that it was "apparent from the statutory text alone" that withholding requires a "particularized inquiry into . . . foreseeable harm."[46] Instead, the court relied on an examination of "detailed legislative history," which it claimed "underscore[d]" the showing required by the statute.[47] To begin, the court noted provisions from both the House and Senate committee reports identifying that Congress adopted the Act out of concerns that agencies were "overusing FOIA exemptions" that allowed but did not require

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[39] Interestingly, even though the Factual Accuracy Comments and draft PowerPoint slides were found to not fall within Exemption 5, the court continued on to the foreseeable harm analysis. It is not clear why it did so, beyond to show that the withholding was "doubly erroneous." *Id.* at 370.

[40] *Id.*

[41] *Id.* at 371; *see also* Machado Amadis v. U.S. Dep't of State, 971 F.3d 364, 371 (D.C. Cir. 2020).

[42] *Reps. Comm. IV*, 3 F.4th at 372.

[43] *Id.*

[44] *See id.* at 364, 372.

[45] *Id.* at 369–70 (discussing the legislative history and prior caselaw to elucidate the reasonable harm standard).

[46] *Id.* at 369 n.2.

[47] *Id.*

withholding.[48] The court then noted that Congress intended to foreclose withholding unless an agency could articulate the link between the "specified harm and specific information" to be withheld,[49] without relying on "mere 'speculative or abstract fears.'"[50] The court's discussion built on the small but growing body of caselaw from the district court sitting beneath it,[51] which similarly used the legislative history to paint a picture of Congress attempting to curb the overuse of FOIA exemptions, particularly Exemption 5.[52]

The D.C. Circuit's methodological approach to interpretation here was at odds with the strictly textualist FOIA jurisprudence of the Supreme Court. Recently, in *Food Marketing Institute v. Argus Leader Media*,[53] the Supreme Court struck down the "substantial competitive harm" requirement added to FOIA's Exemption 4 by the D.C. Circuit in 1974,[54] finding that it was established "after a selective tour through the legislative history."[55] The Court was highly critical of the D.C. Circuit's approach, noting that it could not "approve such a casual disregard of the rules of statutory interpretation" and had "repeatedly refused to alter FOIA's plain terms on the strength only of arguments from legislative history."[56] Justice Gorsuch, joined by five other members of the Court, made it clear that where "a careful examination of the ordinary meaning and structure of the law itself . . . yields a clear answer, judges must stop."[57] This approach to FOIA, rooted in the "new

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[48] *Id.* at 369 (quoting S. REP. NO. 114-4, at 2 (2015)) (citing H.R. REP. NO. 114-391, at 9 (2016)).

[49] *Id.* (quoting H.R. REP. NO. 114-391, at 9 (2016)).

[50] *Id.* (quoting S. REP. NO. 114-4, at 8 (2015)).

[51] *Id.* at 369–70.

[52] *See, e.g.*, Ctr. for Investigative Reporting v. U.S. Customs & Border Prot., 436 F. Supp. 3d 90, 104–05 (D.D.C. 2019) (citing House and Senate committee reports to establish Congress's concern that agencies were "overusing FOIA exemptions," especially "Exemption 5 and the deliberative process privilege," *id.* at 104); Jud. Watch, Inc. v. U.S. Dep't of Com., 375 F. Supp. 3d 93, 99–100 (D.D.C. 2019) (citing prior caselaw and House committee reports to articulate the inquiry required of agencies as an inquiry into a "specific, identifiable harm," *id.* at 100 (quoting H.R. REP. NO. 114-391, at 9 (2016)). The D.C. Circuit also referenced its own prior decision *Machado Amadis v. U.S. Department of State*, but the court's discussion of the foreseeable harm standard in that case was brief and conclusory. *See supra* note 35.

[53] 139 S. Ct. 2356 (2019).

[54] Nat'l Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 770 (D.C. Cir. 1974).

[55] *Argus Leader*, 139 S. Ct. at 2364.

[56] *Id.*; *see, e.g.*, U.S. Dep't of Just. v. Landano, 508 U.S. 165, 178 (1993) (refusing to expand the plain meaning of Exemption 7(D) based on an argument rooted in legislative history); United States v. Weber Aircraft Corp., 465 U.S. 792, 800–03 (1984) (refusing to restrict the scope of Exemption 5 based on legislative history).

[57] *Argus Leader*, 139 S. Ct. at 2364.

textualism"[58] now used broadly by the Supreme Court,[59] contrasts with the approach of the D.C. Circuit here, where the court continued past text it claimed was clear to an examination of legislative history.

In this way, *Reporters Committee* contributes to the trend of dissonance between the Supreme Court's preferred interpretive methodology and those of the appellate courts beneath it. While lower courts certainly do try to follow "the Supreme Court's operative propositions of methodology" to some extent,[60] and there has been a decline in the circuit courts' reliance on legislative history, possibly in response to the Supreme Court,[61] there is still a noticeable divergence. Compared to the Supreme Court's preference for textualism, federal appellate judges have broadly preferred a median approach to interpretation coined "intentional eclecticism,"[62] which can involve "grasp[ing] at whatever supports are available to reinforce a conclusion."[63] The D.C. Circuit here did just that, passing over the textualist approach prescribed by Justice Gorsuch,[64] and instead opting to bolster its reading of what it determined to be unambiguous text with an analysis of the legislative history.

While lower courts are not bound by the Supreme Court's methodological preference,[65] there are benefits to interpretive uniformity that are forgone when the lower courts diverge. Uniformity renders federal law more predictable.[66] A consistent "interpretive regime" alerts potential litigants and other onlookers as to "how strings of words in statutes will be read" and "what auxiliary materials might be consulted to resolve

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[58] As described contemporaneously by one of its leading critics, the "new textualism" maintains that once a court has "ascertained a statute's plain meaning, consideration of legislative history becomes irrelevant" and "should not even be consulted to confirm the apparent meaning of a statutory text." William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621, 623 (1990).

[59] *See* Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 YALE L.J. 788, 793 (2018) (highlighting that the premise of textualism has "taken hold in our courts," including a statement from Justice Elena Kagan that "[w]e're all textualists now" (quoting Elena Kagan, *The 2015 Scalia Lecture: A Dialogue with Justice Elena Kagan on the Reading of Statutes*, HARV. L. TODAY (Nov. 25, 2015), https://today.law.harvard.edu/in-scalia-lecture-kagan-discusses-statutory-interpretation [https://perma.cc/PYK6-AH5S])).

[60] Aaron-Andrew P. Bruhl, *Eager to Follow: Methodological Precedent in Statutory Interpretation*, 99 N.C. L. REV. 101, 140–41 (2020).

[61] *See* Lawrence Baum & James J. Brudney, *Two Roads Diverged: Statutory Interpretation by the Circuit Courts and Supreme Court in the Same Cases*, 88 FORDHAM L. REV. 823, 852 (2019).

[62] 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, 1302–03 (2018).

[63] *Id.* at 1314.

[64] *See supra* p. 1485.

[65] *See* Abbe R. Gluck, *Intersystemic Statutory Interpretation: Methodology as "Law" and the* Erie *Doctrine*, 120 YALE L.J. 1898, 1902 (2011) ("The U.S. Supreme Court generally does not treat its statements about statutory interpretation methodology as law.").

[66] *See* Sydney Foster, *Should Courts Give Stare Decisis Effect to Statutory Interpretation Methodology?*, 96 GEO. L.J. 1863, 1885 (2008).

ambiguities."[67] Enhancing predictability lowers costs for courts and litigants,[68] and allows Congress to legislate more cheaply and effectively against the background of a predictable interpretive regime.[69] Such a regime even limits judicial discretion[70] and enhances the legitimacy of a court system perceived to be further governed by the rule of law.[71]

Even accepting the court's claim that the substantive outcome would have been the same in *Reporters Committee* under either interpretive approach, the court's choice of methodology forgoes these benefits and contributes to the broader problems stemming from interpretive disjunction. While a savvy litigant might have expected post–*Argus Leader* FOIA litigation to focus heavily on the "ordinary meaning and structure" of the text, instead the D.C. Circuit gave only a cursory nod to the text in lieu of any meaningful textual analysis and focused on the legislative history. Unfortunately, this leaves litigants guessing as to what set of interpretive rules will be used in future cases and prevents them from making use of a consistent "hierarchy of . . . sources that courts at all levels will find persuasive."[72] Furthermore, since the substantive outcome from either approach could arguably have been the same, the defense of employing an alternative interpretive methodology to prevent "unconscionable decisions"[73] finds no ground here. Ultimately, while the choice of interpretive rules may not have changed the substantive outcome here, the court's embarking on a separate interpretive path without much explanation certainly raises questions of what weight courts will attribute to interpretive sources in future FOIA litigation.

In recent years, the Supreme Court has maintained its textualist predilections,[74] and no less so for its interpretation of FOIA.[75] In *Reporters Committee*, the D.C. Circuit noted that the meaning of the FOIA Improvement Act's text alone was apparent but explained no further and instead proceeded to analyze the legislative history. The court's failure to harmonize its approach with that of the Supreme Court further grows the methodological divide between the two courts and eschews any potential benefits of greater interpretive uniformity.

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[67] William N. Eskridge, Jr. & Philip P. Frickey, *The Supreme Court, 1993 Term — Foreword: Law as Equilibrium*, 108 HARV. L. REV. 26, 66 (1994).

[68] *See* Foster, *supra* note 66, at 1893–95.

[69] *See* Eskridge & Frickey, *supra* note 67, at 66–67.

[70] *See id.* at 66.

[71] Foster, *supra* note 66, at 1894.

[72] *See* Baum & Brudney, *supra* note 61, at 830.

[73] Evan J. Criddle & Glen Staszewski, Essay, *Against Methodological Stare Decisis*, 102 GEO. L.J. 1573, 1593 (2014).

[74] John F. Manning, *The Supreme Court, 2013 Term — Foreword: The Means of Constitutional Power*, 128 HARV. L. REV. 1, 22–30 (2014) ("In the Rehnquist-Roberts era, the Court has firmly forsworn its *Holy Trinity* power in favor of a more textualist approach. The Court now states that the judiciary 'must presume that a legislature says in a statute what it means and means in a statute what it says there.'" *Id.* at 22–23 (quoting Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253–54 (1992))).

[75] *See* Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019); *see also* sources cited *supra* note 56.