AMENDING LINGUISTIC TEXTUALISM

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In Bondi v. VanDerStok*, the Supreme Court issued a consequential decision for statutory interpretation. Drawing on law-and-linguistics research, it infused new empiricism into the search for word meanings, introducing a method this Article labels "Linguistic Textualism." It is incumbent upon the legal community to reckon with Linguistic Textualism, the Article asserts—because if* VanDerStok *is the future of statutory interpretation, we are in some trouble.*

To make that argument, the Article first diagnoses the pathologies of Linguistic Textualism. It chronicles multiple artificial constraints that Linguistic Textualism imposes upon interpreters, including a striking tendency to erase the historical evolution of a statute. This can undermine interpretation of amended statutes, in particular, which now dominate the Court's docket. Attempting to do better, the Article then develops a competing interpretation of the statute from VanDerStok*. Through an increased attention to amendment history, the Article uncovers the untold story of the Gun Control Act of 1968. In so doing, it provides a vivid illustration of why courts should be attentive to the rich, layered nature of statutory law—and it gives a methodological template for how to accomplish that goal.*

The result is a comparative interpretive project with numerous insights—both doctrinal and theoretical. It provides a new understanding of the GCA, a statute whose unresolved questions will shape the future of gun control in America. The Article reveals the shortcomings of Linguistic Textualism, an interpretive approach only increasing in prevalence. The Article develops new tools and strategies to better interpret amended statutes—including a proposed "dead-hand canon," which can resolve the inconsistencies that amendments often produce. And the Article outlines a new principle for assessing interpretive methods—one that offers a useful baseline for interpretive debates. Through these many lessons, the Article aims to help transform VanDerStok *into a productive moment for statutory interpretation.*

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Introduction

In March of last year, the Supreme Court decided the case of *Bondi v. VanDerStok*.[1] It was a landmark in statutory interpretation. Attempting to identify the decision's revolutionary quality, Justice Thomas

[1] Bondi v. VanDerStok, 145 S. Ct. 857 (2025).

noted in dissent that "it substitutes novel linguistic labels for traditional statutory interpretation."[2] Yet "labels" were the least of what *VanDerStok* borrowed from the field of linguistics. Drawing on both theoretical insights and empirical work in that field, the case marked a turning point in statutory interpretation—one this Article refers to as the emergence of Linguistic Textualism.

This embrace of Linguistic Textualism is the culmination of several major trends in statutory interpretation over the last decade.[3] Its methodology promises to be a fixture of our interpretive landscape for the next decade as well (and beyond).[4] As this occurs, it is incumbent upon the legal community to reckon with it. This Article attempts to undertake that project. If *VanDerStok* is the future of statutory interpretation, it argues, we are in some trouble.

This is especially true, the Article explains, because Linguistic Textualism struggles to navigate a particular challenge: interpretation of amended statutes. In this regard, it is a method uniquely ill-suited for our time. The Court's workload now overwhelmingly consists of interpreting amended statutes.[5] We need methodologies that can navigate the unique features that are endemic to these laws. It is not clear that Linguistic Textualism is up to the task.

To illustrate why, this Article first diagnoses the pathologies of Linguistic Textualism. Through a close analysis of *VanDerStok*, it chronicles multiple artificial constraints that Linguistic Textualism imposes upon interpreters.[6] These include a temporal constraint, which artificially limits the time period for the Court's historical analysis of statutory language. At times, the Court even adopts a temporal fiction—pretending that the statutory text it interprets is borne of a single enactment. It thereby collapses a rich, dynamic statutory text into something else: namely, a static document onto which it can impose assumptions of perfection and ordinary word usage. In the process, valuable features of the law are lost.

In *VanDerStok*, this temporal constraint led the Court into puzzling errors. It conflated separate statutes, for instance,[7] and it misstated years of enactment.[8] More importantly, this constraint also limited the

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2 *Id.* at 886 (Thomas, J., dissenting).

3 *See infra* Sections I.A–I.B (describing trends on Supreme Court and in the academy).

4 *See infra* Sections I.A, I.C. (reviewing its demonstrated appeal for courts).

5 *See* Jesse M. Cross, *The Amended Statute*, 92 U. Chi. L. Rev. 1291, 1314 (2025) (finding that, in the 2022 Term, cases involving amended statutes comprised ninety-five percent of the Court's statutory cases and over seventy percent of its total docket).

6 *See infra* Part II.

7 *See infra* note 192 and accompanying text.

8 *See infra* notes 188–90 and accompanying text.

Court's ability to understand the language choices Congress had made in the statute—and to develop a coherent, persuasive interpretation of the Gun Control Act of 1968 (GCA). The result was a troubling picture of a Court overwhelmed by the challenges of amended statutes.

In response, this Article attempts to do better. To that end, it revisits the statutory provision at issue in *VanDerStok*. Through an increased attention to amendment history, it uncovers the remarkable story of this evolving law: from its origins in Prohibition-era concerns about "crooks" and racketeers,[9] to outrage over the gun that "was used to murder the President of the United States,"[10] to President Johnson wrestling with the challenge of "mail-order murder,"[11] to hostile congressional testimony from arms dealers,[12] and beyond. Throughout, this analysis underscores the superior ability of amendment-focused interpretation to locate the democratic choices that were encoded in the various layered, accruing statutory phrases of the GCA. Moreover, it shows this method to be uniquely able to unlock the puzzle of the statute, revealing why its seemingly odd language reads as it does.

This comparative interpretive project is valuable for multiple reasons. First, it develops a superior interpretation of the GCA. That is important because *VanDerStok* left many questions about the GCA unanswered.[13] It left unresolved, for instance, the level of assembly a firearm must attain before GCA coverage begins—a critical question for the future of build-at-home gun kits. That question, along with many others, will depend upon further judicial interpretation of the GCA. As that occurs, it is crucial for courts to be aware of the democratic decisions Congress has made in the statute. This Article attempts to uncover them.

Second, the success of the Article's amendment-focused approach provides bigger lessons for statutory interpretation. *VanDerStok* revealed the need for interpretive tools that can unlock the choices made in amended statutes. The traditional canons of construction, which feature in Linguistic Textualism, were developed for a world that lacked amended statutes.[14] While these remain valuable interpretive resources,

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9 *See infra* note 279 and accompanying text.

10 *Interstate Shipment of Firearms: Hearings on S. 1975 and S. 2345 Before the S. Comm. on Com.*, 88th Cong. 10 (1964) [hereinafter *Interstate Firearms Hearings*] (statement of Sen. Thomas J. Dodd, Member, S. Comm. on Com.).

11 114 Cong. Rec. 16301 (1968).

12 *See infra* note 313 and accompanying text.

13 *See infra* note 181 and accompanying text (noting the "facial" nature of the *VanDerStok* challenge).

14 *See* Cross, *supra* note 5, at 1315–16 (documenting that amended statutes did not exist at the federal level until the mid-1800s).

VanDerStok showed the need to supplement them with additional tools. To begin that project, this Article draws on the experience of the GCA to develop a new canon of construction: the *dead-hand canon*.[15] This canon provides that, when statutory inconsistency results from a new amendment sitting uncomfortably alongside older language, courts should prioritize the more recent statutory text. By developing this canon, the Article hopefully can inaugurate a larger conversation about new interpretive tools to capture the meaning of amended statutes.

Third, the Article uses (and thereby proposes) an overlooked principle to evaluate interpretive methods. It refers to this as the *inconsistency confrontation principle*. Under this principle, interpreters must acknowledge and address the textual evidence that is inconsistent with their interpretation. This principle persuasively explains the shortcomings of Linguistic Textualism in *VanDerStok*, the Article contends, and it illuminates why amendment-focused interpretation is more successful. It is a principle that, ideally, can guide future discussions of statutory interpretation regardless of preferred methodology. In doing so, it can summon courts to provide the service that the best interpretations perform: namely, to unlock for readers a linguistic puzzle that once was unclear.

These positive insights join the Article's critical takeaways. The latter, as already mentioned, provide an understanding of the pathologies of Linguistic Textualism. In the wake of *VanDerStok*, there is every reason to believe that this interpretive method will only become increasingly prevalent, in both the courts and the academy. Consequently, it is essential for courts and scholars to have a clear understanding of what this method can deliver—and what it cannot. Among other things, this Article's analysis shows how the methodology's constraints led the Court in *VanDerStok* into basic errors (such as not knowing the difference between statutory "subsections" and "subparagraphs").[16] It was not a portrait of a Court equipped to navigate the complexities of modern federal law. This Article attempts to

15 *See id.* at 1343–51 (explaining how the question in *Niz-Chavez v. Garland* arose from the missing conforming amendment).

16 As a whole, the Court referred to the contested GCA provisions (roughly eighty times) as "subsections." *See, e.g.*, Bondi v. VanDerStok, 145 S. Ct. 857, 869–71 (2025). Yet the case involved subparagraphs, not subsections. This was correctly stated in the provisions themselves, as well as in the United States Code. *See* Off. of the Legis. Couns., U.S. House of Representatives, House Legislative Counsel's Manual on Drafting Style 16 (2022) [hereinafter Manual on Drafting Style], https://legcounsel.house.gov/sites/evo-subsites/legcounsel-evo.house.gov/files/documents/ManualDraftStyle_2022.pdf [https://perma.cc/JR52-7KWM]; 18 U.S.C. § 921(a)(4)(C) (containing the correct usage in statutory provision); 18 U.S.C. § 921 note (containing the correct references to "subpar." in Code).

shed light on those shortcomings—and to confront the questions they raise for Linguistic Textualism going forward.

Linguistic Textualism has arrived to our judicial system. It raises pointed questions about the type of legitimacy, and of legitimating rhetoric, that we want in our judicial opinions. It is time to reckon with it. This Article posits that, while there is an important place for the excellent work in law-and-linguistics that is occurring today, it can do better than encouraging a generation of courts to embrace Linguistic Textualism. This Article hopes to illustrate why that is the case.

The Article proceeds in four Parts. Part I provides background on the rise of Linguistic Textualism, both in the judiciary and the academy, and it reviews *Bondi v. VanDerStok*. Part II diagnoses the pathologies of Linguistic Textualism, and it chronicles their contributions to the *VanDerStok* decision. Part III develops a novel, competing interpretation of the Gun Control Act of 1968—showing how attention to its amendment history can unlock the statute in a manner that satisfies the *inconsistency confrontation principle*, while also revealing the democratic decisions embedded in the statute. Part IV considers broader theoretical implications. A brief conclusion follows.

I
Background: *VanDerStok* and Linguistic Textualism

In March 2025, the Supreme Court decided the case of *Bondi v. VanDerStok*.[17] There, it announced that the Gun Control Act of 1968 regulates non-traditional firearms—including some "ghost guns," or gun parts kits, and incomplete frames and receivers.[18] It was a landmark case—and not only because it shaped the future of gun control in America. Rather, it also announced the arrival of Linguistic Textualism: a new method of statutory interpretation, and one with potential to remake our legisprudence. In this regard, *VanDerStok* represents the culmination of two sweeping, multi-year trends in statutory interpretation: one on the courts, one in the legal academy. This Part briefly reviews those twin movements. It recounts the story of their emergence, their dramatic rise to prominence, and their remarkable convergence into Linguistic Textualism in *VanDerStok*.

A. The Judiciary

The new Linguistic Textualism is the culmination of a decades-long transformation in statutory interpretation on the

17 145 S. Ct. 857.

18 *See id.* at 876 (construing 18 U.S.C. § 921(a)(3)(A)–(B).

judiciary.[19] That transformation has been marked by the Supreme Court's growing embrace of—and continual efforts to refine—the interpretive method of textualism.

For much of our history, it should be noted, the Supreme Court did not take a textualist approach to statutory interpretation. Traditionally, American courts considered many concerns when interpreting statutes—including broad statutory purpose,[20] congressional intent,[21] substantive policy goals,[22] and evolving social norms.[23] Beginning in the 1980s, however, a new textualist movement urged the abandonment of these concerns, preferring to focus exclusively on the plain meaning of statutory text.[24] As Justice Scalia and his coauthor Bryan Garner phrased it: "Textualism . . . begins and ends with what the text says and fairly implies."[25] Interpretive considerations beyond textual meaning, this approach held, should be set aside.

On the Roberts Court, this textualism quickly became the Court's preferred method of statutory interpretation.[26] This shift undoubtedly was shaped by the arrival of a conservative majority on the Court.[27] Nonetheless, the turn to textualism has been a broader bipartisan

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19 I here use the phrase "new" Linguistic Textualism to acknowledge the many valuable contributions that linguistics scholars have made to statutory interpretation even before the recent wave of research. *See* Brian G. Slocum, *Linguistics and "Ordinary Meaning" Determinations*, 33 Statute L. Rev. 39 (2012); Lawrence M. Solan, The Language of Statutes: Laws and Their Interpretation (2010).

20 *See generally* William N. Eskridge, Jr., *All About Words: Early Understandings of the "Judicial Power" in Statutory Interpretation, 1776-1806*, 101 Colum. L. Rev. 990 (2001) (identifying the role of purpose in early American statutory interpretation).

21 *See, e.g.*, John F. Manning, *Textualism and the Equity of the Statute*, 101 Colum. L. Rev. 1, 91 (2001) (explaining that "[t]he Marshall Court frequently emphasized that the federal judge's constitutional duty was to adhere to the legislature's intent").

22 *See* Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 109 (2010) ("Federal courts have long employed substantive canons of construction to interpret federal statutes.").

23 *See generally* Eskridge, *All About Words*, *supra* note 20 (discussing the role of norms in early statutory jurisprudence); William N. Eskridge, Jr., *Dynamic Statutory Interpretation*, 135 U. Pa. L. Rev. 1479 (1987) (discussing the role of evolving social contexts in statutory interpretation).

24 *See generally* William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. Rev. 621, 623–65 (1990) (analyzing "the new textualism" and its use by courts to set aside legislative history when they can ascertain the plain meaning of a statute).

25 Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 11 (2012).

26 *See, e.g.*, Anita Krishnakumar, *Cracking the Whole Code Rule*, 96 N.Y.U. L. Rev. 76, 97 (2021) (charting the rise of textualist concerns in Roberts Court opinions).

27 *See, e.g.*, *id.* at 98 (charting lower reliance on "text/plain meaning" for interpretation among justices appointed during Democratic administrations). *But see* Katie R. Eyer, *Textualism as an Equality Practice?*, 104 Tex. L. Rev. 901 (arguing that textualism can promote left-leaning preferences for social equality).

phenomenon, with Justice Kagan famously declaring: "We're all textualists now."[28]

Despite such rhetoric, of course, the textualist revolution on the Court has never been complete. The current Court still periodically veers into intentionalist practice in statutory interpretation.[29] The appointment of Justice Jackson, in particular, has introduced new dissensus—adding a Justice with an express preference for intentionalist methodology.[30] Nonetheless, the Court's turn to textualism has been dramatic. Few legal revolutions have been more successful.

As the current Court has embraced textualism, it also has sought to refine this methodology. For many years, textualism was marked by ambiguity over a particular question: What is the precise meaning that interpreters should locate in statutory text? Early textualists sometimes sought the meaning for an ordinary legislator,[31] while others prioritized a "reasonable reader," for instance.[32] In the last half-decade, however, the Court has coalesced around a different answer: namely, that interpreters must seek the "original public meaning" of statutes.[33] In this way, it has established ordinary people as the proper reference point for determining statutory meaning.[34] As the Court has put it, this brand of textualism "seeks to afford the law's terms their ordinary meaning at

[28] Harvard Law School, *The Scalia Lecture: A Dialogue with Justice Elena Kagan on the Reading of Statutes*, at 8:29 (Nov. 17, 2015), https://today.law.harvard.edu/in-scalia-lecture-kagan-discusses-statutory-interpretation [https://perma.cc/B8US-68PT] (on file with the New York University Law Review). For competing textualist arguments by two of the Court's liberals, Justices Ginsburg and Kagan, see generally Yates v. United States, 574 U.S. 528 (2015). *But see* West Virginia v. EPA, 142 S. Ct. 2587, 2641 (2022) (Kagan, J., dissenting) ("It seems I was wrong. The current Court is textualist only when being so suits it.").

[29] *See, e.g.*, Brnovich v. Democratic Nat'l Comm, 141 S. Ct. 2321, 2342–43 (2021) (looking to considerations beyond statutory text); *see also* Abbe R. Gluck & Laila M. Robbins, *The Enduring Relevance of Congress Despite the Court's Shift to "Ordinary Reader" Statutory Interpretation*, 33 J.L. & Pol'y 29, 29–30 (2024) (documenting the Court's continued considerations of Congress).

[30] *See, e.g.*, Fischer v. United States, 144 S. Ct. 2176, 2191 (2024) (Jackson, J., concurring) ("Our goal in interpreting any statute should be 'to give effect to the intent of Congress.'" (quoting United States v. Am. Trucking Ass'ns, Inc., 310 U.S. 534, 542 (1940))).

[31] *See, e.g.*, Chisom v. Roemer, 501 U.S. 380, 405 (1991) (Scalia, J., dissenting) (stating that "[w]e are to read the words of [the] text as any ordinary Member of Congress would have read them").

[32] *See, e.g.*, Scalia & Garner, *supra* note 25, at 33 (arguing to interpret the way "a reasonable reader, fully competent in the language, would have understood the text at the time it was issued"); *see also* Tara Leigh Grove, *Is Textualism at War with Statutory Precedent?*, 102 Tex. L. Rev. 639, 644 (2024) ("Many textualists treat the search for plain meaning as involving a distinctively legal inquiry—as reflected by their focus on the perspective of a hypothetical 'reasonable reader.'").

[33] For extended discussion of this development, see Jesse M. Cross, *The Fair Notice Fiction*, 75 Ala. L. Rev. 487, 488–91 (2023).

[34] For scholars noting this, see Kevin Tobia, Brian G. Slocum & Victoria Nourse, *Progressive Textualism*, 110 Geo. L.J. 1437, 1443–44 (2022).

the time Congress adopted them."[35] A study of the 2021 term found that, for the first time, the Court consisted of "a super-majority of Justices [who] clearly accept the primacy of 'ordinary meaning.'"[36] The Justices now believed, as the Court phrased it in *Bostock v. Clayton County*, that courts "must determine the ordinary public meaning of" the law.[37]

In this regard, the Court's statutory interpretation has largely converged with its constitutional interpretation, which also emphasizes original public meaning.[38] This shift on the Court has influenced the broader judiciary as well, generating a rising phenomenon of original public meaning in statutory interpretation on the federal courts.[39] Under this approach, courts regularly seek original public meaning when interpreting statutes.[40] In so doing, they already have remade major areas of federal law—from criminal law,[41] to civil rights,[42] to environmental law.[43] It is an approach that begs the question: How are courts to locate the original public meaning of a statute?

B. The Academy

With remarkable swiftness, the legal academy has met the rise of this "original public meaning" textualism on the Supreme Court. Using tools from the field of linguistics, this research has sought superior

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35 Niz-Chavez v. Garland, 141 S. Ct. 1474, 1480 (2021).

36 Kevin Tobia, Brian G. Slocum & Victoria Nourse, *Ordinary Meaning and Ordinary People*, 171 U. Pa. L. Rev. 365, 368–69 (2023) [hereinafter *Ordinary Meaning*].

37 Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1738 (2020).

38 *See, e.g.*, District of Columbia v. Heller, 554 U.S. 570, 576–77 (2008) (claiming the Constitution's "words and phrases are used in their normal and ordinary as distinguished from technical meaning" (quoting United States v. Sprague, 282 U.S. 716, 731 (1931))).

39 *See* William N. Eskridge, Jr., Brian G. Slocum & Stefan Th. Gries, *The Meaning of* Sex*: Dynamic Words, Novel Applications, and Original Public Meaning*, 119 Mich. L. Rev. 1503, 1510 (2021) [hereinafter *Meaning of Sex*] (noting that "statutory interpretation in federal courts has shifted focus away from language production to language comprehension," i.e., away from drafters and toward readers).

40 *See, e.g.*, *Niz-Chavez*, 141 S. Ct. at 1480 ("When called on to resolve a dispute over a statute's meaning, this Court normally seeks to afford the law's terms their ordinary meaning at the time Congress adopted them."); Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019) ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself.").

41 *See, e.g.*, Borden v. United States, 141 S. Ct. 1817, 1821–22 (2021) (narrowly construing the mandatory minimum sentence provision in the Armed Career Criminal Act); Van Buren v. United States, 141 S. Ct. 1648, 1652, 1657–58 (2021) (construing the reach of the Computer Fraud and Abuse Act).

42 *See* Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1737 (2020) (holding that the Civil Rights Act of 1964 extends to employment discrimination based on gender identity and sexual orientation).

43 *See, e.g.*, HollyFrontier Cheyenne Refin., LLC v. Renewable Fuels Ass'n, 141 S. Ct. 2172, 2175 (2021) (expansively interpreting Clean Air Act to permit certain small refinery exemption extensions under renewable fuel program).

methods to determine the "ordinary" public meaning of specific words or phrases. This law-and-linguistics movement has generated a wave of scholarship aimed at refining our understanding of how ordinary people read texts.[44] In so doing, it has posited that linguistics theory can assist "original public meaning" textualists in their interpretive task.

This scholarship also has proposed that empirical strategies from linguistics can contribute to this project. Due to this empirical work, the scholar Kevin Tobia has described the movement as marking an "empirical turn" in statutory interpretation.[45] It aims, through the deployment of various empirical tools, to reveal the word meanings that "original public meaning" textualists purportedly seek in statutes.

One such empirical approach has deployed survey methods from linguistics.[46] This research has drawn upon surveys of volunteer participants regarding their interpretation of isolated words or phrases. By gathering responses from hundreds of participants, the approach aims to provide an empirical foundation for conclusions about specific word meanings or about common interpretive practices among ordinary readers.[47] These studies have uncovered a variety of ordinary reading practices, discovering that ordinary people interpret in ways that use technical meanings,[48] add implicit terms to statutory text,[49] and defy prevailing interpretive canons.[50] Throughout, the goal has been to anchor judicial assessments of "ordinary" linguistic meaning in survey-tested results.

Another empirical approach has used tools from the burgeoning field of corpus linguistics.[51] This work uses computing technology to survey massive corpora of linguistic data in search of prevailing trends

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44 *See* Brandon Waldon, Cleo Condoravdi, James Pustejovsky, Nathan Schneider & Kevin Tobia, *Reading Law with Linguistics: The Statutory Interpretation of Artifact Nouns*, 62 Harv. J. on Legis. 415, 468 (2024) (describing this scholarship as "[e]xtending a scholarly tradition at the intersection of law and linguistics").

45 Kevin Tobia, *Algorithmic Interpretation*, U. Chi. L. Rev. Online, at *17 (2024) (asserting that "legal interpretation continues its empirical turn").

46 *See, e.g.*, Kevin P. Tobia, *Testing Ordinary Meaning*, 134 Harv. L. Rev. 727, 753–77 (2020) (analyzing a classic hypothetical case by surveying one-word phrases).

47 *See generally* Brian G. Slocum, Ordinary Meaning: A Theory of the Most Fundamental Principle of Legal Interpretation 3–5 (2015) (laying out a linguistics-based framework for how determinants of ordinary meaning should be identified and developed).

48 *Ordinary Meaning*, *supra* note 36, at 367 ("Laypeople often take laws to communicate legal—not ordinary—meanings.").

49 *See* Kevin Tobia & Brian G. Slocum, *The Linguistic and Substantive Canons*, 137 Harv. L. Rev. F. 70, 78, 107 (2023).

50 *See* Kevin Tobia, Brian G. Slocum & Victoria Nourse, Essay, *Statutory Interpretation from the Outside*, 122 Colum. L. Rev. 213, 221–22 (2022).

51 *See, e.g.*, Thomas R. Lee & Stephen C. Mouritsen, *The Corpus and the Critics*, 88 U. Chi. L. Rev. 275 (2021) (analyzing three cases by studying appearance of one-, three-, and six-word phrases in corpora).

in linguistic meaning and usage.[52] For instance, it might use frequency analysis to search newspapers published in the United States during a specified time period, looking to determine how frequently two terms co-occur (or appear together).[53] In so doing, it would hope to learn how often a searched word carries a meaning suggested by that co-occurrence—for instance, to determine the ordinary meaning of "custody" by seeing how often it co-occurs with "divorce" versus with "adoption."[54] Such an approach can ground theories of ordinary word meaning in big-data analyses, its proponents assert, and can thereby help judicial interpretation in the aspiration to "move beyond the subjective nature of the humanities to the more objective realm of social science . . . ."[55]

As the courts have shifted statutory interpretation toward ordinary public meaning, law-and-linguistics scholars have advocated for re-orienting judicial practice toward the aforementioned linguistic theories and empirical tools. Those theories and tools, they have posited, can provide superior access to the meaning that "original public meaning" textualists pursue. And there were early indications that, perhaps, the courts might be amenable to these novel, linguist-developed approaches. Various state and lower federal courts began drawing on corpus linguistics in the last decade,[56] for instance, as in the 2022 district court opinion striking down a mask mandate from

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52 *See, e.g.*, Thomas R. Lee & Stephen C. Mouritsen, *Judging Ordinary Meaning*, 127 Yale L.J. 788, 795 (2018); Stefan Th. Gries & Brian G. Slocum, *Ordinary Meaning and Corpus Linguistics*, 2017 BYU L. Rev. 1417, 1442–62 (2017); Tobia, *supra* note 45, at *17; Tammy Gales & Lawrence M. Solan, *Revisiting a Classic Problem in Statutory Interpretation: Is a Minister a Laborer?*, 36 Ga. St. U. L. Rev. 491, 496 (2020); *Meaning of Sex*, *supra* note 39, at 1509.

53 *See* James C Phillips, Daniel M. Ortner & Thomas R. Lee, *Corpus Linguistics & Original Public Meaning: A New Tool to Make Originalism More Empirical*, 126 Yale L.J. F. 21, 21–25 (2016) (explaining "collocation").

54 *See In re* Adoption of Baby E.Z., 266 P.3d 702, 723–31 (Utah 2011) (Lee, J., concurring) (applying corpus linguistics to this example).

55 Phillips, Ortner & Lee, *supra* note 53, at 23.

56 Corpus linguistics have been used in the Fourth and Sixth Circuits and in Utah and Michigan state courts. For the federal circuit courts, see *United States v. Rice*, 36 F.4th 578, 583 n.6 (4th Cir. 2022) (using to support interpretation of "strangulation" in state statute); *United States v. Woodson*, 960 F.3d 852, 855 (6th Cir. 2020) (using corpus linguistics to interpret federal sentencing guidelines); Wilson v. Safelite Grp., Inc., 930 F.3d 429, 439–40 (6th Cir. 2019) (Thapar, J., concurring) (using and defending corpus linguistics in statutory interpretation); *id.* at 445–48 (Stranch, J., concurring) (expressing concern with this corpus linguistic usage). For Utah, see *In re Adoption of Baby E.Z.*, 266 P.3d at 723–31 (Utah 2011); *State v. Rasabout*, 356 P.3d 1258, 1281–82 (Utah 2015) (Lee, J., concurring); *Craig v. Provo City*, 389 P.3d 423, 428 n.3 (Utah 2016) ("appreciat[ing]" the parties' briefing on corpus linguistics while finding it unnecessary to resolve case). For Michigan, see *People v. Harris*, 499 Mich. 332, 347–53, 365–78 (Mich. 2016) (using corpus linguistics for meaning of "information" in both the majority and dissent).

the Centers for Disease Control and Prevention.[57] In 2020, the Court expressed some interest in linguist-conducted surveys of ordinary word meaning,[58] and a dissenting opinion in the 2024 case of *Pulsifer v. United States* cited an amicus brief reporting the results of such a study.[59] Likewise, the Court has begun to discuss corpus linguistics in oral arguments,[60] as well as in concurring and dissenting opinions.[61] Nonetheless, the Supreme Court generally has resisted any reliance on this linguistics work, instead preferring the traditional tools of statutory interpretation. That is, until the recent case of *Bondi v. VanDerStok*.

C. Bondi v. VanDerStok

In March 2025, the Supreme Court decided *Bondi v. VanDerStok*.[62] The case involved the proper interpretation of the Gun Control Act of 1968 (GCA), a federal statute that imposes certain requirements upon the sale and transfer of firearms (including background checks, weapon serialization, and dealer licensing requirements).[63] In *VanDerStok*, the Court faced the question of whether the statute applied to various incomplete and non-traditional firearms. These included "ghost guns"—i.e., weapons parts kits that purchasers can easily assemble into a firearm at home.[64] The case also concerned firearm frames and receivers that, because they are sold in an unfinished state, arguably

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57 *See* Health Freedom Def. Fund, Inc. v. Biden, 599 F. Supp. 3d 1144, 1160, 1178 (M.D. Fla. 2022).

58 *See* Transcript of Oral Argument at 51–52, Facebook, Inc. v. Duguid, 141 S. Ct. 1163 (2021) (No. 19-511) (featuring Chief Justice Roberts's hypothesis that surveys would be particularly indicative of ordinary meaning).

59 Pulsifer v. United States, 144 S. Ct. 718, 743 (2024) (Gorsuch, J., dissenting) (citing amicus brief reporting results of a linguist survey).

60 *See* Transcript of Oral Argument at 9–10, ZF Auto. US, Inc. v. Luxshare, Ltd., 142 S. Ct. 2078 (2022) (No. 21-401).

61 *See* Facebook Inc. v. Duguid, 141 S. Ct. 1163, 1174 (2021) (Alito, J., concurring) (discussing possible use to evaluate canons); Carpenter v. United States, 138 S. Ct. 2206, 2238 (2018) (Thomas, J., dissenting) (using canons to identify association of "search" with "reasonable expectation of privacy"). Assent to such empirical linguistics work among the liberal Justices has mainly taken the form of such Justices simply signing onto opinions by the conservative Justices, including Justices Jackson and Sotomayor joining Justice Gorsuch in *Pulsifer*, as well as all of the liberal Justices joining the majority in *VanDerStok*. *See also* Moore v. United States, 144 S. Ct. 1680, 1698 (2024) (Jackson, J., concurring) (citing brief that included corpus linguistics arguments); *cf. id.* at 1701 (2024) (Barrett, J., concurring) (citing brief that included a contradictory corpus linguistics argument). As the sources cited in this footnote illustrate, the dialogue between courts and law-and-linguistics scholars reported herein has been iterative, with rising judicial interest in linguistics tools repeatedly furthering the conversation.

62 Bondi v. VanDerStok, 145 S. Ct. 857 (2025).

63 *See* 18 U.S.C. § 921(a)(3)(A)–(B).

64 *See VanDerStok*, 145 S. Ct. at 879 (Thomas, J., dissenting) (referring to "ghost guns—i.e., privately made firearms built from kits or collections of unfinished parts").

evaded statutory coverage.[65] *VanDerStok* asked: Do the requirements imposed by the GCA extend to these components?

The answer would hinge upon the statutory definition of "firearm." That definition states that, for purposes of the GCA:

> (3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.[66]

VanDerStok challenged the Court to construe this definition. It required the Court to determine whether it reached the aforementioned borderline applications that, according to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), it did indeed cover.[67]

In the lower courts, this question had been answered in the negative. Both the District Court for the Northern District of Texas and the Fifth Circuit held that, when applying the statute to weapons parts kits and incomplete frames and receivers, ATF had exceeded the statutory definition of "firearm."[68] To reach this conclusion, both courts invoked the Supreme Court's preferred methodology of "original public meaning" textualism. For its part, the district court declared that: "[H]istorical practice does not dictate the interpretation of unambiguous statutory terms. The ordinary public meaning of those terms does."[69] Likewise, the circuit court stated that: "In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself."[70] *VanDerStok* thereby was well-positioned to provide the next chapter in the Supreme Court's embrace of "original public meaning" textualism.

This opening was not overlooked by participants in the law-and-linguistics movement. Several key contributors to that movement recognized *VanDerStok* as an opportunity to advocate for judicial use

65 The statute inarguably applies to finished frames and receivers. *See* 18 U.S.C. § 921(a)(3)(B) (covering "the frame or receiver of any such weapon").

66 18 U.S.C. § 921(a)(3).

67 27 C.F.R. § 478.11 (2026) (weapon parts kits); 27 C.F.R. § 478.12(c) (2022) (incomplete frames and receivers).

68 VanDerStok v. Garland, 86 F.4th 179, 211–12 (5th Cir. 2023); VanDerStok v. Garland, 680 F. Supp. 3d 741, 768 (N.D. Tex. 2023).

69 *VanDerStok*, 680 F. Supp. 3d at 767.

70 *VanDerStok*, 86 F.4th at 188 (quoting Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019)); *see also id.* at 189 ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms *at the time of its enactment*." (quoting Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1738 (2020))).

of linguistics research. In an amicus brief to the Supreme Court,[71] as well as a companion academic article,[72] these scholars argued that linguistics provided key insight into the ordinary meaning of crucial terms in the GCA. Drawing upon both theoretical work and empirical survey data,[73] they argued that the ordinary meaning of artifact nouns (i.e., terms for manmade objects) often includes incomplete or unfinished objects.[74] This suggested that the ATF might be correct in its capacious interpretation of various artifact nouns in the GCA, including the terms *firearm*, *weapon*, *frame*, and *receiver*.[75] Moreover, the context of immediately surrounding terms—namely, *designed*, *converted*, and *any such weapon*—confirmed the broad ordinary meaning of these artifact nouns, they contended.[76] In this way, the scholars urged that linguistics research revealed the proper answer to *VanDerStok*[77]—one that should resolve the case.[78]

The Supreme Court largely agreed. In a 7-2 decision, it held that the GCA extends to "ghost guns" and to incomplete frames and receivers, at least in some instances.[79] In reaching this conclusion, the Court relied heavily on the linguists' analysis of artifact nouns, and on the brief that presented it.[80] "[A]s artifact nouns," the Court explained, "[the key statutory terms] may sometimes describe not-yet-complete objects."[81] It added that artifact nouns are "typically" used in this manner,[82] and

71 Brief for Professors and Scholars of Linguistics and Law as Amici Curiae Supporting Petitioners, Bondi v. VanDerStok, 145 S. Ct. 857 (2025) (No. 23-852) 2024 WL 3354719 [hereinafter Brief for Professors and Scholars of Linguistics and Law].

72 Waldon et al., *supra* note 44.

73 *See id.* at 426 ("This article augments the traditional textualist toolkit with formal linguistic theory and empirical linguistic methods.").

74 *See* Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 4 ("As artifact nouns, [terms] have ordinary meanings that are not limited to perfectly completed or presently operable objects."); Waldon et al., *supra* note 44, at 453 ("In many contexts, artifact nouns include members missing parts . . . , members that are unassembled . . . , and members with unfinished parts that can only be completed by applying additional tools . . . .").

75 *See* Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 12–13 (expounding on the "ordinary meaning of firearm and weapon"); *id.* at 22 (explaining that "frame and receiver are also artifact nouns").

76 *See id.* at 3 ("The Act's text clearly and specifically employs these ordinary meanings. Section 921(a)(3)(A) refers to design ('designed to') and potential function ('may readily be converted to') as key facets of meaning . . . ."); *id.* at 4 (arguing that the "any such weapon" phrase "clarifies the relevant class of frames and receivers").

77 Waldon et al., *supra* note 44, at 468–69 (asserting that "we answer a question about the GCA's meaning").

78 *Id.* at 453 (providing "a recommendation for deciding *VanDerStok*").

79 On the "facial" nature of this statutory challenge and the details of the GCA that it leaves unresolved, see *infra* note 181 and accompanying text.

80 *See* Bondi v. VanDerStok, 145 S. Ct. 857, 868, 886 nn.3 & 6 (citing amicus brief).

81 *Id.* at 873.

82 *Id.* at 868.

that "Congress used an artifact noun to reach unfinished objects" in the GCA.[83] For the first time in the Supreme Court's current era of "ordinary public meaning" textualism, in short, the Court relied squarely on linguistics scholars' assessment of ordinary meaning to resolve a statutory question. It hardly could have chosen a more consequential case to do so—using that work to resolve the application of the GCA to tens of thousands of potential weapons throughout the United States.

In his dissent, Justice Thomas underscored that this represented a major shift in textualist methodology. To that end, his opinion bemoaned that: "The majority . . . conjures up the 'artifact noun' to support an interpretation that is incompatible with our traditional methods of statutory construction."[84] Recurring to this theme, his dissent also twice decried "[t]he majority's novel artifact-noun methodology,"[85] one that was "[d]rawing heavily from an amicus brief and an academic paper,"[86] and he lamented that the majority's opinion "substitutes novel linguistic labels for traditional statutory interpretation."[87] As Justice Thomas recognized, this case was not simply about gun control. It was about statutory interpretation methodology. In its pivot to Linguistic Textualism, the Court had introduced a new chapter in its approach to reading statutes.

In this way, the Court's decision in *VanDerStok* provided an important moment in statutory interpretation. Despite having embraced "original public meaning" textualism for a half-decade, the Court had mostly continued to resolve statutory cases via traditional tools of statutory interpretation (e.g., dictionaries, canons of construction). In the meantime, an explosion in law-and-linguistics scholarship had occurred—one that had pioneered new methods of locating the "ordinary meaning" of statutory terms. In *VanDerStok*, these trends finally collided. The result was one that, in this article, will be referred to as Linguistic Textualism. It was one that has given courts throughout the country new license to resolve statutory cases by reference to novel linguistics resources, such as empirical survey data and corpus linguistics results.

As this occurs, it is incumbent upon the legal community to ask: Did Linguistic Textualism provide an effective tool to access statutory meaning in *VanDerStok*? Did it meaningfully resolve the challenges

83 *Id.* at 875.

84 *Id.* at 890 (Thomas, J., dissenting).

85 *Id.* at 888; *see also id.* at 892 ("Employing its novel 'artifact noun' methodology, the majority charts a different course . . . .").

86 *Id.* at 886.

87 *Id.*

posed by the Gun Control Act of 1968, and did it uncover the democratic decisions that Congress encoded in that statute?

II
Linguistic Textualism's Pathologies

VanDerStok was an illuminating case, in part because it revealed several pathologies of Linguistic Textualism. This Part attempts to diagnose these pathologies. Through a close analysis of *VanDerStok*, it chronicles multiple artificial constraints that Linguistic Textualism imposes upon interpreters.[88] This is a continuation of a project begun in a prior Article, which identified three constraints that the Supreme Court regularly imposes upon its analysis (viz., a *meaning* constraint, a *temporal* constraint, and a *textual* constraint).[89] Linguistic Textualism embraces new versions of the three constraints, it turns out, and to troubling effect.

A. Meaning Constraint

The first artificial constraint of Linguistic Textualism is the *meaning constraint*. This excludes consideration of types of linguistic meaning beyond ordinary meaning. Prior scholars have noted the Court's theoretical commitment to this constraint,[90] while also observing the Court's inconsistent commitment to it in practice.[91] As I have chronicled elsewhere, this constraint particularly tends to exclude evidence of technical legislative meaning.[92]

The *meaning constraint* was on full display in *VanDerStok*. In its opinion, the Court repeatedly declared that it sought word meaning

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88 *See infra* Part II.

89 Cross, *supra* note 5, at 1297.

90 *See, e.g.*, William N. Eskridge, Jr. & Victoria F. Nourse, *Textual Gerrymandering: The Eclipse of Republican Government in an Era of Statutory Populism*, 96 N.Y.U. L. Rev. 1718, 1733 (2021) (describing the Court's method as "a form of judicial politics that weaponizes 'ordinary' meaning"); *Ordinary Meaning*, *supra* note 36, at 368–69 ("The 2021 Term is even more notable: for the first time, a super-majority of Justices clearly accept the primacy of 'ordinary meaning.'").

91 *See, e.g.*, William N. Eskridge, Jr., Brian G. Slocum & Kevin Tobia, *Textualism's Defining Moment*, 123 Colum. L. Rev. 1611, 1637–40 (2023) (describing the choice of "ordinary vs. term-of-art meaning" that the Court sometimes resolves in different directions); Anita S. Krishnakumar, *Textualism in Practice*, 74 Duke L.J. 573, 624 (2024) (observing the Court's "uneven stances" in practice between ordinary meaning and legal meaning).

92 *See* Cross, *supra* note 5, at 1339.

for "everyday speakers"[93] or "ordinary speakers."[94] (Additionally, it emphasized that it respects "ordinary language,"[95] "ordinary meaning,"[96] and word meaning "as a matter of every day speech."[97]). Justice Thomas's dissent likewise defended the primacy of ordinary word meaning.[98] Despite occasional hints to the contrary,[99] therefore, the Court's interpretive approach ultimately was one summarized by its declaration that: "[O]ur task here, as ever, is to interpret the words Congress enacted 'consistent with their ordinary meaning.'"[100]

In their analyses of the GCA, the linguists also had accepted this *meaning constraint*. They repeatedly emphasized that, when analyzing a key statutory term: "[W]e consider its ordinary meaning."[101] Consequently, their brief referenced variants of "ordinary meaning" over thirty times, and their article did so over sixty times.[102] They also underscored that their empirical survey was conducted on "ordinary Americans."[103] This was true despite the linguists using the term "ordinary" in a somewhat different sense than courts—viz., to reference naturally-occurring uses by non-legal actors, regardless of whether they participate in a linguistic subcommunity with its own jargon or expertise.[104] While it may obscure deeper differences, however, *VanDerStok* did underscore one feature of Linguistic Textualism: a shared commitment to the *meaning constraint*.

93 Bondi v. VanDerStok, 145 S. Ct. 857, 868 (2025) ("Reflecting as much, everyday speakers sometimes use artifact nouns to refer to unfinished objects—at least when their intended function is clear.").

94 *Id.* (referencing "ordinary speaker" twice and "everyday speakers" once); *id.* at 871 n.4 (referencing "ordinary speakers"); *id.* at 873 (referencing "ordinary speaker"); *id.* at 874 (referencing "ordinary speakers").

95 *Id.* at 868 ("Consider, first, a feature of ordinary language.").

96 *Id.* at 871 n.4 (citing Wisconsin Central Ltd. v. United States, 585 U.S. 274, 278 (2018)) ("[T]he dissent does not dispute that our task here, as ever, is to interpret the words Congress enacted 'consistent with their ordinary meaning.'").

97 *Id.* at 868 (asserting that "as a matter of every day speech, that rifle *is* a weapon, whether disassembled or combat ready").

98 *See id.* at 883 (Thomas, J., dissenting) ("Because the GCA defines neither 'frame' nor 'receiver,' we give each term its ordinary meaning."). The dissent mentions ordinary meaning eleven times.

99 *See id.* at 871 n.4 (majority opinion) (suggesting that the Court seeks to locate how "Congress used the term"); *id.* at 886 (Thomas, J., dissenting) (contradictorily asserting that "casual conversation" and "colloquial usage" are inapt due to the precision of statutory drafting).

100 *Id.* at 871.

101 Waldon et al., *supra* note 44, at 432. *See also* Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 12 (referencing "ordinary meaning").

102 *See* Waldon et al., *supra* note 44; Brief for Professors and Scholars of Linguistics and Law, *supra* note 71.

103 *Id.* at 443.

104 *See, e.g.*, *id.* at 435–37 (describing firearm online marketing and customer reviews as "ordinary usage"); *id.* at 422 (focusing on "naturally occurring language").

This shared approach to *VanDerStok* is remarkable, because it is difficult to imagine a statute less amenable to the *meaning constraint* than the GCA. Time and again, that statute transparently uses terms in a non-ordinary fashion. As a result, the Court's repeated discussion of "ordinary meaning" often seems puzzlingly inapt. Consider some examples.

1. "Firearm"

Begin with the term "firearm" itself, which the lower courts had particularly emphasized. The Fifth Circuit had referred to this word as the "bedrock of the GCA,"[105] and a key concurrence placed particularly heavy emphasis on its ordinary meaning.[106] Following this lead, the Respondents had argued to the Court that the term "firearm" must not reach incomplete weapons because "[o]rdinary American usage compels this conclusion."[107] By contrast, the linguists argued that coverage actually was required by the "ordinary meaning of *firearm*."[108] The linguists emphasized, moreover, that key aspects of the definition of "firearm" in the GCA were consistent with its ordinary meaning.[109] A consensus therefore emerged as the case progressed through the courts: namely, that the ordinary meaning of "firearm" was relevant to understanding the GCA definition.

Yet the term "firearm" has always been defined unnaturally in federal law. In the National Firearms Act, the nation's first major gun control legislation, the term "firearm" included mufflers and silencers—gun accessories that plainly are not "firearms" themselves. It also was artificially limited to concealable weapons and machine guns.[110] In the Federal Firearms Act of 1938 (FFA), which eventually would be amended to become the GCA, it likewise included mufflers and silencers—as well as any individual part of a firearm.[111] Throughout, the term has consistently been assigned a highly non-ordinary meaning.

This trend continued in the GCA, where "firearm" is defined in a manner that flatly defies its ordinary meaning. Indeed, it is difficult to

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105 VanDerStok v. Garland, 86 F.4th 179, 184 (5th Cir. 2023).

106 *Id.* at 212 (Oldham, J., concurring) (using the "truck" analogy).

107 Brief for Respondents Defense Distributed, Polymer80, Inc., and the Second Amendment Foundation at 14–15, Garland v. VanDerStok, 144 S. Ct. 1390 (2024) (No. 23-852), 2024 WL 3860010.

108 Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 12.

109 Waldon et al., *supra* note 44, at 433 ("Thus, from a linguistic perspective, Congress's definition of *firearm* in (A) is best understood not as an instruction to disregard or embellish the noun's ordinary meaning but as an attempt to provide sufficient context to resolve an indeterminacy that is inherent to its ordinary meaning.").

110 National Firearms Act of 1934, ch. 757, § 1(a), 48 Stat. 1236, 1236.

111 Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1250.

imagine a more artificial definition of "firearm" than that found in the GCA. Consider just some of the things that definition identifies as a *firearm*:

- A gun silencer.[112]
- A gun frame.[113]
- A combination of parts to make a poison gas mine.[114]
- A starter gun.[115]

The former two items are plainly attachments for, or subsets of, the main object (a firearm). Yet the definition artificially declares them identical to that object. The latter two seemingly are not such an object, yet it likewise declares them identical. Meanwhile, the definition also specifies that a firearm manufactured before 1899 (i.e., one type of firearm) is not a "firearm."[116] That is to say, it announces that the term does not include a subset that literally has "firearm" in its description. Glaring linguistic inconsistencies abound.

In this way, the term "firearm" nicely illustrates the core linguistic puzzle of *VanDerStok*: The GCA plainly uses some terms in unnatural, illogical, or inconsistent ways. Yet the parties and courts in *VanDerStok* never reckoned with these linguistic oddities. Instead, their surveys and analyses would artificially eliminate these textual inconsistencies. In the sample definition of "firearm" used for their empirical survey on the ordinary meaning of "firearm," for instance, the linguists removed every indicia of non-ordinary meaning listed above.[117] Such evidence of how readers might construe an artificially consistent alternative to the GCA might well be helpful in construing the statute. Nonetheless, it runs the risk of empowering a judicial tendency to ignore textual evidence that would require courts to reckon with inconsistency. And it provides limited help in solving the core linguistic puzzle presented by the GCA.

A starting point for that puzzle might instead begin with the following observation: What stands out in reading the "firearm" definition is a smattering of policy goals, not a portrait of linguistic consistency. In the "antique firearms" provision, for instance, one plainly sees a pragmatic desire to carve out antique collectors who are not deemed a threat to use the weapons for harm. What one does not perceive, by contrast, is a communicator fleshing out their linguistically

112 18 U.S.C. § 921(a)(3)(C).
113 18 U.S.C. § 921(a)(3)(B).
114 18 U.S.C. § 921(a)(3)(D)–(a)(4).
115 18 U.S.C. § 921(a)(3)(A).
116 18 U.S.C. § 921(a)(3), (a)(16)(A).
117 *See* Waldon et al., *supra* note 44, at 440–41 (presenting survey questions).

coherent notion of a "firearm" for the reader. In other words, textual indicia communicates that ordinary meaning may not be relevant. Basic principles of statutory construction indicate the same—counseling that, because legislatures should be free to artificially define terms, courts should defer to definitions rather than relying upon defined terms.[118] With its strong commitment to the *meaning constraint*, however, Linguistic Textualism threatens to disrupt that settled consensus.[119]

The Court in *VanDerStok*, it should be noted, admirably avoided reliance upon these arguments about the ordinary meaning of the term "firearm." It did so, however, only to focus attention upon the ordinary meaning of several other GCA terms. Yet these other terms were employed in ways that were equally artificial.

2. *"Weapon"*

Consider the term "weapon." Throughout the litigation, lower courts and parties had relied on arguments about the ordinary meaning of this statutory term.[120] The linguists similarly focused on the ordinary meaning of this term,[121] explaining that: "Because *weapon* . . . is not defined elsewhere in the statute, we consider its ordinary meaning."[122]

The Supreme Court followed suit, declaring (five different times) that it was locating the ordinary meaning of this term.[123] It also cited multiple dictionaries—a classic judicial tool for ordinary meaning.[124] And, crucially, the Court relied directly upon the linguists' assessment of ordinary meaning. Citing the scholars' amicus brief, the Court drew

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118 *See, e.g.*, Victoria L. Killion, Cong. Rsch. Serv., R46484, Understanding Federal Legislation: A Section-by-Section Guide to Key Legal Considerations 1 (2022) ("Defined terms in a bill set the meaning of those terms wherever those definitions apply, even if those terms would normally have a different meaning in everyday usage.").

119 The linguists were careful to underscore this principle of interpretation, it should be noted, and suggested their analysis had relevance only if the Court elected not to respect it. *See* Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 25–27.

120 *See* VanDerStok v. Garland, 86 F.4th 179, 192 (5th Cir. 2023) (emphasizing need to attend to fact that statute regulates "any weapon"); *id.* at 212 (Oldham, J., concurring) (using the truck analogy to underscore meaning "no reasonable person" would apply); VanDerStok v. Garland, 680 F. Supp. 3d 741, 768 (N.D. Tex. 2023) (emphasizing that GCA covers "any *weapon*," not "weapon *parts*"); Reply Brief for the Petitioners, Garland v. VanDerStok at 4, 144 S. Ct. 1390 (2024) (No. 23-852), 2024 WL 4183989 (citing Webster's Third New International Dictionary of the English Language (1968)).

121 *See, e.g.*, Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 12 (focusing on "ordinary meaning of . . . *weapon*"); *id.* at 20 (explaining what, "[a]s a matter of ordinary meaning, *weapon* contemplates").

122 Waldon et al., *supra* note 44, at 432.

123 Bondi v. VanDerStok, 145 S. Ct. 857, 868 (2025) (referencing "ordinary language," "everyday speakers," "every day speech," and twice referencing an "ordinary speaker").

124 *Id.* at 867 (citing Webster's Third New International Dictionary (1966) and Concise Oxford English Dictionary (5th ed. 1964)).

upon the linguists' analysis of artifact nouns to explain how the term is "typically" used, and they repeated the everyday examples of such usage (e.g., a novel; a table) also cited by the linguists.[125] In this way, the Court claimed to uncover how the GCA presumably uses the term "weapon."[126] For its part, Justice Thomas's dissent likewise appealed to the term's "ordinary meaning."[127]

Yet the term "weapon," as well, has often been used unnaturally in federal law. For the National Firearms Act, for instance, the phrase "any other weapon" has meant only concealable firearms (and has further excluded pistols, revolvers, and shoulder-fired weapons).[128] As explained further below, the term initially carried a more natural meaning in the Federal Firearms Act of 1938.[129] That conventional meaning would not carry into the GCA, however.

This is evident from the term's use in the GCA. Recall that the statute covers the following: "any weapon . . . which . . . may readily be converted to expel a projectile by the action of an explosive."[130] Any reader applying the ordinary meaning of "weapon" to this phrase immediately encounters a problem: Typically, a description of something convertible is grammatically preceded by a description of the thing in its *pre-conversion* state. One would not say, for instance: "I bought a bookshelf that can be converted into book shelving." Yet the GCA definition must operate in precisely this way, it seems, if the term "weapon" is to bear its ordinary meaning.

There is one ordinary-meaning interpretation that could remedy this anomaly, of course: one that views "weapon" as designed to capture non-firearm weapons. Under that interpretation, the rule would apply only when someone converted a non-firearm weapon (e.g., a knife) into a gun. However, that meaning is so farfetched that even the litigation parties failed in their efforts to concoct plausibly intended real-world applications.[131] Indeed, that interpretation would lead to a

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125 *See id.* at 868 ("An author might invite your opinion on her latest *novel*, even if she sends you an unfinished manuscript. A friend might speak of the *table* he just bought at IKEA, even though hours of assembly remain ahead of him."); *see also* Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 8–9 (citing examples of "incomplete novel" and "unassembled table [from IKEA]").

126 *See VanDerStok*, 145 S. Ct. at 868 ("The term 'weapon' is an artifact noun—a word for a thing created by humans. Artifact nouns are typically characterized by an intended function, rather than by some ineffable natural essence.").

127 *See id.* at 888 (Thomas, J., dissenting) ("The ordinary meaning of 'weapon' does not include weapon-parts kits.").

128 26 U.S.C. § 5848(5) (1964).

129 *See infra* Section III.B.

130 18 U.S.C. § 921(a)(3)(A).

131 *See* Brief for Respondents VanDerStok, Andren, Tactical Machining, Firearms Pol'y Coal., Inc., and Blackhawk Mfg. Grp., Inc. Supporting Respondents, Garland v. VanDerStok

rule so arbitrary that, without further context or justification, it would resemble statutory rules that some judges have suggested might raise constitutional concerns for arbitrariness.[132] If the concern is about dangerous individuals possessing firearms, for instance, why would anyone care whether that firearm happened to previously be a knife? It is an interpretation that does little to make basic sense out of the words of the GCA, and to thereby resolve the linguistic puzzle or anomaly of that statute.

As Part III will explain, there is a simple explanation for this anomaly in the GCA. However, it requires understanding that, contrary to the Court's assumption, the term "weapon" did not carry an ordinary meaning in this statute. The sentence-level anomaly that interpretation produces should be sufficient to alert any interpreter to that possibility. So, too, perhaps should the fact that the definition refers to "any weapon (including a starter gun)," even though few would describe a starter gun as a weapon.[133] That, too, suggests that the term "weapon" is being used in unnatural ways. The Court ignored these concerns, however—applying a *meaning constraint* which directs that ordinary meaning must govern.

3. "Frame or Receiver"

Likewise, the Court relied heavily on the ordinary meanings of two other terms in the statutory definition: "frame" and "receiver."[134] Here, the linguists had urged that "*frame* and *receiver* have ordinary meanings" that they could detail for the Justices.[135] The Court followed suit, seeking the meaning of these terms for an "ordinary speaker,"[136] as did Justice Thomas's dissent.[137] To find that meaning, the Court once again turned to the linguists' explanation of the ordinary meaning of artifact nouns,[138] and to their colloquial examples of ordinary usage

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at 33–34, 144 S. Ct. 1390 (2024) (No. 23-852), 2024 WL 3860011 (arguing that starter guns are "weapons" but not firearms because they can be brandished threateningly during stickups).

132 *See, e.g.*, United States v. Marshall, 908 F.2d 1312, 1337 (7th Cir. 1990) (Posner, J., dissenting) (describing rules punishing drug mixtures based on amount of non-drug mixture as potentially "irrational, hence unconstitutional").

133 18 U.S.C. § 921(a)(3)(A).

134 18 U.S.C. § 921(a)(3)(B).

135 Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 4 (emphasis added).

136 Bondi v. VanDerStok, 145 S. Ct. 857, 873 (2025).

137 *See id.* at 883 (Thomas, J., dissenting) ("The ordinary meaning of 'frame or receiver' does not include objects that may be 'converted' into a frame or receiver.").

138 *Id.* at 873 ("[L]ike the word 'weapon' in subsection (A), the terms 'frame' and 'receiver' in subsection (B) are artifact nouns. And, as artifact nouns, they may sometimes describe not-yet-complete objects.").

for items such as novels and tables.[139] Finally, appealing to the reader's ordinary linguistic intuition, the Court presented a photograph of an alleged firearm frame and remarked: "Just look again at the second photo. What else would you call it?"[140]

Yet "frame" and "receiver" are not ordinary, generalist-accessible terms (at least in the firearms context). They are technical terms of art—the vocabulary of an expert, specialized subcommunity.[141] These terms generally refer to a portion of the firearm that houses three specific components: the hammer, bolt or breechblock, and firing mechanism.[142] They exclude the barrel of the firearm, despite the barrel having an exterior (and therefore perhaps a "frame"), as with any other segment of the firearm. Unsurprisingly, litigants and the Justices therefore turned to specialist dictionaries to define these terms.[143] Indeed, the technical nature of these terms was underscored by the briefs submitted to explain their meaning (and their changing ATF definitions) to the Court, which included the following:

"Where before a part had to house both the firing mechanism and the breechblock, now a 'frame' of a handgun need only house the energized firing component (e.g., the sear or equivalent), and a long gun 'receiver' need only house the breechblock."[144]

"'Receiver' was 'the part of a gun that takes the charge from the magazine and holds it until it is seated in the breech. Specifically, the metal part of a gun that houses the breech action and firing mechanism . . . .'"[145]

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139 *See id.* ("Recall the author who refers to her manuscript as a *novel*, or your friend who calls his IKEA kit a *table*.").

140 *Id.* ("Just look again at the second photo. What else would you call it?").

141 On the "division of linguistic labor" whereby even ordinary readers defer to specialized meanings, see, for example, Lawrence B. Solum, *Incorporation and Originalist Theory*, 18 J. CONTEMP. LEGAL ISSUES 409, 429–31 (2009). *See also Ordinary Meaning*, *supra* note 36, at 388–89 (reporting some empirical evidence for this practice).

142 *See* Definition of "Frame or Receiver" and Identification of Firearms, 87 Fed. Reg. 24694 (Apr. 26, 2022) (to be codified at 27 C.F.R. pts. 447, 478, 479) (defining "frame or receiver" to be "that part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism").

143 *See VanDerStok*, 145 S. Ct. at 879 (Thomas, J., dissenting) (citing CHESTER MUELLER & JOHN OLSON, SMALL ARMS LEXICON AND CONCISE ENCYCLOPEDIA 87 (1968)); Brief for the Petitioners at 32, Garland v. VanDerStok, 144 S. Ct. 1390 (2024) (No. 23-852), 2024 WL 3344939 (same).

144 Brief for Respondents VanDerStok, Andren, Tactical Machining, Firearms Pol'y Coal., Inc., & Blackhawk Mfg. Grp., Inc. at 10 (quoting 27 C.F.R. § 478.12(a)(1)–(2)); *see also* Garland v. VanDerStok, 144 S. Ct. 1390 (2024) (No. 23-852), 2024 WL 3860011.

145 Brief for *Amicus Curiae* National Shooting Sports Found., Inc. in Support of Respondents and Affirmance at 16, Garland v. VanDerStok, 144 S. Ct. 1390 (2024) (No. 23-852), 2024 WL 3914160 (quoting MUELLER & OLSON, *supra* note 143, at 87).

As these descriptions make clear, the meaning of "frame" and "receiver" turns on technical distinctions—and understanding them requires both mechanical and linguistic expertise with firearms. In such a context, appeals to ordinary meaning seem confusingly misplaced.[146]

This dilemma regarding "frame" and "receiver" is only made worse by section 923(i) of the GCA.[147] That section requires a serial number to be cast or engraved "on the receiver or frame" of each item defined as a firearm.[148] The Court, in its search for a consistent ordinary meaning, cited this provision as evidence that the terms "frame" and "receiver" were consistently used by the GCA "to reach some unfinished and unconventional" forms of these objects.[149] However, section 923(i) does not merely require serial numbers for "unconventional" frames and receivers. Many items defined as "firearms" in the GCA, such as silencers, simply lack any frame or receiver whatsoever. In certain applications, therefore, the section 923(i) instruction is simply unintelligible. As a result, it only deepens the linguistic puzzle—one that the Supreme Court ignored, instead pretending that ordinary meaning unlocked a consistent, coherent reading of the statute.

4. "Any Such Weapon"

Linguistic Textualism's *meaning constraint* was also evident in the Court's interpretation of another statutory phrase: "any such weapon."[150] After subparagraph (A) of the GCA provision referred to "any weapon" that met a certain definition of firearm, subparagraph (B) referred back to "the frame or receiver of *any such weapon*."[151] Virtually everyone involved in *VanDerStok* read this "any

146 A sizeable portion of Americans (roughly one third) own firearms, of course, so it might be argued that the subcommunity is sufficiently broad that the technical usage has entered into general usage. Maggie Fox, *One in Three Americans Own Guns; Culture a Factor, Study Finds*, NBCNews.com (June 29, 2015, at 18:30 ET), https://www.nbcnews.com/news/us-news/one-three-americans-own-guns-culture-factor-study-finds-n384031 [https://perma.cc/VGL7-J7TU]. Still, a comparable percentage of Americans own video game consoles, yet it is difficult to imagine a court displaying a photograph of a graphics processing unit and asking rhetorically: "What else would you call it?" *See* Andrew Perrin, *5 Facts About Americans and Video Games*, Pew Rsch. Ctr. (Sep. 17, 2018), https://www.pewresearch.org/short-reads/2018/09/17/5-facts-about-americans-and-video-games [https://perma.cc/LW59-D2LN] (reporting thirty-nine percent of Americans owned video game consoles as of 2018).

147 18 U.S.C. § 923(i).

148 *Id.*

149 Bondi v. VanDerStok, 145 S. Ct. 857, 873 (2025).

150 18 U.S.C. § 921(a)(3)(B).

151 *Id.* ("The term 'firearm' means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon . . . .").

such weapon" phrase in subparagraph (B) as importing some sort of completeness standard between these two subparagraphs. Echoing an argument from the linguists,[152] the Court claimed that the "any such weapon" phrase "expressly incorporates" an *in*completeness standard from subparagraph (A) into subparagraph (B).[153] On the other hand, Justice Thomas's dissent echoed arguments made by the lower courts and argued that the phrase imported a standard from subparagraph (A) that required, at a minimum, complete frames and receivers.[154] Moreover, the dissent argued that the interpretation likewise ran in the other direction, which is to say that the phrase "any such weapon" imported from subparagraph (B) into subparagraph (A) a completeness standard for frames and receivers as well.[155] Beneath these competing interpretations, there was underlying consensus: The phrase "any such weapon" surely constituted an effort by Congress to port some sort of completeness standard across subparagraphs (A) and (B).

This assumption revealed the Court's continued confusion over the use in statutes of antecedent-referencing phrases. A term of art in legislative drafting, the word "such" in this context plays a technical role as a term that legislatures use to reference statutory antecedents.[156] Unbeknownst to the Court, apparently, the phrase "any such" thereby serves a relatively limited function in statutory drafting. It serves to disambiguate which meaning of a statutory term is intended.[157]

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152 *See* Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 4 (claiming the phrase "clarifies the relevant class of frames and receivers"); Waldon et al., *supra* note 44, at 448 ("This clear reference from Congress, using 'any such weapon' in (B) to refer back to 'weapon' in (A), is essential elaboration of the contextual meaning of 'frame' and 'receiver.' It indicates a close connection between (A) and (B).").

153 *VanDerStok*, 145 S. Ct. at 875 (holding that "[s]ubsection (B) expressly incorporates" a definition of "weapon" that "encompasses some things that are not yet fit for effective use in combat").

154 *Id.* at 889 (Thomas, J., dissenting) ("Section 921 supports this reading by delimiting the definition of a 'firearm' to 'any weapon' convertible into a functional gun, and 'the frame or receiver *of any such weapon* . . . .'"); *see also* VanDerStok v. Garland, 86 F.4th 179, 210 (5th Cir. 2023) (Oldham, J., concurring) ("Section 921(a)(3) does not contemplate a weapon covered by (A) that does *not* have a frame or receiver covered by (B)."); VanDerStok v. Garland, 680 F. Supp. 3d 741, 764 (N.D. Tex. 2023) ("Parts that *may become* receivers are not receivers.").

155 *VanDerStok*, 145 S. Ct. at 889 (Thomas, J., dissenting) ("The unfinished, inoperable kit pieces . . . do not constitute a 'weapon,' because they do not fit within subsection (A)'s statutory definition.").

156 Manual on Drafting Style, *supra* note 16, at 48. *See also id.* at 47 (construing "any" as a term of art used to convey "special emphasis").

157 *See id.* at 47–48.

Applying this understanding to the GCA definition, we see that the antecedent reference performs a straightforward function: It tells the reader that subparagraph (B) applies to *gun* frames, not to *picture* frames. Having established that meaning, the work of the phrase "any such weapon" is done. It is silent about subsidiary questions regarding gun frames, such as the proper cutoff point or stage of completion for becoming one.[158] This limiting function is lost when a reader is unaware of the technical quality of these antecedent references in statutes, however, and instead applies an ordinary (or even literary) lens to them—a lens more eager to infer rich, connotative interconnections between statutorily discrete provisions.

5. "Starter Gun"

Finally, consider the term "starter gun" in the GCA.[159] To support its interpretation, the Court construed that term "as an ordinary speaker might."[160] That interpretation could prove consequential, as the Court suggested that the term might play a role in defining the outer limits of GCA coverage in future cases.[161] Yet there is significant evidence that Congress used the term "starter gun" in a somewhat *non*-ordinary fashion in the GCA.

As the legislative record shows, all manner of blank-firing weapons were entering the United States en masse in the 1960s.[162] In the words of one congressional witness: "[T]here is a tremendous market in the United States for blanks."[163] The problem posed by these weapons was exhaustively presented at congressional hearings[164] and documented in congressional reports.[165] Throughout, the term "starter gun" was used to describe a far broader universe of potentially-convertible objects than a simple carveout for starter pistols might suggest. As one congressional witness put it:

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158 The linguists' materials partly acknowledge this, noting that the antecedent reference to "any such weapons" functions to filter out application to, for example, toy guns. *See* Waldon et al., *supra* note 44, at 448.

159 18 U.S.C. § 921(a)(3)(A).

160 *VanDerStok*, 145 S. Ct. at 868.

161 *Id.* (noting that the term shows GCA must "embrace some unfinished instruments of combat like Polymer80's product").

162 *See Investigation of Juvenile Delinquency in the United States: Hearings on S. Res. 63 Before the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary*, 88th Cong. 3438–41 (1963) [hereinafter *Investigation*] (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York) (describing "mass importation" and "influx" of such weapons).

163 *Id.* at 3576 (statement of Haywood "Hy" Hunter, President, Am. Weapons Corp.).

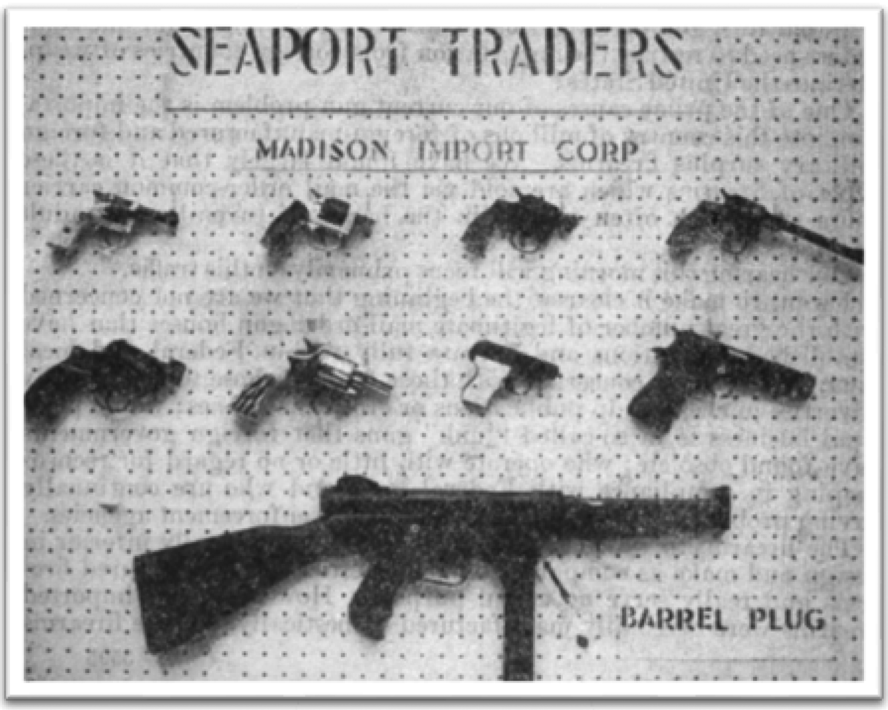
164 *See, e.g.*, *id.*

165 *See, e.g.*, S. Rep. No. 88-1340, at 14 (1964).

> The weapon used was a converted starter pistol, and gentlemen, if any of you are thinking in terms of the starter pistol which the starters at track meets use, and can carry in their vest pockets, let me show you the type of pistol to which I am referring. This is today's starter pistol, which is menacing enough without conversion.[166]

A congressional exhibit related to that testimony is reprinted in Figure 1.[167] It illustrates the remarkable diversity of weapons that were discussed under the label of "starter" weapons.

Figure 1



This evidence suggests that, in Congress, the term "starter gun" carried a broader meaning than simply a weapon designed for use at the beginning of athletic events.[168] (It also suggests that this meaning prevailed among some actors outside of Congress, including the

166 *Id.*

167 *See Investigation*, *supra* note 162, at 3440.

168 In this regard, "starter gun" perhaps is a candidate for William Eskridge's "pet fish" canon, whereby a combination of words takes on a unique meaning independent of its parts. *See* William N. Eskridge, Jr., *The Pet Fish Canon*, 33 J.L. & Pol'y 4, 4 (2024).

firearms-dealer community, the law-enforcement community, and perhaps even the larger society of 1960s America.) This evidence, too, raises concerns that a strict focus on "ordinary meaning" might lose connection to the concepts that Congress worked to add linguistically into the statute. Yet that is the focus required by the *meaning constraint*.

B. Temporal Constraint

Another artificial constraint of Linguistic Textualism is the *temporal constraint*. Under this constraint, the Court artificially limits the time period for its analysis. In so doing, it minimizes the multitemporal dimension of statutes—and, especially, of amended statutes. At times, the Court even uses a temporal fiction: It pretends that the statutory text it interprets is from a single enactment.[169] This empowers the Court to seek "original" meaning at a single moment in time, rather than addressing the temporal layers of a statute.[170]

As a feature of Linguistic Textualism, this *temporal constraint* is largely accepted by the recent work in law-and-linguistics. For instance, its empirical surveys have consistently presented survey respondents with amended sentences from present-day law, but without retelling any of the amendment history behind them.[171] In this regard, the law-and-linguistics research tends to make an unspoken assumption about *which statutory text* is relevant: It treats the assembled version of law found in the United States Code as authoritative, not the disassembled, amendment-by-amendment version sometimes found in our public laws. While that compilation is a different statutory text than textualism is supposed to select in theory,[172] it is the one it often uses in practice.[173] The result is another basic feature of Linguistic Textualism: a commitment to the *temporal constraint*.

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169 This does not mean that the Court never acknowledges or cites any statutory history. For documentation of the frequency of such citations on the Roberts Court, see Krishnakumar, *supra* note 91, at 607–10.

170 *See* Cross, *supra* note 5, at 1338. *See also* Anita S. Krishnakumar, *Statutory History*, 108 Va. L. Rev. 263, 282, 295 (2022) (suggesting that only 6.2% of Roberts Court opinions in statutory cases from the 2005 term through the 2018 term invoked amendment history).

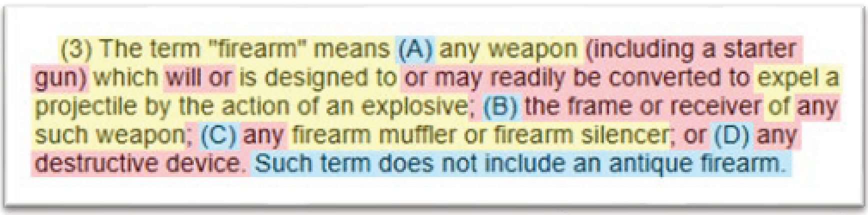
171 *See, e.g.*, Waldon et al., *supra* note 44, at 438–41 (describing research design).

172 *See* Tara Leigh Grove, *Which Textualism?*, 134 Harv. L. Rev. 265, 267 (2020) ("Textualists argue that judges must respect the (often messy) compromises reached through the bicameralism and presentment process of Article I, Section 7 by enforcing a clear text . . . ."); *see also* Jesse M. Cross, *Where is Statutory Law?*, 108 Corn. L. Rev. 1041, 1044 (2023) (exploring the question of the proper text to be analyzed in textualist statutory interpretation).

173 *See generally* Cross, *supra* note 5 (describing problems with the Court's tendency to cite to U.S. Code).

This *temporal constraint* was apparent in *VanDerStok*. Notice that the contested provisions of the GCA had several temporal layers. Begin with the pivotal definition of "firearm." That definition is depicted in Figure 2—with language from 1938 highlighted in yellow,[174] from June 1968 in red,[175] and from October 1968 in blue.[176]

FIGURE 2



(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

This amendatory, multitemporal quality expands further once we consider ancillary provisions of the GCA cited by the Court. These include provisions enacted as recently as 1986,[177] as well as several more provisions added in October 1968.[178] *VanDerStok* thereby implicated a richly multitemporal interaction between terms enacted by Congress at various times.

This was true despite a curious feature of *VanDerStok*. The case was a "facial" challenge of the GCA definition of "firearm," so the plaintiffs were not challenging any particular application of that definition.[179] Any such application would necessarily involve a second provision of law—one that cross-referenced the GCA definition to specify some prohibited conduct (and outline the penalty for violation). However, because *VanDerStok* involved a pre-enforcement challenge to the statutory definition, it lacked this typical cross-provision interaction.

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174 Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1250.

175 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 902, 82 Stat. 197, 227; *see also* STAFF OF S. COMM. ON THE JUDICIARY, 89TH CONG., REPORT ON STATE FIREARMS CONTROL ASSISTANCE AMENDMENTS OF 1966 24 (Comm. Print 1966) ("The definition of the term 'firearm' in paragraph (3) is a restatement and revision of the provisions of existing law (15 U.S.C. 901(3)).").

176 Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214.

177 *See, e.g.*, Firearms Owners' Protection Act, Pub. L. No. 99-308, § 101(6), 100 Stat. 449, 451 (1986) (adding cited definitions of "firearm silencer" and "firearm muffler"); Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1223 (adding cited "receiver or frame" language into 18 U.S.C. § 923(i)).

178 Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214–26.

179 *See* Bondi v. VanDerStok, 145 S. Ct. 857, 865 (2025) (noting "facial" challenge lodged "[b]efore ATF's new rule took effect").

This "facial" challenge raises several questions.[180] First, although the GCA definition of "firearm" appears in the criminal code, the definition is used both inside and outside the criminal code.[181] When a "facial" challenge settles the meaning of a definition for all uses, should the rule of lenity apply, given that this interpretive rule is typically reserved for criminal statutes?[182] (Justice Thomas's dissent assumed it should, without mention of this wrinkle.)[183] More relevant to this Article, however, is another odd feature of the "facial" challenge: It removed yet another temporal layer to the GCA, insofar as its definition continues to be cross-referenced even in contemporary legislation.[184] Even lacking these further temporal layers, however, *VanDerStok* was a case of complex, multitemporal interactions between words enacted into law at different moments.

Rather than reckon with this multitemporal quality of the statute, however, the Court relied on the *temporal constraint*. To that end, it pretended that only two historical moments were relevant to

180 The *VanDerStok* Court accepted this "facial" characterization of the pre-enforcement challenge under the Administrative Procedure Act (APA) because that framing was unchallenged by the parties, while also carefully noting that the Court was repeating but not endorsing the characterization offered by the parties and lower courts. *See id.* at 865 (noting that it was "what [parties] described as a 'facial' challenge" and "what the lower courts called a 'facial' pre-enforcement challenge"); *id.* at 866 n.2 (noting the Court was accepting as given "the parties' dispute as they have chosen to frame it"). In the constitutional context, a "facial" challenge generally refers to an allegation that a statute is unconstitutional in all possible applications, whereas an "as-applied" challenge alleges unconstitutionality in only one particular application. On facial versus as-applied challenges on the Roberts Court, see generally Gillian E. Metzger, *Facial and As-Applied Challenges Under the Roberts Court*, 36 Fordham Urb. L. J. 773 (2009).

181 For uses outside the criminal code, see, for example, 42 U.S.C. § 2201a (use of firearms by security personnel); 20 U.S.C. § 7961(b)(3) (requiring the expulsion of children who bring firearms to school as a condition for federal education funding); 46 U.S.C. § 70105(c)(2)(vii)(III) (disqualifying from shipping employment workers convicted for unlawful firearm possession); 15 U.S.C. § 7903(4) (including firearms among "qualified products" for the purpose of prohibiting certain civil actions against qualified product manufacturers).

182 As one leading casebook observes, the rule of lenity is generally viewed as a rule for "construing penal statutes," and "criminal statutes are the most obvious and common type of penal law." William N. Eskridge, Jr., Abbe R. Gluck & Victoria F. Nourse, Statutes, Regulation, and Interpretation 583 (2d ed. 2024). On contestable areas of application of this rule, see *id.* (noting that "many civil statutes . . . have criminal penalties as well"); *id.* at 593–94 (noting debate over whether canon applies to sentencing).

183 *VanDerStok*, 145 S. Ct. at 891 (Thomas, J., dissenting) ("But, even if it were reasonable to treat artifact nouns differently, the Government would—at most—demonstrate statutory ambiguity. And, when a statute with criminal applications is ambiguous, the rule of lenity applies.").

184 For contemporary legislation using and cross-referencing this statutory definition, see, for example, Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, § 5211(b), 138 Stat. 1773, 2444 (2024).

the meaning of the statute: 1968 and today.[185] This led to awkward mischaracterizations of law. For instance, it led the Court to cite statutory meaning "in 1968,"[186] as well as dictionaries from the mid-1960s,[187] for a statutory term enacted in 1938.[188] Moreover, it also made the Court seemingly attempt to condense two separate statutes from 1968 (enacted in June and October) into a single enactment. As a result, the Court cited a specific page of the *Statutes at Large* for the GCA statute, yet for its discussion of the purpose of the statute (in the very next sentence), it cited a page nearly 1,000 pages prior.[189] This is depicted in Figure 3, which shows this passage of the Court's opinion with statutory citations highlighted.[190]

FIGURE 3

> Shortly after the assassinations of Senator Robert F. Kennedy and Dr. Martin Luther King, Jr. stunned the Nation, Congress adopted the Gun Control Act of 1968 (GCA). Pub. L. 90–618, 82 Stat. 1213. Existing gun control measures, Congress found, allowed criminals to acquire largely untraceable guns too easily. See 82 Stat. 225. Of-

In most instances, if a citation to a statute is misaligned by a thousand pages, it means the court has made a typographical error. In *VanDerStok*, it meant that the Court was flattening two statutes into one—a sleight of hand that empowered the *temporal constraint* that would erroneously regard the GCA as a static, monotemporal text.

This *temporal constraint* impacted the Court's interpretation in several ways. First, it empowered the Court to aggressively deploy its consistency-seeking canons of construction. The Court justified that approach by noting that it was interpreting terms "in the same provision," which it distinguished from the diminished consistency it assumes for "different statutes passed at different times to address

185 *See VanDerStok*, 145 S. Ct. at 867 ("When Congress adopted the GCA in 1968, that term meant what it means today . . . .").

186 *Id.*

187 *See id.* (citing dictionaries from 1964 and 1966); *see also id.* at 888 (Thomas, J., dissenting) (citing the 1966 dictionary for meaning of same term "[a]t the time of the GCA's enactment").

188 *See* Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1250 (enacting the term "weapon" in its definition of "firearm").

189 *See VanDerStok*, 145 S. Ct. at 862.

190 *Id.*

different problems using different language."[191] Similarly, Justice Thomas's dissent explained that the rule of meaningful variation was of "particular force here" because, in this case, it applied to provisions "of the same Act."[192] Yet these observations were only half accurate. While the provisions under discussion were all contained within the same amended provision or amended statute (the GCA), their origins were in different congressional enactments (or public laws). As I have explained elsewhere, this diminishes the persuasiveness of these consistency-seeking canons, which were applied in the Founding era only to individual public laws, not to amendatory documents.[193] With its *temporal constraint*, however, the Court is able to ignore this problem—and to straightforwardly apply its canons by pretending it interprets a single public law.

The *temporal constraint* also manifests in another way in *VanDerStok*. Under its Linguistic Textualism, the Court is supposed to seek the original meaning of statutory language—i.e., the meaning at the time of enactment.[194] Indeed, the author of *VanDerStok* has been a chief proponent of this approach.[195] As I have observed elsewhere, amended statutes pose difficult questions for this approach: After all, what is the "original" meaning of a sentence with language from multiple different years?[196] *VanDerStok* provided an opportunity to answer.

Rather than do so, however, the Court took an interpretive approach that plainly defied any pursuit of "original" meaning. Time and again, the Court interpreted a word in the GCA by citing the evidence of surrounding words—even though the surrounding words were not enacted into law until decades later. This is a curious phenomenon empowered by the *temporal constraint*: courts using "context" added years later to shape and infuse the "original" meaning of terms that entered the law without them around it. Virtually everyone involved in *VanDerStok* took this approach. Some examples can illustrate.

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191 *Id.* at 875.

192 *Id.* at 884 (Thomas, J., dissenting); *see also id.* at 888 (noting that "our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest" (citation omitted)).

193 *See generally* Cross, *supra* note 5 (arguing for the centrality of amended statutes in the interpretive enterprise).

194 *See VanDerStok*, 145 S. Ct. at 867 ("When Congress adopted the GCA in 1968, that term meant what it means today . . . ."); *id.* at 888 (2025) (Thomas, J., dissenting) (claiming to find word meaning "[a]t the time of the GCA's enactment").

195 *See, e.g.*, Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1738 (2020) (Gorsuch, J.) ("This Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment. After all, only the words on the page constitute the law adopted by Congress and approved by the President.").

196 *See* Cross, *supra* note 5, at 1319–20.

1. *"Weapon"*

Consider the term "weapon." That term was inserted into law in 1938.[197] The context that illuminates its original meaning, therefore, presumably would be the surrounding statutory language from 1938. To uncover its meaning, however, interpreters consistently looked elsewhere: They relied on numerous phrases not enacted until decades later.

This occurred repeatedly. Echoing the linguists' argument,[198] for instance, the Court contended that the phrase "may readily be converted to" was a crucial tool to discovering the correct meaning of "weapon."[199] Likewise, the Court said that the parenthetical statutory reference to a "starter gun" helped show how "Congress used that term,"[200] an approach to the term "weapon" mirrored by Justice Thomas's dissent.[201] Yet the "converted to" and "starter gun" phrases were not enacted until 1968—three decades after the term "weapon" was enacted.[202] Heavy reliance on these phrases, therefore, is a curious way to uncover the original meaning of "weapon" from 1938.

Justice Thomas's dissent additionally relied upon further statutory phrases to construe "weapon" that suffered from the same problem. There, he argued that a set of neighboring GCA provisions all assume the presence of a frame or receiver, which he believed to suggest that Congress used "weapon" as a term of art—one that included only weapons with complete firearm frames or receivers.[203] Yet all those neighboring provisions were from 1968, not 1938.[204]

2. *"Frame or Receiver"*

Moreover, consider the Court's interpretation of the phrase "frame or receiver" in section 921.[205] That interpretation drew upon

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197 *See* Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1250 ("The term 'firearm' means any weapon . . . .").

198 *See* Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 3 (arguing "converted to" phrase shows GCA "clearly and specifically employs" the ordinary meaning of "weapon").

199 *See VanDerStok*, 145 S. Ct. at 869 ("Those latter provisions necessarily contemplate that some things short of fully operable firearms will qualify as 'weapons.'").

200 *Id.* at 868.

201 *Id.* at 889 (Thomas, J., dissenting). *But see id.* at 890 (making a contradictory argument that the term "starter gun" was included "because a starter gun does not fit within the ordinary meaning of 'weapon'").

202 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 227.

203 *See VanDerStok*, 145 S. Ct. at 889 (Thomas, J., dissenting) (citing 18 U.S.C. §§ 923(i), 921(a)(3)(B)).

204 *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 227.

205 18 U.S.C. § 921(a)(3)(B).

the reference to a "receiver or frame" in nearby section 923(i), which imposes a serialization requirement on firearms.[206] However, when the "frame or receiver" phrase in section 921 was enacted, it was accompanied by a different serialization requirement. That requirement simply directed the Secretary to identify each firearm "in such manner as the Secretary shall by regulations prescribe."[207] It was only when Congress amended the law (a few months later) that it specified that such serialization must occur via engraving "on the receiver or frame of the weapon."[208] The temporal proximity of these two amendments might make this evidence more probative, of course, at least for some interpreters. Nonetheless, the point remains: Readers of the original statutory phrase "frame or receiver" had no parallel reference in section 923(i) to embellish their meaning.

3. Additional Examples

Other arguments from *VanDerStok* were even more remarkable. Echoing the lower court,[209] Justice Thomas's dissent interpreted the statutory reference to a "frame or receiver" by emphasizing its meaningful variation from the statutory definitions of "firearm silencer" and "firearm muffler"—definitions that more expressly reference concepts of disassembly or incompleteness.[210] The dissent argued that these meaningful variations had "particular force here" because they appeared within "the same Act."[211] The Court described the meaningful variation argument as likely the plaintiffs' "best argument."[212] The linguists likewise relied upon these definitions to provide "contextual information which helps to resolve the indeterminacy of frame or receiver."[213] However, the definitions of "firearm silencer" and "firearm muffler" were not enacted until 1986.[214] As such, it is unclear how they might

206 *VanDerStok*, 145 S. Ct. at 873 (arguing "§ 923(i) uses the phrase 'frame or receiver' to reach some unfinished and unconventional frames and receivers, making it only sensible to think the same phrase does the same work a few doors away in § 921(a)(3)(B)").

207 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 902, 82 Stat. 197, 232 (adding 18 U.S.C. 923(f)).

208 Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1223 (adding 18 U.S.C. § 923(i)).

209 *See* VanDerStok v. Garland, 86 F.4th 179, 192 (5th Cir. 2023) (citing this as "[y]et another example within the same statute" of meaningful variation).

210 *See* 18 U.S.C. § 921(a)(25).

211 *VanDerStok*, 145 S. Ct. at 884 (Thomas, J., dissenting).

212 *Id.* at 870.

213 Waldon et al., *supra* note 44, at 446 (emphasis omitted) (citing definitions in § 921(a)(25) to contend that "[t]he remainder of § 921(a)(3) bolsters this conclusion").

214 Firearms Owners' Protection Act, Pub. L. No. 99-308, § 101(6), 100 Stat. 449, 451 (1986) (adding new paragraph 18 U.S.C. § 921(a)(24)).

illuminate the original meaning of a statutory reference from 1968. Similar arguments apply to the statutory definition of "destructive device" cited by these interpreters,[215] although the cited language was added into the definition only months later.[216]

In addition to leading interpreters into confused arguments, this neglect of amendment history also led interpreters to overlook potentially helpful arguments. For instance, consider the linguists' argument (endorsed by the Court) that ordinary readers would tend to read the "firearm" definition holistically, because they would carry assumptions from one subparagraph of the definition into others.[217] The basic claim, that the definition would be read holistically, is particularly persuasive for the earlier versions of the GCA that enacted the contested phrases from *VanDerStok*. In the 1938 statute, the definition was a single, simple sentence. It contained no subparagraphs or even semicolons.[218] In the June 1968 enactment, the definition had elements separated by semicolons, but it still lacked separate subparagraphs.[219] It was only the October 1968 statute that broke the definition into separate subparagraphs.[220] Those factors surely impact the extent to which ordinary readers approach a provision holistically (versus as a collection of isolated or distinct elements). Yet neither the Court nor the linguists seemed aware that, when virtually all key terms in *VanDerStok* were enacted, the "firearm" definition was less segmented than it is today. That, too, would seem to bear upon the "original" meaning of those early terms.

One final, perplexing example: Everyone involved in *VanDerStok* cited the phrase "such weapon" in subparagraph (B).[221] Beginning with the incompleteness standard implied by the phrase "converted to" in subparagraph (A), these interpretations viewed the phrase "such weapon" as importing that standard into subparagraph (B), which the phrase in turn imposed onto the terms "frame or receiver." From an amendment perspective, this was a dizzyingly multitemporal argument.

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215 *See VanDerStok*, 145 S. Ct. at 884 (Thomas, J., dissenting); Waldon et al., *supra* note 44, at 446.

216 *See* Gun Control Act of 1968, Pub. L. No. 90-618, §102, 82 Stat. 1213, 1215 (adding 18 U.S.C. § 921(a)(4)(C)).

217 Waldon et al., *supra* note 44, at 448 (arguing that, given the proximity of these terms, ordinary readers are likely to perceive "a close connection between [subparagraphs] (A) and (B)" and view one as "essential elaboration" of the other).

218 *See* Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1250.

219 *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197, 227.

220 *See* Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214.

221 *See, e.g.*, Bondi v. VanDerStok, 145 S. Ct. 857, 875; *id.* at 889 (Thomas, J., dissenting); Waldon et al., *supra* note 44, at 40–41; *see also* discussion *supra* Section II.A.4.

It viewed a policy change proposed in August 1963 ("converted to") as having remade the meaning of a cross-referencing phrase retained from 1938 law ("such weapon"),[222] which in turn remade the contours of a policy change for a *different* amendment—one already added to the legislative proposals by March 1963 ("frame or receiver").[223] That is a remarkably dynamic, multitemporal notion of how statutory language evolves holistically—absorbing new meanings and limits from language changes occurring elsewhere.

These myriad examples beg the question: What is happening here? One explanation is that the Court is using these later-enacted provisions as a sort of subsequent legislative history—evidence of word meanings that Congress provided years after enactment of the words themselves. That usage might be particularly persuasive for the two GCA statutes enacted months apart in 1968, since similar actors in Congress likely shaped both statutes. Another explanation is that the Court actually wants to find non-original word meanings—and so it assumes that new phrases, when enacted, interact dynamically with older terms to remake their meaning. According to the Court's statements of interpretive principle, however, it rejects both these explanations.[224] Instead, it presents these interpretations as textual evidence (not subsequent legislative history) of original meaning (not dynamic meaning). It is difficult to see how that could be true.

The result is a mismatch between theory and practice. The theory of Linguistic Textualism, with its shibboleth of preserving original meaning, sometimes has little meaningful connection to the actual reading practices the Court conducts under its banner. The Fifth Circuit distilled the theory side in its *VanDerStok* opinion, citing Justice Gorsuch to boldly announce: "But the meanings of statutes do not change with the times."[225] Yet the words of statutes do change with the times. That is a problem for a Linguistic Textualism which, in practice, assumes that statutes are drafted to both: (1) relentlessly hew to ordinary meaning,

222 *See* Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1250.

223 This piecemeal drafting and staggered timing also raise questions about Justice Thomas's argument for meaningful variation between subparagraphs (A) and (B). *See VanDerStok*, 145 S. Ct. at 888 (Thomas, J., dissenting) (suggesting there is "every reason to think [the subsections] do not" have consistent meaning).

224 *See supra* notes 33–35 and accompanying text (discussing the Court's stated commitment to original meaning); Bostock v. Clayton Cnty., 140 S. Ct. 1731, 1747 (2020) ("Arguments based on subsequent legislative history . . . should not be taken seriously, not even in a footnote." (quoting Sullivan v. Finkelstein, 496 U.S. 617, 632 (1990) (Scalia, J., concurring))).

225 VanDerStok v. Garland, 86 F.4th 179, 189 (5th Cir. 2023) (citing *Bostock*, 140 S. Ct. at 1738).

and (2) fit seamlessly together.[226] Interpreters can seek that sort of static consistency in the present-day language of a statute, if they so desire, or they can seek the original reading of its words. For a statute that emerged incrementally, however—as the GCA did—they cannot simultaneously find both.

These contradictions endure, however, thanks to the *temporal constraint* of Linguistic Textualism. That constraint permits the Court to conduct statutory interpretation without any reference whatsoever to the dynamic amendment history beneath our statutes. The result is a method that embraces original meaning in theory while pursuing contemporary consistency in practice, and that often develops illogical arguments as a result.

C. Textual Constraint

The final artificial constraint of Linguistic Textualism is the *textual constraint*. Under this constraint, the Court artificially narrows the statute to isolated, individual terms. In prior cases, this has led the Court to a myopic focus on terms such as: "*because*," "*so*," and "*a*."[227] When taking this approach, the Court assumes that dispositive meaning can be found in small, decontextualized linguistic units.[228] This has been described by William Eskridge and Victoria Nourse as "textual gerrymandering,"[229] and it may be the best appreciated of the Court's new constraints.[230]

While this practice of "textual gerrymandering" has reached new extremes on the current Court, it touches on a longstanding and unresolved question in statutory interpretation. That question asks: Exactly how much "context" should a court consider when facing a statutory question?[231] That is to say, how broad a textual universe (from both primary and secondary documents) is adequately wide to justify an

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226 *See* Waldon et al., *supra* note 44, at 431–32 (using "converted to" phrase to argue that the term "*weapon* harmonizes with the rest of (A)").

227 *See Bostock*, 140 S. Ct. at 1731 (2020) (relying on an interpretation of "because of"); Niz-Chavez v. Garland, 141 S. Ct. 1474, 1480–82, 1489–94 (2021) (relying on an interpretation of "a"); Van Buren v. United States, 141 S. Ct. 1648, 1654–57, 1664 (2021) (relying on an interpretation of "so").

228 *See* Cross, *supra* note 5, at 1338.

229 *See* Eskridge & Nourse, *supra* note 90, at 1718.

230 *See id.* at 1727 (noting that "new textualists . . . have increasingly focused on small bits of text . . . and have demanded plain meanings from those language morsels"); Ryan D. Doerfler, *Late-Stage Textualism*, 2021 Sup. Ct. Rev. 267, 305 (noting the linguistics turn's tendency to "exaggerate the determinacy of linguistic meaning," including by "devot[ing] extended, dictionary-supported analysis to Congress's selection of a one- or two-letter word").

231 *See also* Eskridge & Nourse, *supra* note 90, at 1722 (noting that "interpreters, whether conservative or liberal, textualist or not, make choices about text, and make choices about context").

interpretation? Beneath the common platitudes to consider "context," few have offered any guiding principle for this dilemma or defined when an interpreter has *reckoned with enough text* to adequately support a particular reading.[232]

This Article proposes one provisional answer to the question: Judicial interpreters should adhere to an *inconsistency confrontation principle*.[233] Under that principle, interpreters must acknowledge and address the textual evidence that is inconsistent with their proffered interpretation, and that makes the resolution of the case not entirely obvious.

Sometimes, this *inconsistency confrontation principle* will generate helpful explanations that resolve the apparent contradiction in the statute. Other times, it will lead to a conclusion that the contradiction is irreconcilable—and to a principled statement of why the court nonetheless is compelled to choose one interpretation over another. Either way, it will empower courts to satisfy a core goal of textual interpretation: unlocking for readers a text that initially appears linguistically puzzling.

Measured by this standard, the pivotal actors performed poorly in *VanDerStok*. Courts and litigants repeatedly failed to respect the *inconsistency confrontation principle*. Rather than develop persuasive readings of the sentences and provisions that seemed confusing, the Court hewed to the *textual constraint*, preferring to focus on isolated terms and phrases. This allowed it to project an artificial clarity and consistency onto the statute—but at the expense of helping readers unlock the curious text of the GCA.

Each portion of the Court's analysis reflected this *textual constraint*. First, there was the issue of GCA application to "ghost guns" or gun parts kits. Here, the *textual constraint* led the Court to focus largely upon a single statutory term: "weapon." Borrowing from the linguists' brief,[234]

232 For generic appeals to context, see, e.g., Biden v. Nebraska, 143 S. Ct. 2355, 2378 (2023) (Barrett, J., concurring) ("To strip a word from its context is to strip that word of its meaning."); John F. Manning, *Textualism and Legislative Intent*, 91 Va. L. Rev. 419, 420 (2005) (asserting that "judges must seek and abide by the public meaning of the enacted text, understood in context"); King v. Burwell, 576 U.S. 473, 475 (2015) (arguing for meaning of key statutory phrase "when read in context"); Antonin Scalia, A Matter of Interpretation: Federal Courts and the Law 37 (Amy Gutmann ed., Princeton Univ. Press 1997) ("In textual interpretation, context is everything."). *See also* Eskridge & Nourse, *supra* note 90 (arguing generally for consideration of relevant legislative evidence, with illuminative examples where such evidence highlights additional statutory text or speaks to at least one of ordinary or intended meaning).

233 For expanded discussion of the utility of the *inconsistency confrontation principle* for both courts and legal commentators, see *infra* Section IV.C.

234 *See* Bondi v. VanDerStok, 145 S. Ct. 857, 868 (2025) (citing amicus brief and three scholarly works).

the Court asserted that such artifact nouns "typically" are defined by their intended function, and therefore can refer to incomplete objects.[235] The Court found this to be consistent with three additional statutory phrases—"starter gun," "designed to," and "converted to"—all of which likewise contemplated incomplete firearms.[236] With that, its textual analysis for "ghost guns" essentially was complete.

It is worth noting how this argument evolved from the work in linguistics. In their academic article, the linguists acknowledged and discussed (outside the *VanDerStok* context) the perils of "relying exclusively on individual words in interpretation . . . ."[237] Moreover, they explained that the purpose of a rule (and the intention of the lawmaker)[238] can be crucial context that shapes the ordinary meaning of a text.[239] They also added that artifact nouns can be vessels for this sort of purposive interpretation. Theoretically, they therefore began from a place that seemingly permitted divergence from the *textual constraint* in order to empower more holistic and comprehensive readings of texts.

Such considerations would seem to have particular use in interpreting the GCA. Its purposes are relatively intuitive. The reasons why one might want background checks for firearms, or to prevent minors and felons from possessing firearms, reflect public safety goals any reader can surmise. Moreover, two enacted versions of the GCA contained lengthy "Purpose" sections that expressly outlined and codified its aims.[240] *VanDerStok* therefore seemed an ideal case for the linguists to explain how a statutory purpose provides crucial context that can infuse our reading of words such as artifact nouns.

In the linguists' analysis of the issues in *VanDerStok*, however, these holistic textual concerns vanished. Instead, the "context" that the linguists discussed as disambiguating the meaning of "weapon" was reduced to a few statutory phrases.[241] Nonetheless, their analysis did still underscore the importance of this context: Artifact nouns are "inherently underspecified" words, they explained.[242] One simply cannot know their relevant qualities absent their context.

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[235] *Id.* (citing linguistics article for premise that "[a]rtifact nouns are typically 'characterized by an intended function,' rather than by 'some ineffable "natural essence"'").

[236] *See id.* ("starter guns"); *id.* at 869 ("designed to" or "converted to" firearms).

[237] Waldon et al., *supra* note 44, at 462.

[238] *Id.* at 462–63 (explaining that relevant context includes "policymaker objectives").

[239] *Id.* at 463–65.

[240] Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 101, 82 Stat. 197, 198; Gun Control Act of 1968, Pub. L. No. 90-618, 82 Stat. 1213, 1213–14.

[241] *See generally* Waldon et al., *supra* note 44 (citing "any such weapon" phrase, "designed to" and "converted to" phrases, and other artifact nouns such as "firearm").

[242] *Id.* at 429.

Once adopted by the Court, however, this argument's emphasis on context further receded. Rather than being "indeterminate" absent context,[243] as the linguists had claimed, artifact nouns now were said to "typically" capture unfinished objects.[244] As a result, the term "weapon" could increasingly resolve the case by itself. The result was a brand of Linguistic Textualism that, in its journey from academic theory to judicial application, moved steadily toward the Court's *textual constraint*.

The Court's analysis of incomplete frames and receivers was equally limited. There, the Court relied so heavily upon the ordinary meaning of the contested terms ("frame" and "receiver") that its analysis devolved into simply presenting a photograph of a contested object and asking: "What else would you call it?"[245] This bald assertion, which posited that a word's application to an object was self-evident, is the opposite of interpretation. So while the Court did ultimately support its reading of "frame" and "receiver" by reference to some supporting statutory phrases,[246] its analysis was so marked by the *textual constraint* that it bordered on non-interpretation.

This approach was disappointing, particularly because *VanDerStok* presented a worthy case for the *inconsistency confrontation principle*. It centered around GCA provisions that appeared at first blush to use language in confusing ways. It is worth detailing its core linguistic puzzles—ones the Court failed to address (much less resolve).

1. "Firearm"

First, *VanDerStok* revolved around a definition that was linguistically puzzling: the definition of "firearm." Numerous items included within that definition plainly are not "firearms," at least under any ordinary usage. Meanwhile, certain items excluded from the definition plainly *are* "firearms." These linguistic inconsistencies are catalogued in *infra* Section A.[247] In light of these inclusions and omissions, the GCA offered a definition that sounded more like a riddle than a consistent use of ordinary language. It was a definition in which all the words could not have their natural meaning.

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243 Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 30–31 (describing artifact nouns' "indeterminacy").

244 Bondi v. VanDerStok, 145 S. Ct. 857, 868 (2025) (citing linguistics article for premise that artifact nouns are characterized by intended function).

245 *Id.* at 873.

246 *See id.* (considering § 923(i)); *id.* at 875 (considering "any such weapon"); *id.* at 875 (discussing consistent usage of artifact nouns).

247 *See infra* Section III.A.

Rather than address that challenge, however, the linguists recurred to the *textual constraint*. They declared that there was "no conflict between the ordinary meaning of firearm and its statutory definition."[248] How could they make such a claim—and for a baldly inconsistent definition? The answer was an intentionally narrowed textual focus. As the linguists put it: "We restrict our attention to a contested subpart of the statutory definition, section 921(a)(3)(A) . . . ."[249] This narrowed focus omitted all the inconsistent definitional material in the subsequent subparagraphs (and beyond). Instead, it focused exclusively on the compatibility of the term "firearm" with the "designed" and "converted" phrases embedded in a portion of subparagraph (A).[250] This allowed them to make an argument for linguistic consistency.

In their empirical survey of the ordinary meaning of "firearm," moreover, the linguists further limited the statutory text. That survey purported to test the ordinary meaning of the term *firearm* "in the absence of further definitional context."[251] What their survey provided, however, seemingly were definitions of "firearm" that were edited to remove the GCA's linguistic inconsistencies. In addition to removing all definitional material beyond subparagraph (A), it also omitted the curious inclusion of starter guns within that subparagraph.[252] As a result, survey participants were presented with a definition that was far more linguistically consistent than that found in the GCA. As previously mentioned, understanding how readers would construe that artificially consistent definition might still help resolve *VanDerStok*. However, it is of limited utility in understanding how readers might reckon with the inconsistencies that plague the statutory definition. And it provides limited assistance in solving the linguistic puzzle presented by the GCA, since it does not satisfy the *inconsistency confrontation principle*.

While the Court in *VanDerStok* avoided reliance upon such arguments about the ordinary meaning of "firearm," it focused attention upon several other GCA elements that had their own linguistic paradoxes. In reckoning with them, the Court likewise failed to satisfy the *inconsistency confrontation principle*.

248 Waldon et al., *supra* note 44, at 431 (emphasis omitted).

249 *Id.* at 429.

250 *Id.* at 431–33 (arguing for "designed" and "converted" references as constituting an "attempt to provide sufficient context to resolve an indeterminacy that is inherent to [*firearm*'s] ordinary meaning").

251 Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 3.

252 *Id.*

2. *"May Readily Be Converted"*

Consider subparagraph (A) of the "firearm" definition. This provision confronts the reader with an aforementioned anomaly involving the verb phrase: "may readily be converted."[253] That anomaly arises because, in ordinary speech, a phrase using the term "converted" typically is grammatically preceded by a description of the thing *in its pre-conversion state*. In everyday speech, as Section A noted, one would not say: "I bought a bookshelf that can be converted into book shelving." Likewise, one would not say: "The ice was converted into frozen water." In the GCA, however, the use of "converted" is preceded grammatically by the term "weapon." If that term has its ordinary meaning, the GCA definition reads similarly to these strange everyday examples. After all, it refers to a weapon that is converted into a firearm—and yet, almost certainly, the objects at the center of the GCA are weapons precisely because they are firearms.[254] If so, they presumably become weapons and firearms simultaneously. This begs the question: What is going on here linguistically?

In *VanDerStok*, no participants reckoned with this sentence-level anomaly. Instead, they claimed to find perfect linguistic consistency. For instance, the linguists declared that "*weapon* harmonizes with the rest of (A)."[255] To reach this conclusion, they looked at congruent word meanings in isolation, while ignoring the anomaly of how they read together.[256] That is to say, they emphasized each term in a vacuum: "Weapon" can refer to incomplete objects, they observed, and acts of conversion can involve incomplete objects.[257] This ignored the crucial sentence-level inconsistency, however: These two meanings generally *do not travel together*, and in the arrangement

253 18 U.S.C. § 921(a)(3)(A).

254 On the failure of the one reading that would avoid this possibility, see *supra* note 131 and accompanying text.

255 Waldon et al., *supra* note 44, at 432.

256 *See also* Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 17–20 (taking similar approach to reading "firearm" and "converted to" together, while avoiding anomalous use of "weapon" in between). This reading practice by the Court is a variant of the one described by Eskridge and Nourse as "cracking." *See* Eskridge & Nourse, *supra* note 90, at 1732 ("Interpretive *cracking* breaks up those items of text, defines each broadly or narrowly according to taste, and then reassembles them into a meaning not apparent from the text as a whole.").

257 Waldon et al., *supra* note 44, at 432 (noting that "*weapon* may denote entities that are far from operable"); Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 19–20 ("The definition thus expressly covers [those incomplete] weapons that are 'designed to' or 'may readily be converted to' expel a projectile, as those words' ordinary meaning conveys.").

found in the GCA definition.[258] Nonetheless, the Court made the exact same argument.[259]

In this regard, the Court failed in its interpretive task, according to the *inconsistency confrontation principle*. It brought the legal community no closer to understanding the linguistic anomaly that seemingly appeared in the crucial subparagraph (A). Nor did it articulate any principled manner of resolving that linguistic inconsistency, if it was irreconcilable. Instead, the Court divided up the statutory text, and in a manner that rendered the inconsistency invisible. That is the manner in which the Court deploys its *textual constraint*.

3. *"Starter Gun"*

The Court took a similar approach to another potential inconsistency: the use of the term "starter gun" in subparagraph (A).[260] In this provision, the statute declares that it applies to "any weapon (including a starter gun)" that meets certain criteria.[261] This implies that a starter gun is a weapon, and sometimes also is a firearm, which arguably are characterizations that ordinary meaning cannot sustain. After all, the very quality that makes something a "starter" gun is that, while it mimics the sound of a firearm, it does not function as an "instrument of combat" or "weapon."[262] In this regard, the reference to a "starter gun" seems to be another example of terms being used in unnatural ways. It is indicia that non-ordinary meaning is being used, or that principles of consistency are being violated in ways that warrant further explanation.

However, the key actors in *VanDerStok* neglected these inconsistencies. For instance, the linguists' empirical survey excised this statutory term, despite purporting to use a definition "matching the statutory text."[263] For its part, the Court once again looked at congruent word meanings, ignoring their odd sentence-level relationship. "Weapon" can sometimes include incomplete objects, the Court observed, and starter guns certainly are incomplete as weapons. "All of

258 This was particularly unfortunate because the linguists' empirical survey, despite claiming to simply find the ordinary meaning of "firearm," in fact implicitly included reader assumptions about how to interpret this anomaly. *See* Waldon et al., *supra* note 44, at 441 (describing the sample sentence provided to survey-takers: "[A]ny weapon which . . . may be readily converted to expel a projectile by the action of an explosive.").

259 Bondi v. VanDerStok, 145 S. Ct. 857, 866 (2025) (describing these as two separate requirements or elements); *id.* at 868 (noting that "everyday speakers sometimes use artifact nouns [like 'weapon'] to refer to unfinished objects"); *id.* at 869 (discussing "the 'ready-conversion' standard from the statute").

260 18 U.S.C. § 921(a)(3)(A).

261 *Id.*

262 145 S. Ct. at 867–68.

263 Brief for Professors and Scholars of Linguistics and Law, *supra* note 71, at 21.

which indicates that Congress used that term, as an ordinary speaker might, to embrace some unfinished instruments of combat," the Court said.[264] Whether the types of "unfinished instruments of combat" that ordinary speakers might describe as "weapons" actually includes the subset of starter guns, meanwhile, went unexplored.

4. *"Receiver or Frame"*

Section 923(i) provides another example of seeming inconsistency in the GCA. It requires importers and manufacturers to engrave or cast a serial number "on the receiver or frame" of any firearm.[265] This instruction encounters a problem, however. Many items defined as "firearms" plainly lack a "receiver or frame." By all definitions, those terms refer to the casing and structure that holds the core components that produce a firearm explosion. How does that term apply to a firearm silencer, for instance, which merely disperses the gas from a discharged firearm? Such a silencer, which has nothing to do with setting off an explosion, obviously lacks any such "receiver or frame." This is another of the linguistic puzzles in the GCA: Section 923(i) assumes that every "firearm" has a "receiver or frame," yet that assumption obviously cannot square with any ordinary meaning of those terms.[266]

Once again, the Court avoided this inconsistency. It simply noted that section 923(i) was incompatible with a narrow meaning of "receiver or frame" as covering only finished items, since silencers and mufflers lack a finished frame or receiver.[267] For the Court, this proved that section 923(i) (as well as the GCA generally) used a broad meaning of "frame" and "receiver" that reached "some unfinished and unconventional" frames and receivers.[268] Meanwhile, the awkward fact that silencers and mufflers likewise lack those unfinished items was left unmentioned. In this way, the Court was able to erase an anomaly from the statute, and to ostensibly find consistent ordinary meaning in a provision plainly marred by confusing inconsistency.

5. *Secondary Materials*

VanDerStok also involved further inconsistencies that the Court ignored—including basic inconsistencies with secondary materials. In the era of Linguistic Textualism, the Court has largely renounced the use

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[264] 145 S. Ct. at 868.
[265] 18 U.S.C. § 923(i).
[266] In his dissent, Justice Thomas noticed this. *See VanDerStok*, 145 S. Ct. at 884 (Thomas, J., dissenting).
[267] 18 U.S.C. § 923(i).
[268] *VanDerStok*, 145 S. Ct. at 873 (majority opinion).

of secondary legislative materials (such as floor speeches and committee reports), of course. Nonetheless, if an interpretation correctly locates a particular meaning in a document, then certain secondary evidence should align. Rather than reckon with inconsistencies in the secondary materials, however, interpreters in *VanDerStok* avoided them.

Consider Justice Thomas's dissent. There, Justice Thomas offered the only effort in *VanDerStok* to reckon with the statutory history of the GCA. In so doing, he argued that the crucial amendments in 1968 cut in a particular direction, asserting that: "The GCA sets forth a narrower definition of 'firearm' than the FFA did."[269] That assessment is flatly contradicted by the Library of Congress assessment from 1968, whose Legislative Reference Service stated the following:

> § 921 provides definitions substantially the same as in the existing Federal Firearms Act (15 U.S.C. 901) but the definition of "firearm" has been expanded to include any weapon "which will . . . or may readily be converted to expel a projectile or projectiles by the action of an explosive . . . ." The definition is expanded to clearly include firearms which while unserviceable may readily be converted to serviceability.[270]

The subcommittee that developed the legislation provided the same assessment, noting that the definition "has been extended" and that "[t]his represents a much needed clarification and strengthening of existing law designed to prevent circumvention of the purposes of the act."[271] When your interpretation of the basic direction of a statutory amendment is flatly contradicted by the contemporary assessment of Congress's own chief legal research office, as well as by its authoring subcommittee, it seems to warrant some further justification. Instead, the Court deploys a *textual constraint* that makes reckoning with such inconsistent secondary materials unnecessary.

VanDerStok therefore was a case in which the Court never solved (or even engaged with) the linguistic puzzles of the statute. In this regard, it was emblematic of its Linguistic Textualism. It revealed a Court that, through its *textual constraint*, ignores textual evidence that would require it to reckon with limited inconsistency. A superior interpretation would address these linguistic challenges, this Article instead posits, rather than strategically evade them. Developing such an interpretation for *VanDerStok* is the project of Part III.

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269 *VanDerStok*, 145 S. Ct. at 879 (Thomas, J., dissenting).

270 E. Jeremy Hutton & Johnny H. Killian, Libr. of Cong. Legis. Reference Serv., The Omnibus Crime Control and Safe Streets Act: Background and Summary of its Provisions 41 (1968).

271 S. Rep. No. 89-1592, at 24 (1966); *accord* S. Rep. No. 90-1097, at 110–11 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2200 (noting "definition has been extended").

III
VanDerStok: The Amendatory Interpretation

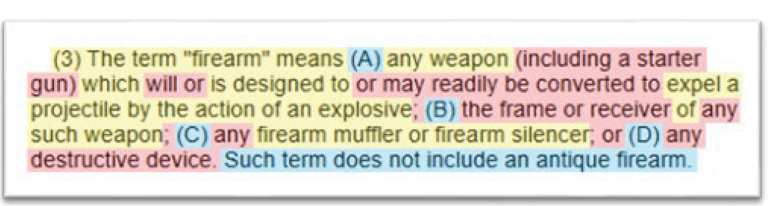
This Article has argued that Linguistic Textualism ultimately failed in *VanDerStok*. Specifically, it failed to develop a compelling account of the statute at issue, or to develop an interpretation that reckoned appropriately with the challenges posed by the GCA. In this regard, it did not respect the *inconsistency confrontation principle*, which urges courts to engage with the confusing, seemingly inconsistent portions of a statute. Instead, the Court engaged mostly with those segments that supported its preferred reading. The result was an unconvincing effort to unlock for readers a difficult statute.

This Part attempts to do better. Using a methodology that might be described as *amendatory interpretation*, it develops a competing interpretation of the provisions from *VanDerStok*. Under this methodology, which I have defended elsewhere, courts pay heightened attention to the amendatory changes that Congress has made to statutory text over time.[272] That approach provides a superior method of locating the democratic decisions made by Congress at key moments, it posits. It also provides a superior method of understanding the limited inconsistencies that often infect amended statutes, offering ways to reckon with them rather than ignore them. This Part hopefully illustrates that to be true for the GCA.

A. The GCA: An Amended Document

The methodology of *amendatory interpretation* relies, first of all, upon identifying the amendatory layers beneath our statutes. Section II.B performed that crucial work for the GCA, illustrating the amendments beneath the GCA definition of "firearm." Its visualization is re-presented in Figure 4 below. That Figure highlights language from 1938 in *yellow*,[273] June 1968 in *red*,[274] and October 1968 in *blue*.[275]

Figure 4


(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

272 *See* Cross, *supra* note 5.

273 National Firearms Act of 1934, ch. 757, § 1(a), 48 Stat. 1236, 1236.

274 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 902, 82 Stat. 197, 227.

275 Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214.

As this Figure illustrates, there were three key linguistic interventions that shaped the definition in *VanDerStok*. A proper interpretation therefore must revisit each of these interventions—and must attempt to locate the democratic decisions behind them.

B. The 1938 Statute

Let's begin with the 1938 statute. Known as the Federal Firearms Act (FFA),[276] it emerged from a Prohibition-era effort to "eliminate the gun from the crooks' hands," as the committee report phrased it, and to address "the outlaws who have rendered living conditions unbearable in the past decade."[277] To that end, it created basic licensing and recordkeeping requirements for individuals and businesses trafficking in firearms.[278] Additionally, it prohibited the sale of firearms to certain classes of individuals, such as convicted felons.[279] For purposes of these provisions, the statute established a definition of "firearm" as follows:

> (3) The term "firearm" means any weapon, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosive and a firearm muffler or firearm silencer, or any part or parts of such weapon.[280]

The FFA therefore used an expressly artificial definition of "firearm." That definition captured firearm accessories (viz., silencers and mufflers), as well as any individual part of a firearm. Meanwhile, with respect to the gun itself, it anchored the definition solely upon design: If the weapon was designed to fire projectiles, it was covered, regardless of whether it actually did fire them. Likewise, if the weapon was not designed to fire projectiles, it seemingly evaded coverage—regardless of whether it nonetheless had that capacity.

In this context, the statutory usage of "weapon" made perfect sense. The FFA established a "designed to" standard that described a particular subset of weapons. Grammatically, a label for an overarching category (e.g., "weapon") can naturally precede a description that refines it to capture only a subcategory (e.g., weapon that fires projectiles). In this regard, the FFA offered an internally consistent grammatical phrase.

At the same time, the definition also expressly flagged the artificiality of its use of "firearm." Underscoring that the definition applied to

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276 Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1250.

277 S. Rep. No. 75-82, at 2 (1937).

278 *See* Federal Firearms Act of 1938, ch. 850, §§ 2–3, 52 Stat. 1250, 1250–52 (licensing); *id.* § 3(d) (recordkeeping).

279 *See id.* § 2(d)–(f).

280 *Id.* § 1(3).

objects "by whatever name known," so long as they fit the subsequent description, the statute instructed readers: Do not rely upon everyday nomenclature to determine whether something is a "firearm" under the statute. Instead, rely upon the specified definition, which may well deviate from common senses of "firearms."

Finally, by relying upon a "designed to" standard, the definition was careful to reach beyond currently operable firearms. If the designed purpose of the weapon was to fire projectiles, it was covered, regardless of actual serviceability. Decades later, Senator Dodd would underscore why this approach made sense: the defining trait of a firearm is often its intended function. In his words:

> A firearm, as we all know, is a unique product. It has one objective and that is to put a bullet through something, whether that something be a target, an animal, or a human being. I believe that the special nature of this product calls for special regulation. That is the only use it can be put to. I don't know what else you can use a gun for.[281]

Sharing this assessment, the 1938 Congress had decided: if an object is designed "to put a bullet through something," it is covered.[282]

Looking back on the FFA in 1964, Congress would remark that it was "hastily written" and claim that it "consequently reflect[ed] inconsistencies and ambiguous language."[283] Yet its definition of "firearm" seemed admirably clear. Among other things, it reflected a plain democratic decision to cover anything that was designed to fire projectiles. And that standard would expand in 1968.

C. The June 1968 Statute

Throughout the 1960s, momentum grew for greater federal regulation of firearms. In particular, President Kennedy's assassination in 1963 awoke the nation to the havoc that firearms might wreak upon public life. Moreover, there was particular shock at revelations that Lee Harvey Oswald had obtained his rifle via mail order.[284] Having seen an advertisement on the back of a magazine, he mailed in a money order using an alias, and was able to retrieve the firearm from a P.O. Box.[285] This generated public outrage and a new focus on the problem

281 *Interstate Firearms Hearings*, *supra* note 10, at 14 (statement of Sen. Thomas J. Dodd, Member, S. Comm. on Com.).

282 *Id.*

283 S. Rep. No. 88-1340, at 2 (1964).

284 *See* VanDerStok v. Garland, 86 F.4th 179, 202 (5th Cir. 2023).

285 *See id.* (recounting FBI findings on weapon purchase).

that President Johnson dubbed "mail-order murder."[286] Describing this originating focus, Senator Dodd (as the legislation's primary architect) would vividly remark that:

> During 1963, approximately 1 million dangerous weapons were ordered through the mails and delivered by mail-order firms, via common carriers. Thousands of these weapons were delivered to persons with criminal records. One of them was used to murder the President of the United States.[287]

This helped spur extensive congressional hearings in the 1960s, which used the mail-order problem as a focal point in discussions about broader gun control policy.[288] Those hearings revealed further policy concerns that, as detailed below, gradually were incorporated into proposed legislation throughout the mid-1960s. Finally, the assassinations of Robert F. Kennedy and Martin Luther King, Jr. in 1968 gave the impetus for decisive action.[289] The day after the assassination of Senator Kennedy, the House passed the Senate-endorsed version of the legislation. Two weeks later, the President signed the Omnibus Crime Control and Safe Streets Act of 1968 (OCCSSA) into law.[290]

As enacted, the statute extensively amended and expanded the FFA from 1938.[291] This included several amendments to the FFA definition of "firearm"—amendments that had been proposed and discussed throughout the 1960s congressional hearings. It is worth considering each in detail.

1. *"Frame or Receiver"*

First, the OCCSSA replaced the prior reference to "any part or parts" of a firearm with a new reference: namely, to the "frame or

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286 114 Cong. Rec. 16301 (1968); *see also* S. Rep. No. 88-1340, *supra* note 165, at 2 (noting that "[t]he subcommittee has kept abreast of this problem since 1959").

287 *Interstate Firearms Hearings*, *supra* note 10, at 10 (statement of Sen. Thomas J. Dodd, Member, S. Comm. on Com.).

288 On link to broader social problems, see, for example, S. Rep. No. 88-1340, at 12 (1964) ("[T]he records show that persons armed with these mail-order firearms have substantially contributed to the overall crime rate in large metropolitan areas.").

289 *See* 114 Cong. Rec. 13323 (1968) (statement of Sen. Thomas J. Dodd) (discussing "the background of the recent assassination of Dr. King"); Brief of Constitutional Accountability Ctr. as *Amicus Curiae* in Support of Petitioners at 21–24, Garland v. VanDerStok, 144 S. Ct. 1390 (2024) (No. 23-852), 2024 WL 3331814 (discussing the House convening hours after Senator Kennedy's assassination); 114 Cong. Rec. 16292 (1968) (statement of Rep. Boland) (describing how all three assassinations highlighted need for law).

290 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197.

291 On the style of these amendments, see *infra* Section III.F.

receiver" of a firearm.[292] This was the first important change to the "firearm" definition made during the legislative process: It was made in legislative drafts by March 1963, including in those developed by both the Treasury Department and the relevant congressional subcommittee.[293] In those drafts, the definition from the FFA otherwise was retained verbatim (except for one other change not relevant to *VanDerStok*).[294]

In language that would be obsessively repeated throughout the years-long legislative process for the OCCSSA,[295] both legislators and Treasury officials attested to the reason for this change: It had proved impractical to individually stamp every minute, separate part of a firearm with a serial number.[296] As the Treasury Department (i.e., the implementing agency for the statute through the 1960s) phrased it:

> The present definition includes any "part" of a weapon within the term. It has been found that it is impracticable, if not impossible, to treat all parts of a firearm as if they were a weapon capable of firing. This is particularly true with respect to recordkeeping provisions since small parts are not easily identified by a serial number.[297]

In official committee publications, this Treasury concern was identified at least eleven different times as the motivation for this statutory change.[298] No alternative explanation was mentioned once. It seems beyond doubt, therefore, that this edit was targeted at addressing this practical (and eminently logical) problem with FFA implementation.[299]

The legislative record was consistent, too, regarding the reason why the phrase "frame or receiver" was chosen as a replacement.

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292 Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1250; *id.* § 902 (inserting 18 U.S.C. § 21(a)(3)).

293 *Investigation*, *supra* note 162, at 3414 (statement of Gen. Couns. Dep't of the Treas.); *id.* at 3412 (showing identical Treasury-proposed draft).

294 *See id.* at 3414 (statement of Gen. Couns. Dep't of the Treas.). The other change was the insertion of coverage for weapons that "will" fire projectiles. *Id.*

295 *See, e.g.*, *Interstate Firearms Hearings*, *supra* note 10, at 286 (statement of Gen. Couns. Dep't of the Treas.); *id.* at 69 (giving a substantially similar explanation in report section-by-section); *id.* at 285 (same); S. Rep. No. 89-1592, at 24 (1966) (same); S. Rep. No. 89-1866, at 14 (1966) (same); *id.* at 73 (same); S. Rep. No. 90-1097, at 110–11 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2200 (same); *id.* at 269 (same); H.R. Rep. No. 90-1577, at 10 (1968) (same); S. Rep. No. 90-1501, at 29 (1968) (same regarding "each small part" of a firearm).

296 *See Investigation*, *supra* note 162, at 3414 (statement of Gen. Couns. Dep't of the Treas.).

297 *Id.*

298 *See supra* notes 290–92 and accompanying text.

299 *See* S. Rep. No. 89-1866, at 14 (1966) (explaining this amendment as growing from "[e]xperience in the administration of the Federal Firearms Act" by the Treasury Department).

Rather than cover every tiny part of a firearm, the committees emphasized, there was a desire to cover simply "the major parts" of the weapon.[300] That was the clear logic behind this statutory edit: It would exempt from coverage individual firearm parts that, because outside the frame or receiver, were deemed minor or ancillary. In this way, it would relieve the Treasury Department (and the firearms industry) of having to serialize and regulate every pin and screw produced for a gun, while also ensuring that core (or "major") gun parts could not evade coverage.

The amendment therefore was directed at those firearm parts outside the "frame or receiver," which now were excluded. Regarding the level of completion needed to become a "frame or receiver," however, it was silent—at least, beyond the linguists' good insight that usage of such terms to capture incomplete objects is common. Meanwhile, the legislative record was not silent on this issue. The committee report explanation for the identical phrase, which the same 1968 amendment simultaneously inserted into the National Firearms Act, had remarked: "Of course, if the frame or receiver are themselves unserviceable as a frame or receiver then they would be treated as an unserviceable machinegun. Any machinegun or frame or receiver which is readily restorable would be treated as serviceable."[301]

The relevant Senate subcommittee therefore believed that the "frame or receiver" verbiage "[o]f course" tracked the incompleteness standard it had created for the larger weapon.[302] (For machine guns, that standard was a "readily restorable" standard, and the "unserviceable" standard was defined as anything incapable of such restoration.)[303] Key actors in Congress, it therefore seems, did not read their "frame or receiver" amendment as embodying a full-completion standard for those parts.

300 S. Rep. No. 90-1097, at 111 (1968) ("Thus, the revised definition substitutes only the major parts of the firearm."); H.R. Rep. No. 90-1577, at 10 (1968) ("Thus, this definition includes only the major parts of the firearm, that is, the frame or receiver."); S. Rep. No. 90-1501, at 29 (1968) ("Thus, the revised definition substitutes only the major parts of the firearm, i.e., frame or receiver for the words 'any part or parts.'").

301 S. Rep. No. 90-1501, at 46 (1968).

302 *Id.*

303 *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 925(d)(2), 82 Stat. 197, 234 (adding "readily restored" standard); Gun Control Act of 1968, Pub. L. No. 90-618, § 201, 82 Stat. 1213, 1231 (reenacting "readily restored" standard); *id.* § 201, 82 Stat. at 1232 (adding "unserviceable firearm" definition).

2. *"May Readily Be Converted"*

As the congressional subcommittee incorporated the "frame or receiver" language to address Treasury Department concerns, it continued to hold hearings to better understand the firearms problem in 1960s society. At those hearings, it focused upon a particular element of the problem: Foreign dealers were shipping huge numbers of low-quality weapons to the United States that, while presently incomplete or unserviceable, were easily converted into operational firearms.[304]

One variant of this problem was particularly prominent. As one congressional report phrased it, legislators were made aware of "the readily available, easily convertible starter pistols" that were flooding the nation.[305] These were weapons that, while containing many traditional firearm components, nonetheless were designed (or modified) to fire blank ammunition.[306] In the 1960s, these "starter guns" provided an especially popular starting point for the construction of unregulated firearms—a situation attributable to "the relative ease with which they can be converted into working firearms," as one witness put it.[307]

These blank-firing weapons were diverse in their shape and design. This was because many were not designed for the simple track-and-field functions typically associated with "starter" pistols. Instead, they were rendered to fire blanks (versus "live" ammunition) simply to circumvent state[308] and federal firearms law.[309] This included circumvention of customs duties, which were significantly lower for "starter guns" than for operable firearms.[310] In the words of one former

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304 *See id.*

305 S. Rep. No. 88-1340, at 15 (1964).

306 *See, e.g.*, S. Rep. No. 89-1866, at 14 (1966) (describing problem of "starter gun designed for use with blank ammunition"); *Investigation*, *supra* note 162, at 3438–41 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York) (discussing "starter (blank cartridge) pistols imported into this country from Europe").

307 *Investigation*, *supra* note 162, at 3438 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York); *see also* S. Rep. No. 88-1340, at 14–15 (1964) (repeating the same).

308 *See Investigation of Juvenile Delinquency in the United States: Hearings on S. 275 Before the Subcomm. to Investigate Juvenile Delinquency of the S. Comm. on the Judiciary*, 88th Cong. 3596 (1964) [hereinafter *Investigation 2*] (statement of Sen. Thomas J. Dodd, Chairman, Subcomm. to Investigate Juv. Delinq.) ("The anonymity of such purchases allows circumvention of the laws in these jurisdictions."); S. Rep. No. 89-1592, at 5 (1966) (noting that "mail order [is] a means of circumventing State and local law").

309 S. Rep. No. 88-1340, at 9 (1964) ("Thus, it develops that the mail-order transaction circumvents the provisions of the Uniform Firearms Act . . . .").

310 *Id.* at 4 ("[M]any of them have been imported into this country as scrap or parts of firearms, which many times is a device used to circumvent tariff regulations.").

dealer: "The entire operation was purely to save on duty."[311] Once the duties were increased on starter weapons, the dealer added, he instead shipped them in disassembled parts (to again change their customs classification).[312] Throughout, the goal was legal circumvention in the distribution of firearms—not provision of a narrow class of items used to inaugurate athletic events.[313]

Unsurprisingly, these "starter guns" were not limited to the familiar variant from track-and-field events. Instead, they had a diversity matching that of the firearms market. As discussed above in Part II, one subcommittee witness clarified to Congress that: "[I]f any of you are thinking in terms of the starter pistol which the starters at track meets use, and can carry in their vest pockets, let me show you [how wrong you are]."[314] That witness testimony was accompanied by an exhibit displayed at the 1963 congressional hearings, which was reprinted in Figure 1, and which showed how far these plugged-barrel weapons might stray from a traditional track-and-field starter pistol, including variants that resembled a machine gun in size and design.[315] In sum, the discussion of weapon conversions in Congress—and of the "starter guns" that were being sold for ready conversion—encompassed a great diversity of inoperable weapons and parts.

The types of "conversions" that these weapons might require likewise was extremely broad.[316] Legislators and witnesses described some that needed to be disassembled and reassembled,[317] including with new barrels or parts that were shipped separately.[318] Others had

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311 *Investigation 2*, *supra* note 308, at 3665 (statement of George W. Rose).

312 *Id.* at 3668.

313 *See id.* at 3330 (discussing guns being potentially purchased for "athletic, ceremonial, or sporting event"); *id.* at 3668–69.

314 S. Rep. No. 88-1340, at 14 (1964).

315 *See Investigation 2*, *supra* note 308, at 3596; *see supra* notes 167–68 and accompanying text.

316 *See, e.g.*, *Investigation 2*, *supra* note 308, at 3439 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York) ("[W]e learned of still another method of conversion . . . .").

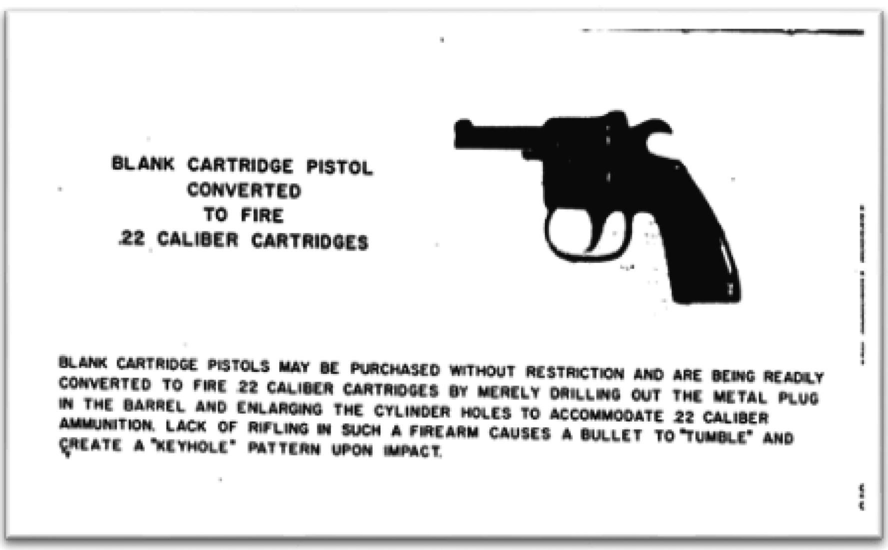
317 *See, e.g.*, *Interstate Firearms Hearings*, *supra* note 10, at 33 (statement of Sen. Birch E. Bayh) ("But just one little . . . reassembly of this so-called junk and you have a lethal weapon."); S. Rep. No. 88-1340, at 6 (1964) (statement of Kenneth Carpenter, Sergeant, L.A. Police Dep't) (describing "disassembled guns" with "parts [that] are assembled or used to build modified copies of brand name guns").

318 *See, e.g.*, S. Rep. No. 89-1592, at 24 (1966) (describing conversion by "substitution of a barrel which will permit the firing of a projectile"); *Investigation*, *supra* note 162, at 3438 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York) ("[O]ne type of starter pistol with plugged barrel was being imported into our State, followed by a second, separate shipment of bored, rifled barrels, threaded at one end."); *see also* S. Rep. No. 88-1340, at 14 (1964) (same).

welded receivers that needed to be replaced or restored.[319] Senator Dodd spoke to iterations that needed to be "rebuilt or rebored" to become operable.[320] Many therefore demanded significant effort to be converted from being "deactivated" or "disarmed."[321] Committee reports were explicit about the legislative intention to reach this broad array of conversions.[322]

Figure 5 reprints a congressional exhibit detailing the work required for just one such iteration.[323] Notice that it describes the starter pistol as being "readily converted" for live ammunition—terminology that would become statutorily significant.

FIGURE 5



319 *Investigation 2*, *supra* note 308, at 3656 (statement of George W. Rose) (describing imports with "welded receiver" and where "the receiver was welded").

320 *Id.* at 3596 (opening remarks of Sen. Thomas J. Dodd, Chairman, Subcomm. to Investigate Juv. Delinq.) ("These firearms were then rebuilt or rebored [after importation], and are, in the main, unsafe or hazardous to use.").

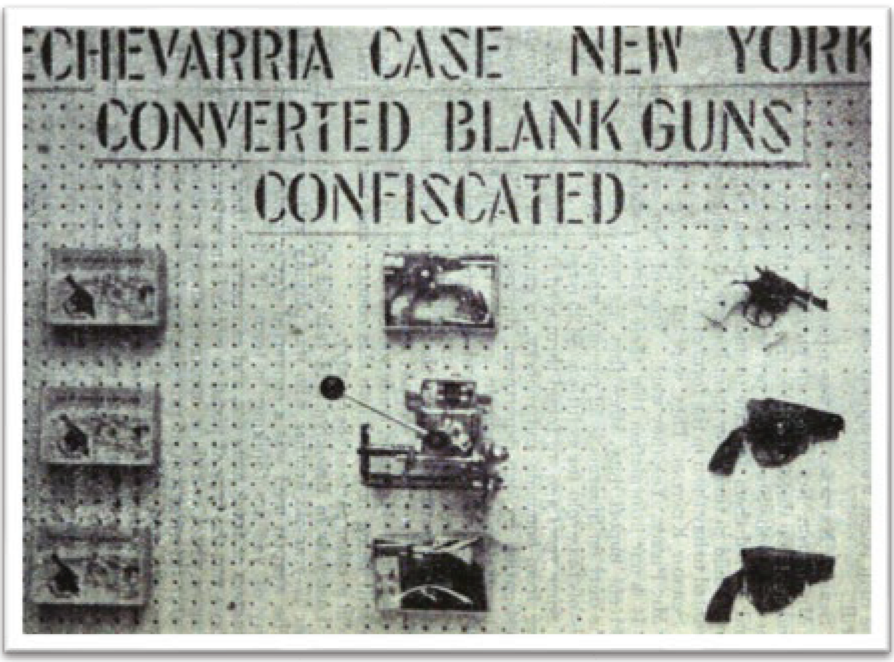
321 *Id.* at 3382 (testimony of James V. Bennett, Dir., U.S. Bureau of Prisons) (describing starter pistols as "deactivated or disarmed"); *id.* at 3653 (testimony of George W. Rose) (describing sales of "deactivated" guns and those "bought [by the dealer] in a deactivated state").

322 *See* S. REP. No. 89-1592, at 24 (1966) (describing intention to reach "starter pistols which may be converted to fire a projectile by boring a hole through an obstruction in the barrel, substitution of a barrel which will permit the firing of a projectile, or otherwise converted"); S. REP. No. 89-1866, at 73 (1966) (substantially the same).

323 *Federal Firearms Act: Hearings on S. 1, S. 1853, and S. 1854 Before the Subcomm. to Investigate Juv. Delinq. of the S. Comm. on the Judiciary*, 90th Cong. 375 (1967) [hereinafter *Federal Firearms Act 1853 Hearings*].

Many such conversions also required additional tools, including drill stands and hand drills.[324] In the congressional exhibit reprinted in Figure 6, for instance, some confiscated tools are shown (in the center column) alongside the confiscated weapons.[325] Notice, again, that the display is given the statutorily meaningful label of "CONVERTED" blank guns.

FIGURE 6[326]



324 *See, e.g.*, *Investigation, supra* note 162, at 3439 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York) (1963) (describing the need for "some skill at using these implements, the drill stand which appears on that exhibit, and an electric hand drill").

325 *Id.* at 3439 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York) (discussing exhibit "showing . . . the tools used for this [assembly] purpose").

326 *Id.* at 3440, Exhibit No. 55.

In addition to requiring necessary tools, purchasers of these weapons also often needed a third party to complete the conversion.[327] This was because, as one congressional witness attested: "It takes a certain amount of skill."[328] Consequently, a purchaser often needed assistance from a "do-it-yourself gunsmith" to render the weapon operable, as the witness detailed.[329]

With blank guns or "starter guns," therefore, the Subcommittee on Juvenile Delinquency confronted a broad universe of convertible weapons. It was a universe that included weapons requiring a wide range of time, expertise, manpower, and tools to convert into a functional firearm.[330]

Still, the Subcommittee's concern with potentially convertible weapons also went beyond these starter weapons. As one committee report explained: "This problem, however, is not limited to the convertible starter pistols."[331] Instead, it included myriad items that could be made into operable firearms. These included deactivated military weapons,[332] as well as disassembled weapons and parts classified as junk[333] or scrap metal.[334] Extensive congressional testimony spoke to these additional conversion concerns.[335]

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327 *Id.* at 3438 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York) ("Our experience is that there is a third party intervening who actually does the boring of the plugged barrel, the conversion.").

328 *Id.*

329 *Id.* at 3439.

330 *See Investigation*, *supra* note 162, at 3435–41 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York) (discussing a range of convertible starter guns proliferating on the streets of New York).

331 S. Rep. No. 89-1866, at 65 (1966); *see also id.* (statement of McLeod, Att'y Gen. of South Carolina) (expressing concern with this gun "and others of its characteristics").

332 *See, e.g.*, S. Rep. No. 88-1340, at 4 (1964) ("[T]he .38 and .45 caliber are usually surplus military firearms which have been discarded by foreign governments.").

333 *See, e.g.*, *Interstate Firearms Hearings*, *supra* note 10, at 33 (statement of Sen. Birch E. Bayh) ("They bring these weapons into the country and tranship many of them as junk.").

334 *See, e.g.*, S. Rep. No. 88-1340, at 6 (1964) ("They accomplish this by shipping thousands of disassembled guns to this country under the classification of parts and scrap metal.").

335 *See, e.g.*, *Investigation*, *supra* note 162, at 3361 (opening statement of Sen. Thomas J. Dodd, Chairman, Subcomm. to Investigate Juv. Delinq.) (noting "the hundreds of thousands of guns that were brought into this country under the guise of scrap metal, spare parts, or starter pistols that were easily converted into lethal weapons"); *id.* at 3188 (1963) (statement of K.T. Carpenter, Investigator, L.A. Police Dep't) (describing concerns with "cheap disassembled weapons classified as scrap metal" and "parts and deactivated war surplus weapons").

In these discussions, the subcommittee also reckoned with a host of nontraditional devices that could potentially fire lethal projectiles. Some were originally marketed as capable of firing projectiles, as with some "fountain pen guns."[336] An advertisement for one such weapon, taken from a congressional exhibit, appears in Figure 7, below. Others required conversion—with Congress learning about everything from converted cap pistols[337] to converted cigarette lighters.[338]

FIGURE 7[339]

By the early 1960s, these convertible weapons had become a major societal problem in America. In his opening remarks for a 1963 subcommittee hearing, Senator Dodd could observe that: "The country is flooded with these deadly weapons."[340] Over 40,000 such weapons were imported into New York City in a single year, it was explained.[341]

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336 *Id.* at 3337 (statement of Manuel Pena, Lieutenant, Field Supervisor, L.A. Police Dep't); *see also* S. REP. NO. 88-1340, at 11 (1964) ("Another case in the files of the subcommittee concerns an 11-year-old boy, who ordered and received a pen gun from a California mail-order firearms dealer.").

337 *Federal Firearms Act 1853 Hearings*, *supra* note 323, at 474 (reprinting a news report noting "cap pistols described as having been 'converted to fire .38 caliber shells.'").

338 *Investigation*, *supra* note 162, at 3508 (presenting a hearing appendix describing the effort that "convert[ed] a simple Ronson cigarette lighter to shoot a .22 long pistol").

339 *Id.* at 3196, Exhibit No. 6.

340 *Id.* at 3187.

341 *Id.* at 3438–41 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York).

One dealer alone allegedly sold over 100,000 in a single year,[342] and another testified that: "There is more of an interest in blanks than in the live guns, actually."[343] A representative of the NYPD testified that, with respect to street and gang weapons: "[T]he pattern seems to be moving into the area of the converted starter pistol."[344] A host of such witnesses attested to the problem.[345] As one committee report put it: "The committee's record is clear that hundreds of thousands of starter guns have been imported into this country for nonsporting purposes and their continued importation would be detrimental to the maintenance of law and order within the United States."[346]

To address this situation, Senator Dodd in 1963 began seeking to "draw up legislation which would meet this starter pistol and blank-pistol-type situation."[347] To this end, new amendatory language was incorporated into House[348] and Senate[349] drafts starting in August 1963. In keeping with the broader legislative concern, which reached beyond the universe of "starter guns," this new language did not reference such weapons. Instead, it modified the language of the FFA which had required that, in order to be covered by the statute, any weapon must be "designed to expel a projectile or projectiles by the action of an explosive."[350] Under the amendments, a weapon now additionally would be covered if it "may be readily converted to, expel a projectile . . . by the action of an explosive."[351] This joined another modification made in the March 1963 drafts, which covered weapons that "will" expel such a projectile, regardless of their design.[352]

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342 *Id.* at 3576 (statement of Haywood "Hy" Hunter, President, Am. Weapons Corp.).

343 *Id.*

344 *Id.* at 3446 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York).

345 *See, e.g.*, *id.* at 3330 (statement of Sen. Thomas J. Dodd, Chairman, Subcomm. to Investigate Juv. Delinq.) (discussing "converted starter pistols, one of the most lethal weapons in the arsenal of Brooklyn street gangs" with witness); *id.* at 3361 (1963) (opening statement by Sen. Thomas J. Dodd, Chairman, Subcomm. to Investigate Juv. Delinq.) (noting "the hundreds of thousands of [weapons including] starter pistols that were easily converted into lethal weapons").

346 S. Rep. No. 90-1501, at 38–39 (1968); *see also* S. Rep. No. 89-1866, at 14 (1966) (observing that "[s]uch so-called starter pistols have been found to be a matter of serious concern to law enforcement officers").

347 *Investigation*, *supra* note 162, at 3336 (statement of Sen. Thomas J. Dodd, Chairman, Subcomm. to Investigate Juv. Delinq.); *see also id.* at 3438–41 (noting Senator Dodd's response to a suggestion to address blank cartridge pistols as: "I think this is a very good suggestion")

348 *See* H.R. 8081, 88th Cong. § 1 (1963); H.R. 8174, 88th Cong. § 1 (1963); H.R. 8004, 88th Cong. § 1 (1963).

349 *See* S. 1975, 88th Cong. § 1 (1963).

350 Federal Firearms Act of 1938, ch. 850, § 1, 52 Stat. 1250, 1250.

351 *See* S. 1975, 88th Cong. § 1 (1963).

352 *See Investigation*, *supra* note 162, at 3414 (reprinting draft).

Regarding these amendments, the committee report would explain: "This represents a much needed clarification and strengthening of existing law designed to prevent circumvention of the purposes of the act."[353] This anti-circumvention explanation made sense, given that the basic purpose of the OCCSSA was to ensure that, if a weapon had the capacity to "put a bullet through something" (to use Senator Dodd's vivid phrase), it was covered by the statute.[354] In that regard, as the committee report observed: "The dangers of the readily available, easily convertible starter pistols are apparent."[355] Pointing partly to advertising for such weapons, it added that: "[T]he subcommittee's contention [is] that these weapons serve no other purpose than to kill, maim, or injure."[356] As such, they warranted statutory coverage.

Addressing those concerns, the "converted to" language was added into the "firearm" definition.[357] As several reports also phrased it: "This provision makes it clear that so-called unserviceable firearms come within the definition."[358] The Library of Congress viewed it similarly, noting that: "The definition is expanded to clearly include firearms which while unserviceable may readily be converted to serviceability."[359] In this regard, the amendment also responded to legal developments. Some courts had held that the FFA definition did not extend to a "temporarily unserviceable firearm." According to one district court, for instance, it failed to reach a shotgun lacking a firing pin.[360] Committee materials pointed to the "converted to" language in the amendment as designed to "make it clear" that such an "unserviceable" weapon was covered.[361] (The same explanation was repeated for "restored" language being added into the National Firearms Act, incidentally—a repetition which speaks to the desire for overlapping coverage of presently inoperable weapons.)

The amendment to insert "converted to" coverage into the definition therefore culminated an extensive congressional examination of "converted" firearms. That examination had directed special focus to "starter guns," or firearms equipped for blank ammunition, which were proving especially popular for conversion. A remarkable diversity of

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353 S. Rep. No. 89-1592, at 24 (1966).

354 *Interstate Firearms Hearings*, *supra* note 10, at 14 (statement of Sen. Thomas J. Dodd, Member, S. Comm. on Com.).

355 S. Rep. No. 88-1340, at 15 (1964).

356 *Id.* at 9.

357 S. Rep. No. 90-1097, at 110–11 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2200; *see also* H.R. Rep. No. 90-1577, at 10 (1968) (same); S. Rep. No. 90-1501, at 29 (1968) (same).

358 *Id.*

359 Hutton & Killian, *supra* note 270, at 41.

360 *See Interstate Firearms Hearings*, *supra* note 10, at 286 (statement of Gen. Couns. Dep't of the Treas.).

361 *See id.*

such weapons existed—including versions requiring significant time, tools, and manpower to render into an operable firearm. In addition to addressing this diversity of weapons, moreover, Congress expressly sought to reach a broader universe of incomplete and unfinished weapons being imported under other labels, such as those bearing labels of junk or scrap metal. And it sought to reiterate the coverage of weapons that, while unserviceable because missing parts, were designed and easily converted to be firearms (thereby overriding judicial decisions to the contrary). Through these efforts, it simultaneously sought to address a growing real-world problem and a legal hurdle that sometimes prevented current law from reaching "unserviceable" weapons—a term that, in this everyday usage, connoted current operability.

3. "Starter Gun"

The addition of "converted to" coverage into the definition thereby addressed significant loopholes and safety concerns regarding firearms. However, it also introduced a new grammatical problem. Previously, the "designed to" portion of the definition had identified the subset of "weapon[s]" that the definition sought to address. It clarified that the only weapons of concern were those that fired projectiles (versus the larger universe of weapons, such as knives, etc.). In this regard, it appeared grammatically correct. However, the "converted to" language bore a subtly different grammatical relationship to the preceding terms. It implied a temporal relationship, not a logical one (of identifying a relevant subset). In this regard, it touched upon a common problem for statutory amendments: It ideally required additional "conforming amendments," or changes beyond the immediate addition of the "converted to" phrase itself, in order to make the sentence read perfectly.[362] Such changes can be difficult to spot, however, and even more difficult to communicate and convince others to address.

During the legislative process, one astute witness perceived this problem. In January 1964, the NYPD Deputy Commissioner testified before the Subcommittee on Juvenile Delinquency. In his comments on the legislation, he noted approvingly its effort to broaden the "firearm" definition. "However," he observed, "the basic term which is still incorporated is the term 'weapon' which might conceivably eliminate starter pistols."[363] He therefore explained:

362 *See* MANUAL ON DRAFTING STYLE, *supra* note 16, at 12 (on "conforming and technical amendments").

363 *Interstate Firearms Hearings*, *supra* note 10, at 213 (statement of Leonard Reisman, Deputy Comm'r, New York City Police Dep't); *see also Investigation 2*, *supra* note 308, at 3654 (statement of George W. Rose) ("Personally I do not refer to the item as a weapon.").

> It would be preferable, in our judgment, to include the term "or instrument" after the word "weapon" so as to make it clear that the act applies to starter pistols. These starter pistols are easily converted to fire projectiles and have been found in the possession of criminals in the city of New York in increasing numbers.[364]

That proposed solution had its own problems, however. The term "weapon" was understood in Congress to exclude certain items from coverage—items that Congress still did not want covered. Most importantly, as three different committee reports repeated: "It should be noted that powder actuated industrial tools used for their intended purpose are not considered weapons and, therefore, are not included in this definition."[365] The desire for a conforming amendment therefore seemed to place Congress between a rock and a hard place, insofar as Congress preferred a relatively surgical amendment to the existing FFA definition.

At any rate, it seems that relevant actors inside Congress did not fully understand the Deputy Commissioner's concern. It appears that they heard in his comment a policy concern for underscoring coverage of starter pistols, not a linguistic concern that required an appropriate conforming amendment. As a result, by March 1966 the Subcommittee had simply inserted a new phrase after the term "weapon," which read: "including a starter gun."[366] Explaining the addition, committee reports claimed that the addition was to "make it unequivocably clear"[367] and "unequivocally clear"[368] that starter guns were covered.[369] In this regard, legislators seemingly thought they were reiterating coverage already provided by the statute, not addressing a grammatical oddity that might be mistakenly read to prevent coverage. By October 1966, this "including a starter gun" phrase had been made into a parenthetical in the legislative drafts.[370] That is how it still appears in law today.[371]

In the committee reports, this parenthetical language was expressly linked to the broad understanding of conversions and starter guns

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364 *Interstate Firearms Hearings*, *supra* note 10, at 213 (statement of Leonard Reisman, Deputy Comm'r, New York City Police Dep't).

365 S. Rep. No. 90-1097, at 111 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 2112, 2200; H.R. Rep. No. 90-1577, at 10 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 4410, 4416; S. Rep. No. 90-1501, at 30 (1968).

366 *Compare* S. Rep. No. 89-1592 at 24 (1966), *with id.* at 47 (showing change).

367 *Id.* at 24.

368 S. Rep. No. 89-1866, at 73 (1966).

369 *See also* S. Rep. No. 89-1592, at 3 (1966) (showing amendment is to "specifically include" starter guns).

370 S. Rep. No. 89-1866, at 43 (1966).

371 18 U.S.C. § 921(a)(3)(A).

that had prevailed throughout the legislative discussions. As multiple reports put it, these "so-called starter pistols" include items "which may be converted to fire a projectile by boring a hole through an obstruction in the barrel, [by] substitution of a barrel which will permit the firing of a projectile, or otherwise converted to fire a projectile."[372] Even when providing what was assumed to be redundant reassurance to stakeholders that a paradigm case was covered, therefore, legislators underscored that they understood that paradigm case to broadly include the many types of weapons and conversions that had been discussed under the umbrella term, and term of art, of "starter gun."

4. "Destructive Device"

Finally, the June 1968 statute inserted the concept of a "destructive device" into the "firearm" definition.[373] A defined term in the statute, this concept covered a host of military-grade weapons, from poison gas bombs to missiles.[374] Going forward, these would be treated as "firearms" under the GCA.

At the Subcommittee hearings, witnesses had called for such coverage. A representative of the Los Angeles Police Department, for instance, testified in 1963 that: "The possession or importation of cannons, mortars, antitank guns, rockets, bazookas, bombs, grenades, and other explosives whether deactivated or not should be effectively regulated by law."[375] By March 1965, this concern had made it into the legislative drafts, with "destructive device" coverage under the definition.[376]

As a matter of ordinary language, of course, many devices are "destructive devices" beyond those military-style weapons included in the definition (e.g., wrecking balls). Congress plainly was coining a term of art—a fact reinforced by its shifting history throughout the legislative drafts. In the June 1968 statute, for instance, missiles having an explosive or incendiary charge of less than one-quarter ounce were not covered; in the October 1968 statute, they were.[377] In some drafts, moreover, the concept of the "destructive device" was removed entirely—not because Congress was uncertain whether the concept fit linguistically as a

372 S. Rep. No. 89-1592, at 24 (1966); S. Rep. No. 89-1866, at 73 (1966).

373 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 902, 82 Stat. 197, 227 (adding 18 U.S.C. § 921(a)(3)).

374 *Id.* (adding 18 U.S.C. § 921(a)(4)).

375 *Investigation*, *supra* note 162, at 3342 (statement of Manuel Pena, Lieutenant, Field Supervisor, L.A. Police Dep't).

376 *See* S. Rep. No. 89-1592, at 47–48 (1966).

377 *Compare* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 902, 82 Stat. 197, 227 (1968) (adding 18 U.S.C. § 921(a)(4)), *with* Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214 (adding 18 U.S.C. § 921(a)(4)(A)(iv)).

"firearm," but because it was considering whether it was preferable to regulate such devices under the National Firearms Act instead of the GCA.[378] The coverage of firearm mufflers and silencers underwent a similar journey—drifting in and out of the "firearm" definition, based on where policy preferences stood in Congress at the moment regarding GCA coverage reaching them.[379] Ultimately, however, both would be included.

D. The October 1968 Statute

While the June 1968 statute was a significant legislative milestone, the Johnson administration expressed a desire for additional legislation that would go further.[380] Momentum therefore continued in Congress into the fall of 1968 for additional firearms legislation. Those efforts culminated in the enactment of the Gun Control Act of 1968 in October—a statute that, in addition to making expansions of statutory coverage, also included more minor clerical revisions to various portions of the June statute.

The October statute made three changes that were relevant to *VanDerStok*. First, it modified the serialization requirement under the statute (which here was relocated to section 923(i)) to specify that such serialization must appear on the "receiver or frame" of the weapon. Second, it would add subparagraph designations into the "firearm" definition, thereby further segmenting it. Third, it would add a new sentence into the definition: an exclusion of any "antique firearm."[381] The final of these warrants particular comment.

On the one hand, this exclusion of antiques was not novel. Some such exclusion traced back to the 1938 statute,[382] and one persisted through most (though not all) drafts of the 1968 statutes.[383] On the other hand, however, several features of it had evolved. First, the treatment of this exclusion as a definitional element varied: the 1938 statute had declared that the FFA "shall not apply" to antiques despite being within the provided

378 *See, e.g.*, H.R. 11887, 90th Cong. § 10(a)(3) (1967) (defining "destructive device").

379 *Id.* at 2 (removing such coverage).

380 *See, e.g.*, *Federal Firearms Legislation: Hearing on S. 240 Before the Subcomm. to Investigate Juv. Delinq., of the S. Comm. on the Judiciary*, 90th Cong. 17735 (1968) ("[T]he question is now being asked on every side whether we must not take more stringent measures.").

381 18 U.S.C. § 921(a)(3).

382 An Act to Regulate Commerce in Firearms, Pub. L. No. 75-785, § 4, 52 Stat. 1250, 1252 (1938) (exempting "any antique or unserviceable firearms, or ammunition, possessed and held as curios or museum pieces").

383 *See, e.g.*, S. Rep. No. 89-1592, at 3 (1966).

definition;[384] the June 1968 statute had exempted them definitionally, but in a provision of definitional exclusions separate from the definitions themselves;[385] and the October 1968 statute now built the exclusion into the definition itself.[386] Second, the definition of an "antique firearm" shifted and evolved—from an undefined term in the 1938 statute, to reaching only firearms manufactured in or before 1870 in some legislative drafts,[387] to reaching firearms manufactured through 1898 by the June 1968 statute.[388] Throughout, these choices approached the concept of an "antique" as malleable—and its contours were shaped not by considerations of linguistic consistency, but by pragmatic efforts to balance policy goals.[389] These goals included: (1) satisfying the constituency of antique collectors,[390] (2) generating consistency across different statutory regimes,[391] (3) respecting pragmatic enforceability concerns,[392] and (4) ensuring coverage of items that might be converted to pose public safety threats.[393]

In these regards, the journey of the "antique firearm" amendment echoed those of the amendments addressing "destructive device" and "firearm muffler or firearm silencer" coverage. Throughout, a consistent approach was apparent to the statutory definition of "firearm." Time and again, the contours of that definition were shaped by a smattering of policy goals, not pursuit of linguistic consistency. Defined terms were regarded as relatively arbitrary placeholders—that is, as places where legislators were free to attach desired policy coverages or exclusions.

384 An Act to Regulate Commerce in Firearms, Pub. L. No. 75-785, § 4, 52 Stat. 1250, 1252 (1938).

385 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 902, 82 Stat. 197, 228 (adding 18 U.S.C. § 921(b)(1)).

386 Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214 (adding 18 U.S.C. 921(a)(3)); *see also* S. 917, 90th Cong. § 921(a)(17)(b)(1) (1967) (amendment from Mr. McClellan) (proposing version of this approach).

387 *See, e.g.*, S. 917, 90th Cong. § 921(17)(a)(15) (1967) ("The term 'antique firearm' means any firearm of a design used before the year 1870 . . . .").

388 Omnibus Crime Control and Safe Streets Act, Pub. L. No. 90-351, § 902, 82 Stat. 197, 228 (adding 18 U.S.C. § 921(a)(15)).

389 *See, e.g.*, S. Rep. No. 89-1592, at 27 (1966) ("The evidence presented at the hearings demonstrated the need for a properly defined and delineated exception for antique firearms."); S. Rep. No. 89-1866, at 14 (1966) ("The year 1898 was selected as the 'cutoff' date on the basis of testimony presented to Congress by several gun collectors organizations . . . .").

390 H.R. Rep. No. 90-1577, at 9 (1968), *as reprinted in* 1968 U.S.C.C.A.N. 4410, 4415 ("Gun collectors could continue their hobby.").

391 S. Rep. No. 89-1866, at 14 (1966) (noting selection of 1898 partly "to be consistent with the regulations on importation of firearms issued by the Department of State pursuant to section 414 of the Mutual Security Act of 1954").

392 *See* S. Rep. No. 89-1592, at 26 (1966) (noting rejection of ammunition-based definition partly because unworkable to pin legality on changing ammunition availability).

393 *See id.* (noting rejection of ammunition-based definition partly because of concern "firearms can be adapted to fire ammunition other than that which the firearm was designed to fire").

And, indeed, this is precisely how these definitions were discussed in the legislative process. In the words of one congressional witness, when asked how his policy concerns might be addressed: "You write that out of the definition of firearms. You wouldn't have that included in the definition of firearms."[394] Time and again, that is precisely what Congress did.[395]

E. Putting It All Together

That is the story of the GCA definition of "firearm," as told through its amendment history. Notice how it differs from the interpretations proffered by Linguistic Textualism. Unlike those approaches, it takes on the challenge posed by the *inconsistency confrontation principle*: That is to say, it develops (hopefully) persuasive explanations of the linguistic anomalies that make its interpretation complex. Within that complicated statutory text, moreover, it locates a series of clear democratic decisions. In so doing, it empowers courts to respect the choices our democratic branches sought to encode into law—or else challenges them to articulate compelling reasons to disregard such decisions. It is worth briefly reviewing how it accomplishes those things.

In several ways, the foregoing interpretation respects the *inconsistency confrontation principle*. First, it acknowledges that there is inconsistency between the defined term "firearm" and its definition. The amendatory interpretation provides a compelling account for this inconsistency: Legislators were transparent at key moments that they were using defined terms as placeholders that could be assigned artificial meanings based on changing policy goals. In this regard, there is nothing surprising about this interpretation: The traditional "defined terms" canon of construction, which instructs courts to defer to definitions over defined terms, embeds an awareness of this legislative practice into traditional statutory interpretation.[396] As illustrated by both the lower court opinions and the linguists' brief, however, Linguistic Textualism may pose a threat to this conventional wisdom. The amendatory interpretation counsels that this is a poor pathway to capturing the actual democratic decisions made in the statute.

This lesson may be consequential for future interpretations of the GCA. It provides a lesson to interpreters: to understand the GCA coverage, do not look to the term "firearm" to impose independent limitations upon the statute's coverage, above and beyond that captured by its

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394 *Interstate Firearms Hearings*, *supra* note 10, at 106 (statement of James Bennett, Dir., Bureau of Prisons).

395 *See also* S. Rep. No. 89-1592, at 24 (1966) ("The effect of this inclusion is to make the provisions of the act applicable to all such destructive devices.").

396 *See* Killion, *supra* note 118, at 35–38 (describing the "defined terms" canon).

definition. In that regard, it can guard against any potential interpretation to exclude non-traditional firearms expressly considered by Congress for coverage, such as the "fountain pen guns" discussed earlier.[397] Such a limitation would erode a decision plainly made by Congress: Namely, that regardless of how odd an object may be in its shape or design, if it fits the definitional description, it should be subject to the GCA.[398]

Next, consider the sentence-level inconsistency in subparagraph (A): namely, that between the term "weapon" and the subsequent description of its conversion into a firearm (i.e., into the very thing that presumably makes it a weapon). Linguistic Textualism ignored that confusing phrasing, instead considering each term in isolation ("weapon" and "converted") to artificially suggest there was no linguistic inconsistency. By contrast, the amendatory interpretation made sense of this riddle: It showed that the provision initially was linguistically consistent, and that a failure to include a successful conforming amendment had resulted in minor misalignment between statutory terms. Moreover, it showed that a clear democratic decision could be located within this language: a 1968 decision to expand coverage to anything readily convertible to fire projectiles, without regard for any details of its pre-conversion status (with possible exception only for items with no bona fide market as weapons, such as industrial tools). In this way, it clarified the choice that *VanDerStok* actually posed for courts: namely, whether to allow a clerical failure on a conforming amendment to trump a plain democratic decision.

Once again, this may be consequential for the future of the GCA. *VanDerStok* left undecided the precise point of completion at which an object becomes sufficiently proximate to an operable firearm to warrant "converted to" coverage under subparagraph (A). It also made clear that, in future cases, it expects that the ordinary meaning of the term "weapon" will provide those limits.[399] The amendatory interpretation, by contrast, would instead focus attention squarely on the "converted to" phrase that was the focal point of the relevant policy choice made by the 1968 Congress. To do otherwise would, in essence, allow national

[397] *See supra* Section III.C.2.

[398] While the linguists argue that the design facet is not relevant under the GCA definition, their illustrative comparisons do not instill confidence that this will carry into all interpretations. Outside of the completeness context, for instance, their bicycle example presumably would depend partly on design facets: not everything meant to be ridden is a bike, and such a definition presumably would only cover two-wheeled vehicles. *See* Waldon et al., *supra* note 44, at 428–29.

[399] *See* Bondi v. VanDerStok, 145 S. Ct. 857, 866 (2025) ("First, a 'weapon' must be present."); *id.* at 869 ("Even when used to capture unfinished products, artifact nouns generally reach only so far.").

gun policy to depend upon a scrivener's error (in the form of a bad conforming amendment), rather than a democratic decision.[400]

Alternatively, if the Court did insist upon finding an independent limit in the term "weapon," it might interpret that term as applying at the market-wide level. This approach would ask: Do we realistically think this actor was participating in a weapons market, versus in a market for non-weapons products? That interpretation would meaningfully track the series of democratic decisions that legislators wanted to encode in the statute in 1968. On the one hand, it would exclude objects like industrial tools (or toy guns), which might be theoretically easy to convert, yet which seemed to exist in the market as products genuinely marketed and used for their stated purposes. On the other hand, it would include objects like the blank pistols of the 1960s, whose theoretical function as starter guns plainly was a pretext for entering the firearms market. And it easily would cover the weapon parts kits from *VanDerStok*—items that lack any claim to be entering any non-firearms market.

The amendatory interpretation also illuminates (and makes understandable) smaller inconsistencies in the definition. The possible inconsistency of the phrase "starter gun" with the term "weapon" also is explained. Some wanted the phrase added precisely because they believed it outside the ordinary meaning of "weapon," and therefore wanted to treat "weapon" as an artificial, malleable term (akin to a defined term). Meanwhile, others in Congress seemingly assumed it was merely for emphasis regarding coverage already provided by the term "weapon." This debate further erodes any trust that the term "weapon" was itself meant to do heavy lifting in the definition—and counsels toward reliance upon those terms deliberately selected in 1968 to understand the policies developed at that time, versus over-reliance on the dead hand of non-conformed 1938 language. This, too, could have ramifications for the ultimate decision about how far the GCA reaches with respect to weapon parts kits.

Finally, the amendatory interpretation potentially sheds light on the inconsistency between the "firearm" definition and section 923(i) of the GCA. Section 923(i) seemingly assumes that every firearm has a "receiver or frame," it will be recalled, yet the "firearm" definition covers many items that plainly lack such parts. The amendatory interpretation underscores that these two elements cohered when they first entered the statute together in June 1968. It was the October 1968 amendment to the serialization policy of 923(i) that introduced new inconsistency into the

400 On the traditional interpretive doctrine counseling courts to ignore or implicitly correct "scrivener's errors," see Jesse M. Cross, *The Staffer's Error Doctrine*, 56 Harv. J. on Legis. 83 (2019) (describing scrivener's error doctrine).

statute—and that did so by inserting the "receiver or frame" phrase that the Court emphasized. That makes the 923(i) reference appear akin to a bad conforming amendment, too—one that, once again, should not bear the weight of overriding bona fide democratic decisions.

With respect to those democratic decisions, the amendatory interpretation reveals a series of clear decisions embedded in the text of the GCA that are relevant to *VanDerStok*. Those decisions begin with the 1938 statute. There, it was decided that the statute should encode a design-based standard. Under that approach, anything designed to fire a projectile ought to be subject to the statute (regardless of whether it currently could fire such a projectile). That standard alone should have made *VanDerStok* an easy case for weapon parts kits: Those kits are designed to become exactly one thing, and that is a firearm. At the same time, the 1938 statute also encoded a decision to cover each individual part of a firearm (as well as certain accessories).

Through a series of targeted amendments, the 1968 statute then entered several new decisions into the statute. Those decisions responded directly to experience with the statute in the intervening three decades. First, experience had shown that many firearms were able to evade the statute's coverage—in some instances because courts had (atextually) read a serviceability requirement into firearms statutes,[401] and other times because items nominally designed for other purposes were being converted into firearms.[402] Consequently, Congress decided to supplement design-based coverage, including by encoding a convertibility-based standard. Under that approach, anything readily convertible to a firearm was covered—regardless of its current serviceability, and regardless of its original design function.

That standard, once again, should have made *VanDerStok* an easy case for weapon parts kits. The entire purpose of those kits—the very reason for their existence—is that they are easily converted into a firearm. Worse, the features that purportedly distinguish such kits fail miserably at the task: They were also features of the paradigmatic examples that shaped the 1968 amendment. Justice Thomas underscored that weapon parts kits require "[s]pecial tools,"[403] for example, yet Congress had whole exhibits in 1968 "showing . . . the tools used for this purpose" of conversions they wanted to cover.[404] Justice Thomas likewise emphasized that weapon parts kits require "an indeterminate amount

401 *See supra* notes 362–63 and accompanying text.

402 *See supra* notes 308–31 and accompanying text.

403 *VanDerStok*, 145 S. Ct. at 890 (Thomas, J., dissenting).

404 *Investigation*, *supra* note 162, at 3439 (statement of Lawrence W. Pierce, Deputy Comm'r in Charge of Youth Program, Police Dep't, City of New York); *see also supra* Figure 1 (reprinting exhibit).

of time" to convert,[405] yet Congress studied a tremendous array of conversion methods already existing in the 1960s (some of which were very time-consuming), and it expressly sought to reach them.[406] Finally, Justice Thomas emphasized that weapon parts kits can lack a ready-made frame or receiver, yet even he could only claim that starter guns "typically" have such components,[407] and indeed, Congress heard direct testimony from dealers who sold ones that were welded inoperable.[408] In short, the features that purportedly distinguished weapon parts kits, and that thereby exempted them from convertibility coverage, not only were atextual. They also were features shared by the paradigm cases that Congress studied and directly targeted with its conversion standard. As this shows, the 1968 Congress made an express decision to reach the statute even further, creating a second prong of coverage—one that also should have made *VanDerStok* an easy case for weapon parts kits.

Meanwhile, the 1968 statute also encoded a decision to eliminate statutory coverage of every "part of parts" of a firearm, and instead to cover the "frame or receiver" as individual components. Once again, this amendment responded directly to experience with the statute in the preceding decades. That experience had been marked by frustration in the implementing agency over the practical difficulty of regulating (and requiring serialization of) every minute part of a firearm. In response, Congress made a statutory edit—one that captured two democratic decisions. On the one hand, there was a decision to exempt the agency from having to regulate every firearm screw and pin. On the other hand, there was a decision that major firearms parts should not be in circulation (or, ultimately, in weapons) that wholly evaded the statute. And so, Congress made a decision: Those parts outside of the frame or receiver, and therefore deemed minor or ancillary parts, could be excused from coverage.

That amendment, unfortunately, said little about the question in *VanDerStok*—a case involving the frames or receivers that were not, in fact, excused from coverage. (In this regard, Justice Thomas's dissent fundamentally misconstrued this statutory amendment.)[409] And so it is here, in particular, that the linguistics research into artifact nouns is especially insightful for *VanDerStok*. That research provided a simple

405 *VanDerStok*, 145 S. Ct. at 890 (Thomas, J., dissenting).

406 *See supra* notes 316–31 and accompanying text.

407 *VanDerStok*, 145 S. Ct. at 890 (Thomas, J., dissenting).

408 *See supra* note 321 and accompanying text.

409 *See VanDerStok*, 145 S. Ct. at 879 (Thomas, J., dissenting) (arguing that amendment spoke to level of completion for parts within frame or receiver). This argument also undermined one goal of the 1968 amendment: namely, to guard against firearms with no serialization whatsoever.

lesson: namely, that terms for manmade objects can capture more than fully-completed items. It was democratic evidence from committee reports, however, that illuminated a corresponding fact: The Congress that inserted "frame or receiver" into the GCA did, in fact, read those words in precisely that fashion. Courts are better for the ability to recognize that linguistic evidence, too.

F. Epilogue: A Word on Amendment Styles

Finally, a brief word about the amendment styles in the GCA. In a forthcoming Response to this Article, Kevin Tobia and Brandon Waldon suggest that the amendments described above are not amendments at all—and they instead seek to recharacterize the 1938 statute as merely a "repealed predecessor statute"[410] or a "different and repealed" statute.[411] Many of the contributions in their Response are interesting and thoughtful, and there are significant domains of agreement across our contributions.[412] However, their characterization of this category of enactment as simply creating a "different" law is radical and worrisome.[413] It is worth explaining why.

The argument against viewing the 1938 statute as having been amended seemingly has two possible foundations. First, it might be based upon objections to amendment format. Amendments to the GCA have repeatedly taken a form that is commonly called "amendment by restatement."[414] As one reference guide to legislative drafting explains: "An amendment made by restatement sets forth the entire [portion of law] in which you want to make changes, with those changes incorporated into its text but without any specific indication

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410 Kevin Tobia & Brandon Waldon, *Linguistics and Textualism*, 101 N.Y.U. L. Rev. 1046, 1118 n.377.

411 *Id.* at 1111.

412 The term "Linguistic Textualism" is used in this Article to describe one specific approach to incorporating linguistics research into the Court's recent "original public meaning" interpretive method. It is not meant to imply any broader view that linguistics has no productive place in statutory interpretation theory or practice, and indeed, its modeled use by Respondents to enhance interpretation of amendments is extremely helpful and promising. Likewise, just as the label "Linguistic Textualism" is not meant to capture all uses of linguistics in statutory interpretation, it is not meant to describe all textualism. *See, e.g.*, Tara Leigh Grove, *Testing Textualism's "Ordinary Meaning*," 90 Geo. Wash. L. Rev. 1053 (2022) (disputing role of such empirical linguistics work for textualism). For its own part, this Article does not categorize amendatory interpretation as belonging to any particular school of interpretation, instead leaving it to adherents of various schools to decide its relevance for themselves; while Respondents describe it as a "mode of textualist interpretation," Tobia & Waldon, *supra* note 410, at 1081, its use of legislative history presumably would lead some textualists to disagree.

413 Tobia & Waldon, *supra* note 410, at 1113.

414 *See* Manual on Drafting Style, *supra* note 16, at 26.

of what they are."[415] Under this objection, it might be assumed that an amendment by restatement is simply not an amendment.

That certainly would be a surprise to Congress, which has consistently approached amendments as presenting a choice between two alternate styles. This is evinced in the drafting manual for the House of Representatives, where the section entitled "Amendments to Statutes" lists two different "format options" Congress may consider: (1) "cut-and-bite amendments" and (2) "amendment by restatement."[416] The same two options appear as "Amendatory Tools" in *The Legislative Drafter's Desk Reference*, a work coauthored by the former Legislative Counsel for the House of Representatives.[417] As my prior work has shown, both of these amendatory approaches have an equal pedigree—sharing mirrored paths of initial use and subsequent growth in Congress over the centuries.[418] Indeed, amendment by restatement in Congress traces back to at least 1846.[419] It is a common and established practice of amendment.

However, this leads to a second possible argument: Perhaps the OCCSSA did not include any amendments by restatement. Once again, this would be a surprise to Congress, which understood itself to be making precisely this style of amendment. As the relevant committee report phrased it: "This definition of the term 'firearm' *is a revision of the definition in the present law* (15 U.S.C. 901(3))."[420] Such assertions appear time and again.[421]

As originally drafted, Congress ensured that the OCCSSA had all the obvious hallmarks to alert readers to its amendatory quality. The key introduced bills redrafted and replaced each individual section of the 1938 statute, each time declaring that the relevant section of the Federal Firearms Act "is amended to read" as presented.[422] In fact, the original version was simply titled: "A Bill To amend the Federal Firearms Act."[423] Unsurprisingly, a committee report therefore observed of one such iteration that: "The definition of the term 'firearm' . . . is a restatement

415 LAWRENCE E. FILSON & SANDRA L. STROKOFF, THE LEGISLATIVE DRAFTER'S DESK REFERENCE 197–98 (2nd ed. 2008).

416 MANUAL ON DRAFTING STYLE, *supra* note 16, at 26.

417 FILSON & STROKOFF, *supra* note 415, at 195–99.

418 *See* Cross, *supra* note 5, at 1371–76.

419 *See* Act of Aug. 6, 1846, ch. 84, 9 Stat. 53 ("That the twelfth section of [this Act,] approved the thirtieth day of August, one thousand eight hundred and forty-two, is hereby amended so as here-after to read as follows: . . . .").

420 S. REP. NO. 90-1097, at 110 (1968) (emphasis added).

421 *See id.* at 110–11 (twice referring to "the revised definition" and adding that "[t]he definition has been extended").

422 S. 3767, 89th Cong. (1966) (making amendment by restatement for section 1 of FFA); S. 1592, 89th Cong. (1965) (same); *see also Investigation*, *supra* note 162, at 3412 (same).

423 *See Investigation*, *supra* note 162, at 3412 (proposing the statute's title); S. 1592, 89th Cong. (1965) (retaining the statute's title).

and revision of the provisions of existing law (15 U.S.C. 901(3)).”[424] Such statements appear repeatedly in the committee materials,[425] as well as in materials by the Congressional Research Service.[426] A congressional witness likewise identified the new “firearm” definition as the “proposal to amend subsection 3 of section 1 of the Federal Firearms Act,”[427] and he observed that it was a modification “to include in the definition of a ‘firearm’ terms intended to *broaden the application of the act*.”[428] Everyone involved rightly perceived that this was an act of amendment, despite not taking a cut-and-bite format. The key contested definitional phrases in *VanDerStok* originate in these bills.

However, Congress would make one formatting change to these bills before enactment. A decade after enacting the 1938 statute, Congress had codified a criminal law title of the U.S. Code.[429] Although the 1938 statute was a criminal statute, codifiers in 1948 had overlooked it.[430] The 1968 amendments provided an opportunity to remedy this oversight, and legislators adjusted the introduced bills accordingly. By 1967, they had introduced new versions that took the already-drafted provisions from the aforementioned, section-by-section “amended to read” drafts and moved them into a codified new chapter of title 18.[431]

The result was the enacted OCCSSA. The chart below illustrates this: It lists where each provision in the 1938 statute was moved into title 18. (This is a version of the disposition tables that are published for the U.S. Code when full titles are codified.)[432] As it shows, even the sequence and structure of the 1938 law was meticulously preserved—a hallmark of codification—with provisions largely appearing in the same order, and even in the same lettered subsection or paragraph, as before.

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424 S. Rep. No. 89-1592 at 24 (1966).

425 *See, e.g.*, S. Rep. No. 89-1866, at 13 (1966) (describing the proposal as “restating and clarifying existing definitions”); *id.* at 73 (“The definition of the term ‘firearm’ . . . is a restatement and revision of the provisions of existing law (15 U.S.C. 901(3)).”).

426 *See* Hutton & Killian, *supra* note 270, at 41 (“[The replacement section] provides definitions substantially the same as in the existing Federal Firearms Act (15 U.S.C. 901) but the definition of ‘firearm’ has been expanded.”); *id.* (“The definition is expanded to clearly include firearms which while unservicible may readily be converted to serviceability.”).

427 *Interstate Firearms Hearings*, *supra* note 10, at 213 (statement of Leonard E. Reisman, Deputy Comm’r, N.Y.C. Police Dep’t).

428 *Id.* (emphasis added).

429 Act of June 25, 1948, ch. 645, § 1, 62 Stat. 683, 684.

430 *See* Federal Firearms Act of 1938, ch. 850, § 1(3), 52 Stat. 1250, 1252 (creating imprisonment penalty).

431 *Compare* S. 3767, 89th Cong. (1966) (proposing policies as amendments to the Federal Firearms Act), *with* H.R. 11887, 90th Cong. (1967) (converting policies to a new title 18 chapter).

432 *See Positive Law Codification*, Off. L. Revision Couns., https://uscode.house.gov/codification/legislation.shtml [https://perma.cc/ZUD2-YLT4] (last visited Mar. 12, 2026) (explaining the “disposition table”).

Figure 8: Disposition Table for Codification of Chapter 44, Title 18

Provision	FFA Location (title 15)	OCCSSA Relocation (title 18)
Defines "person"	901(1)	921(a)(1)
Defines "interstate or foreign commerce"	901(2)	921(a)(2)
Defines "firearm"	901(3)	921(a)(3)
Defines "manufacturer"	901(4)	921(a)(10)
Defines "dealer"	901(5)	921(a)(11)
Defines "fugitive from justice"	901(6)	921(a)(14)
Defines "ammunition"	901(7)	921(a)(16)
Prohibits shipment, transport, or receipt firearm or ammunition without license	902(a)	922(a)(1)
Prohibits receipt of weapons violating (a) if knew or should've known of violation	902(b)	922(a)(1)
Requires exhibiting license in certain cases[433]	902(c)	--
Prohibits shipping to indicted, convicted, or fugitives from justice	902(d)	922(c)
Prohibits those in 902(d) to ship or transport firearm or ammunition	902(e)	922(e)
Prohibits those in 902(d) to receive firearm or ammunition	902(f)	922(f)
Prohibits shipping or transporting stolen firearm or ammunition	902(g)	922(g)
Prohibits receiving and other actions with stolen firearm or ammunition	902(h)	922(h)
Prohibits receipt of firearm with serial number removed	902(i)	922(i)
License requirement (including regulations and license fees)	903(a)	923(a)
Requires license issuance upon fee payment	903(b)	923(b)

433 Instead of requiring such exhibition of licenses upon sales transactions, the OCCSSA simply required posting of licenses. *See* Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 902, 82 Stat. 197, 226 (adding 18 U.S.C. § 923(e)).

Figure 8: Disposition Table for Codification of Chapter 44, Title 18 Continued

Provision	**FFA Location (title 15)**	**OCCSSA Relocation (title 18)**
Establishes revocation process for violations[434]	903(c)	--
Requires maintenance of records of importation, shipment, and other actions	903(d)	923(d)
Exempts federal government	904(1)	925(a)
Exempts state governments	904(2)	925(a)
Exempts commissioned officers and agents	904(3)	922(a)(2)(B)
Exempts transporters of money & valuables	904(4)	--
Exempts certain research laboratories	904(5)	925(d)(1)
Specifies fines and imprisonment penalties	905(a)	924(a)–(b)
Firearm forfeiture and forfeiture process	905(b)	924(c)
Rules and regulations	907	926
Separability[435]	908	928

Modifications were sometimes made to these rules, of course, as with any amended provisions. Yet most made targeted alterations to existing statutory text. As one example, compare a provision (addressing stolen firearms) as it appeared before and after the codification, with differing language in bold brackets:

Pre-codification: 15 U.S.C. 902(g)	Post-codification: 18 U.S.C. 922(g)
It shall be unlawful for any person to transport or ship **[or cause to be transported or shipped]** in Interstate or foreign commerce any stolen firearm or ammunition, knowing, or having reasonable cause to believe, same to have been stolen.	It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or **[stolen]** ammunition, knowing or having reasonable cause to believe **[the]** same to have been stolen.

434 This provision was inserted back into the statute by the October 1968 amendments. *See* Gun Control Act of 1968, Pub. L. No. 90-618, § 102, 82 Stat. 1213, 1214 (adding 18 U.S.C. § 923(e)).

435 This table omits provisions on effective date and short title. For those, compare 15 U.S.C. §§ 906, 909 (Hein 1964), with Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, pmbl., § 907, 82 Stat. 197, 197, 235.

Meanwhile, the updated definition of "firearm" continued to flow through these preserved provisions, with the defined term appearing over 30 times in the retained provisions.

Finally, to complete the relocation of these rules, the clerical provisions following this codification included a repeal of the 1938 statute.[436] That is precisely where repeals conventionally appear for all codifications (including for the original codification of title 18).[437] There, it was surrounded by the usual suspects: a rule of construction, a provision to conform a table of contents, and the effective date.[438] That was because, like its neighboring sections, it was a clerical provision to make a codification operate properly.

An argument against viewing the OCCSSA as amending the "firearm" definition, therefore, is ultimately grounded in one of two arguments. It posits either that: (1) amendments by restatement are not amendments, or (2) codification erases the history (and prior meaning) of a statute. Both arguments are problematic—for multiple reasons.

First, both arguments are contrary to established interpretive doctrine. Some of our strongest continuity canons are those applying to reenactments.[439] To assert that these particular reenactment practices entail a hard-edged reset of statutory meaning, therefore, seems a radical departure. Second, a contrary view on either front would have massive, troubling repercussions. With amendments by restatement, it would introduce an undesirable arbitrariness into interpretation—taking a choice of amendment style that Congress typically makes based largely on pragmatic considerations of readability, and attaching profound legal consequences to it.[440] Moreover, either approach would drastically change legislative practice. For a legislature disinclined to relitigate the meaning of every settled provision of law, it essentially would remove

436 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, § 906, 82 Stat. 197, 234.

437 *See* Act of June 25, 1948, ch. 645, §§ 19–21, 62 Stat. 683, 862 (1948) (repeal section likewise appearing after the codification amendment, and immediately after a rule of construction and effective date).

438 Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, §§ 904–07, 82 Stat. 197, 234–35.

439 The "reenactment rule" asserts that reenactments not only should bring their statutory history (and meanings) along with them, but even should bring the old soil of accrued administrative and judicial glosses along. *See* William N. Eskridge Jr., James J. Brudney, Josh Chafetz, Philip P. Frickey & Elizabeth Garrett, Cases And Materials on Legislation and Regulation 812 (6th ed. 2020) (describing reenactment rule).

440 *See* Manual On Drafting Style, *supra* note 16, at 26 (describing tradeoffs of how amendment by restatement "aids understanding of the effect" but often is viewed by legislators as "tactically unacceptable"); *id.* at 27 (describing how a cut-and-bite amendment "highlights the particular changes made" but "require[s] a side-by-side comparison of the amendments and the existing law in order to understand the effect of the amendments").

these reenactment tools from Congress's toolkit. That is to say, it would almost surely spell the demise of codification in American law, as well as of amendments by restatement. Courts have typically known better—and they should continue to do so.

That said, perhaps this is incorrect. Perhaps the legal community believes we should begin to view amendments by restatement, or codifications, as effacing the history of statutory text—and as dramatically dislodging and re-beginning its meaning. That certainly would be an alarming development for a Congress with committees that, once again, described the final OCCSSA definition by saying: "This definition of the term 'firearm' is a revision of the definition in the present law (15 U.S.C. 901(3))."[441] Yet perhaps we want to reject such ideas. The broader point is that, regardless of the decision reached, any conclusion on these matters should be the product of a deliberate discussion about the legal questions that arise with changes to statutory text over time. In prior work, I have called for that exact conversation with both amendments by restatement[442] and codifications.[443] It is a conversation that can begin only once we remove from legal discourse a fiction highlighted by this Article: the fiction of static, monotemporal (or atemporal) statutory text.

IV
Implications

Using the landmark case of *VanDerStok*, the foregoing pages have attempted to highlight the shortcomings of the Linguistic Textualism used by the Court. They also have developed an interpretation of the *VanDerStok* statute that uses a competing methodology—one this Article terms *amendatory interpretation*—in the effort to illustrate a superior method of reading statutory text. Moreover, they have outlined the implications this amendatory interpretation can hold for the future of the GCA. This Part turns to broader theoretical implications. To that end, it examines the lessons that the foregoing study holds for statutory interpretation theory and practice.

A. Evaluating Linguistic Textualism

Through its study of *VanDerStok*, this Article has attempted to illustrate the shortcomings of Linguistic Textualism. It is worth

441 S. Rep. No. 90-1097, at 110 (1968).

442 *See* Cross, *supra* note 5, at 1337 ("Do we update the meaning of repeal-and-reenact amendments, which mostly reenact prior statutory text?").

443 *See* Jesse M. Cross & Abbe R. Gluck, *The Congressional Bureaucracy*, 168 U. Pa. L. Rev. 1541, 1656–74 (2020); Cross, *supra* note 172, at 1100–16.

reflecting on those shortcomings—and on their ramifications for the legal system. Specifically, this Section underscores two worrisome limitations of Linguistic Textualism: its unpersuasive interpretive results, and its theoretical incoherence with amended statutes.

1. Unpersuasive Interpretations

The foregoing pages have posited that the Court struggled in *VanDerStok* to develop a persuasive interpretation of the GCA. In significant measure, this difficulty originated with the answer that Linguistic Textualism gave to a fundamental question of statutory interpretation, which asks: What should an interpreter do when confronted with linguistic inconsistency? In that situation, courts must compromise one of two interpretive premises. One is the *consistency premise*, whereby courts commit to the assumption of perfect, wholly consistent language usage in statutes. The other is the *comprehensiveness premise*, under which they commit to holistically considering (and explaining) all relevant text. When an inconsistent statute is at issue, both principles cannot apply. The court must make a choice.

Faced with this dilemma, Linguistic Textualism prioritizes the *consistency premise* to apply a particularly hard-edged, unforgiving assumption of statutory perfection and consistency.[444] Consequently, it must abandon the *comprehensiveness premise*, ignoring the linguistic inconsistencies or oddities in a statute.[445] This produces a Court that limits analysis to selective, artificial snippets of statutory text—thereby embracing the practice that Eskridge and Nourse term "textual gerrymandering."[446] In this way, an aggressive commitment to the *consistency premise* means that the Court often overlooks the very features that make a case challenging (and worthy of the Supreme Court) in the first place.

This general aspect of Linguistic Textualism is significantly exacerbated by the particulars of its interpretive practice. By employing the

444 For ways this echoes earlier practices on the Court, see Abbe R. Gluck, *Imperfect Statutes, Imperfect Courts: Understanding Congress's Plan in the Era of Unorthodox Lawmaking*, 129 HARV. L. REV. 62, 62 (2015) ("The Court's statutory cases over the past decades have . . . [often sought] to impose a coherence and simplicity on modern statutes that those statutes cannot bear."); *id.* at 102 (noting longstanding "perfection-expecting canons").

445 This perfection assumption is even stronger than the "rational Congress" assumption that Abbe Gluck and Laila Robbins have recently documented on the Court. *See* Gluck & Robbins, *supra* note 29, at 38–43.

446 *See* Eskridge & Nourse, *supra* note 90, at 1808 ("Reluctance to admit ambiguity and nuance is one of the worst effects of the consumption economy created by the new textualism. It assures gerrymandering."); *see also* Gluck, *supra* note 444, at 64 (noting in 2015 that "the Court's recent statutory interpretation jurisprudence [until *King v. Burwell*] has been marked by a targeted focus on a few contested words").

three constraints outlined in Part II, this practice deprives interpreters of many useful tools to reckon with inconsistency. The *textual constraint* can exclude access to secondary legislative materials, for instance, that can reveal the logic behind seemingly curious linguistic choices.[447] The *meaning constraint* can obscure a technical meaning that, once available to the interpreter, suddenly reveals a coherent or consistent statute. Finally, the *temporal constraint* can block an understanding of how mild inconsistencies may have accrued in the document due to Congress's layered interventions.

Linguistic Textualism not only embraces a rigid overarching *consistency premise*, therefore, but also adopts specific reading practices that deny interpreters access to explanations that can resolve potential inconsistencies, or else can reasonably explain the persistence of any irresolvable inconsistencies. As a result, Linguistic Textualism threatens to leave remarkably large portions of relevant statutory text unexamined and unexplained.

This development is unfortunate. A decade ago, Abbe Gluck voiced some optimism that the Court was shedding its aggressive consistency assumptions—and, relatedly, was looking at statutory text more holistically.[448] Linguistics, a field sensitive to the importance of context and purpose, seemingly has promise to deliver on that possibility.[449] Instead, this Article finds, Linguistic Textualism is delivering the opposite.

In response, this Article recommends a competing interpretive method—one it labels *amendatory interpretation*.[450] That approach is anchored in the belief that one is better served by a method that instead compromises on the *consistency premise*—and that correspondingly prioritizes comprehensiveness. Under that view, an interpretation is more persuasive when it accounts for more (rather than less) of a text.[451] Further, it is especially persuasive when it can reconcile (or otherwise account for) aspects of the interpreted text that initially appear incongruous or puzzling. In this way, this Article posits that the

447 *See also* Eskridge & Nourse, *supra* note 90, at 1798 (noting that "the evidence . . . [ignored by the Court sometimes] converted hard cases into easier ones").

448 *See* Gluck, *supra* note 444, at 74–75.

449 *See, e.g.*, Thomas R. Lee, Jesse A. Egbert & Zachary P. Lutz, A Linguistic Approach to Linguistic Canons: The Presumption Against Surplusage (unpublished manuscript) (on file with author) (discussing Paul Grice's "cooperative principle").

450 In previous work, I have laid out the basic premises of this method. *See* Cross, *supra* note 5.

451 *See also* Ronald Dworkin, Law's Empire 239 (1986) (outlining the role of "fit" as integral to successful legal interpretation).

comprehensiveness premise has a unique connection to persuasiveness in interpretation.

Amendatory interpretation can be more successful at satisfying this *comprehensiveness premise* largely because of the expanded interpretive toolkit that it can utilize. This method sheds the threefold constraints of Linguistic Textualism—and it benefits from the expanded universe of linguistic explanations that can result. By acknowledging the amendment history of statutory text, in particular—and thereby granting some leeway to acknowledge mild imperfection and inconsistency in statutes—it is able to deploy a wider set of explanations for the meaning and import of language choices in statutes. Those explanations, this Article suggests, are essential to meaningfully unlocking the decisions made in amended laws. (This Article dubs its interpretive method *amendatory interpretation* based on the premise that this tool is particularly essential in a world where many federal statutes have been amended over time.)[452] At the same time, this method still requires a court to explain and defend a reading of the text—including by providing a persuasive account for the presence of any inconsistency, as well as a principled explanation for its method of resolving it.

This proposed interpretive approach may appear, at first, to be out of balance with traditional statutory interpretation. After all, a variety of traditional "consistency canons" of interpretation seemingly underscore the priority of the *consistency premise*.[453] These include the whole act rule, the whole code rule, the presumption of consistent usage, and the presumption of meaningful variation.[454] However, it is arguable that these canons exist just as strongly to enforce the *comprehensiveness premise*. As literary theory has long observed, organic textual theories (i.e., *consistency premises*) exist partly to demand that readers engage with a text holistically, rather than dismissing patterns of language usage. Moreover, traditional statutory interpretation has long incorporated canons of interpretation that empower readers to acknowledge limited textual inconsistencies as well. These include the scrivener's error doctrine and the rule against absurdity.[455] Textualism has long struggled to square those traditional principles with its interpretive theory.[456] Yet

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452 On the rise of amended statutes, see Cross, *supra* note 5.

453 *See* William N. Eskridge, Jr., James J. Brudney, Josh Cafetz, Philip P. Frickey & Elizabeth Garrett, Cases and Materials on Legislation and Regulation 621–24 (6th ed. 2020) (describing consistency canons).

454 *See id.* at 623–24.

455 *See* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 234–39 (2012) (describing canons).

456 On absurdity doctrine, see, for example, John F. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2431–34 (2003) (outlining case for rejecting doctrine as a separate step of

they are no less a part of our interpretive firmament—and they endorse the notion that courts need not be overly rigid in their attachment to the *consistency premise*.

In short, the Justices have committed to such a hard-edged *consistency premise*, and also to such rigid methodological constraints, that they are struggling to develop persuasive interpretations of challenging statutes. As this Article hopefully illustrates, shedding these constraints has promise to improve those interpretations. In some instances, it can resolve inconsistencies; in other instances, it can at least make them explicable. Both are superior to silence.

2. *Theoretical Challenges*

Other critiques of Linguistic Textualism in the foregoing pages were addressed to its theoretical limitations. One such theoretical limitation has been largely overlooked, and so deserves particular attention here: its temporal shortcomings. These result from the basic problem that, as practiced by the Court, Linguistic Textualism lacks any coherent theory of how to navigate the unique temporal questions created by amended statutes.

In previous work, I began to trace this broader problem in the Court's legisprudence.[457] Although the Court now regularly voices a theoretical commitment to preserving the "original public meaning" of statutes, that work observed, the Court has failed to explain what an "original" meaning might be for an amended, multitemporal statute.[458] This has generated an interpretive method that, when interpreting amended statutes, appears problematically under-theorized.

VanDerStok only deepens that problem. It reveals a brand of Linguistic Textualism that, rather than answering these questions, adopts reading practices only further at odds with the Court's professed theoretical commitments. As deployed in *VanDerStok*, Linguistic Textualism relies on contextual reading practices that seem to pursue an evolving statutory meaning for amended statutes, not any plausible "original" meaning. This method also appears to rely on statutory documents that assemble and integrate various statutory amendments (e.g., the United States Code), not on the legislative enactments

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interjecting judicial values). On scrivener's error doctrine, see, for example, John C. Nagle, *Textualism's Exceptions*, ISSUES IN LEGAL SCHOLARSHIP, 2002, art. 15, at 2 (describing doctrine as in "conflict with the theoretical argument for textualism").

457 *See* Cross, *supra* note 5.

458 *See id.*

supposedly prioritized by textualism.[459] Perhaps most troublingly, the Court then sidestepped these theoretical challenges partly by making basic misstatements of law—ones that empowered it to pretend the contested statute was enacted at a single moment in time, not repeatedly amended and expanded. The result was a brand of Linguistic Textualism that seemed ill equipped to navigate our modern, amendment-filled statutory landscape.

If the Court wishes to retain the interpretive practices of Linguistic Textualism, therefore, it should begin the theoretical work of exploring whether its actual practices are intellectually defensible for amended statutes. The rich scholarship on law-and-linguistics may provide assistance in that project—but it also may lead the Court to answers it has resisted since the rise of textualism.[460] Absent such explorations, however, any Linguistic Textualism emerging from the Court seems poised to continue offering analyses that are: (1) temporally confused and (2) unmoored from the Court's professed interpretive theories.

Building new justifications for the Court's brand of Linguistic Textualism is not the only possible response to these challenges, however, and this Article has outlined a different approach. It has offered a strategy of *amendatory interpretation*—one that claims to navigate these theoretical challenges, and that also genuinely respects several interpretive principles professedly endorsed by the Court. First, consider its choice of text: Its analysis of the GCA looked to the actual public laws that, incrementally, enacted the language of the current amended statute. Second, consider its choice of time: Its study focused on the discrete historical moments at which key statutory language was chosen and enacted, with an eye toward understanding the policy choices that language was understood to capture. Other aspects of its methodology were less compatible with textualist principles, of course, such as its use of legislative history.[461] Nonetheless, this analysis perhaps shows that amendatory interpretation can have productive takeaways for interpreters of all backgrounds—provided that those interpreters are willing to tackle the temporal challenges that the Court's brand of Linguistic Textualism seems to ignore.

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459 *See* Grove, *supra* note 172, at 267 (highlighting the textualist emphasis on documents that survived bicameralism and presentment).

460 *See, e.g.*, *supra* notes 46–50 (reviewing survey work that prioritizes contemporary public meaning and outlining various takeaways); *supra* notes 239–41 (discussing linguistics findings on the unavoidability of purposive interpretation).

461 *See* Anita S. Krishnakumar, *Textualism in Practice*, 74 Duke L.J. 573, 607–10 (2024) (finding legislative history to be the one source the Roberts Court has "rejected almost across the board").

B. The "Dead-Hand" Canon

This Article has argued that an amendatory interpretation is more successful than Linguistic Textualism at solving the linguistic challenges of *VanDerStok*. That success (if it exists) is grounded in the expanded interpretive toolkit that amendatory interpretation can draw upon. Crucially, this includes recourse to amendment history. An ability to intelligently parse this history, this Article posits, can be vital to successful interpretation in the era of amended statutes.

In this regard, amendatory interpretation underscores a limitation of conventional statutory interpretation, even beyond Linguistic Textualism. Courts have long relied upon the traditional canons of construction. Yet those canons were developed for a world that lacked amended statutes.[462] While the canons remain valuable interpretive resources, *VanDerStok* underscores the need to supplement them with additional tools that can navigate the unique features of modern, amended statutes. Courts need canons and strategies that can provide reliable guides through this new statutory landscape.

To that end, this Article suggests a new canon of construction. It might be labeled as *the dead-hand canon*. It provides that, when statutory inconsistency results from a new amendment sitting uncomfortably alongside older language, and when the amendment shows a plain or unambiguous democratic decision, courts should not allow the "dead hand" of the older language to undermine that democratic decision. This is, in essence, a way to promote the values embedded in the traditional "later-in-time" rule of interpretation—and to extend it to amendatory language. It also promotes values found in the traditional "scrivener's error" doctrine—ensuring that clear choices by our democratic branch are not undermined by clerical failures, such as not including sufficient "conforming amendments" in amending legislation.[463]

This *dead-hand canon* has relevance for several major recent Supreme Court cases. As I have explained elsewhere, the landmark 2021 case of *Niz-Chavez v. Garland* arose from confusion generated by the retention of a historic reference to "notice" in an update to the

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[462] *See* Cross, *supra* note 5 (documenting that amended statutes did not exist at federal level until mid-1800s). This claim does not apply to those novel "canons" that have emerged in more recent years, of course. *See, e.g.*, Eskridge, Gluck & Nourse, *supra* note 182, at 1034 (purporting to find a canon in Court cases ranging from 1995 to 2021 that "[s]tatutory amendments are meant to have real and substantial effect"). This Article's proposed "dead-hand canon" adds to that presumption (of purposive amendments) by helping interpreters identify exactly *what* the real effect is that an amendment should be read to accomplish.

[463] *See also* Cross, *supra* note 400 (arguing for an updated scrivener's error doctrine that guards against modern-day staffer errors from undermining legislator decisions).

Immigration and Nationality Act.[464] As Part III chronicled, *VanDerStok* likewise involved the GCA retention of the 1938 term "weapon."[465] Applied to the latter case, the *dead-hand canon* would have prevented the Court from reading the term "weapon" to set independent limits on the completeness standard Congress was trying to develop in its "converted to" standard in 1968. Clear textual indicia existed (in the form of grammatical anomalies), which signaled that Congress did not rigorously conform these phrases, but instead focused that attention squarely on the new "readily converted" language. Future courts interpreting the GCA would do well to follow that evidence. In this way, courts can ensure that cases are not determined by the "dead hand" of old language that, in many instances, legislatures struggle to conform to new usage via amendments.

Through its modeling of this *dead-hand canon*, this Article also has attempted to illustrate some limits that would be essential to its proper functioning. Two are particularly worth highlighting. First, the *dead-hand canon* did not, in the foregoing pages, simply displace the consistency canons. Rather, it opened up an alternative explanation for statutory language—one to be weighed for persuasiveness against interpretations supported by the traditional canons, not mechanically applied instead of such interpretations.[466]

By merely permitting access to an additional possible reading, this *dead-hand canon* shares yet another resemblance with the "scrivener's error" doctrine. The latter is not an interpretive rule that creates a presumption in favor of any particular interpretation. Rather, it simply gives interpreters permission to consider another interpretive possibility—and to decide whether, in the words of Justice Scalia and Bryan Garner, that option uniquely supplies "the meaning that causes [the statute] to make sense."[467] Likewise, the *dead-hand canon*—which essentially functions as a check for the amendatory equivalent of a scrivener's error—logically should use a similar standard.

Second, the *dead-hand canon* was applied in this Article only when evidence (in statutory text, as well as secondary materials) revealed a clear congressional decision. Moreover, it was applied only when that clear decision was directly at risk of being undermined by a competing interpretation. In this way, the canon worked to preserve an inner core of decisions that legislators had expressly made. This Article

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464 *See* Cross, *supra* note 5.

465 *See supra* Part III.

466 *See supra* notes 131–32 and accompanying text (explaining implausibility of consistency-preserving interpretation).

467 SCALIA & GARNER, *supra* note 455, at 235–36.

proposes that the canon should be narrowly confined to these particular circumstances, too.

This limited usage would be distinguishable, for instance, from the aggressive ways in which courts sometimes draw secondary conclusions from an initial congressional decision, such as by drawing negative inferences about potential applications that are *outside* of the clear legislative choice. To ensure that the canon serves merely as a device to understand and preserve democratic choices, rather than becoming a freewheeling tool for courts to ignore some statutory text, it presumably ought not extend to this broader universe of applications. If instead used in this limited manner, it can potentially serve as a responsible interpretive guide—one that can assist courts in the objective of preserving democratic decisions, and of developing coherent interpretations, in the amendatory era.

C. The Inconsistency Confrontation Principle

Finally, this Article also proposes a new principle of statutory interpretation: *the inconsistency confrontation principle*. Under that principle, interpreters must acknowledge and address the textual evidence that is inconsistent with their proffered interpretation. This evidence may support a different interpretation, or it may simply introduce odd inconsistency into the statute. Regardless, the *inconsistency confrontation principle* posits that courts should confront the linguistic puzzles that make a case challenging. This is superior, it posits, to cherry-picking the evidence that supports a preferred reading and ignoring the rest.

Through this *inconsistency confrontation principle*, the Article offers a basic solution to a longstanding dilemma in statutory interpretation. Courts and scholars endlessly quibble about a fundamental question: Exactly how much "context" should a court consider when resolving a statutory question? That is to say, how broad a textual universe is adequately wide to justify an interpretation? Typically, courts have groped their way through this question intuitively—impugning their colleagues on a case-by-case basis for casting their evidentiary net too narrowly (i.e., ignoring crucial statutory "context") or too widely (i.e., distracting from the "plain text").[468] Amidst these accusations, few have offered any guiding principle for this dilemma. As a result, the field is plagued by a fundamental uncertainty about when

468 *See, e.g.*, VanDerStok v. Garland, 680 F. Supp. 3d 741, 763 (N.D. Tex. 2023) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." (quoting Sturgeon v. Frost, 577 U.S. 424, 438 (2016) & Roberts v. Sea-Land Servs., Inc., 566 U.S. 93, 101 (2012))).

an interpreter has reckoned with enough text to adequately support a particular reading.

The *inconsistency confrontation principle* offers a basic solution to this uncertainty. In Section A, some of the virtues of this solution already were mentioned, including its potential to encourage more persuasive judicial opinions. Moreover, it is a solution that also tracks the interpretive standard recently endorsed by the Court. In *Loper Bright Enterprises v. Raimondo*, the Court rejected the notion that courts might defer to merely plausible interpretations,[469] insisting that interpreters instead must adopt the "best meaning"[470] or "best reading" of a statute.[471] When courts ignore the *inconsistency confrontation principle*, however, they need merely present some measure of evidence consistent with their proffered interpretation—regardless of the volume of evidence on the other side. As a result, Linguistic Textualism generally sets a plausibility threshold, not a best-reading threshold. By contrast, when interpreters are bound to account for the text holistically (and weigh inconsistent evidence), it generates arguments that a reading is superior to alternatives. That, *Loper Bright* suggests, should be the goal.

That said, it is important to acknowledge a limitation of the *inconsistency confrontation principle*. It is something of a conceptual shorthand—a placeholder for more difficult, and quite contested, questions of statutory interpretation. If one considers an adequately wide universe of textual material, after all, there will always be inconsistencies to confront. A word that bears a plain meaning in a 2025 federal statute, for instance, will bear a different meaning in a Shakespearean folio. Surely the interpreter does not need to confront that inconsistency. In this regard, the *inconsistency confrontation principle* begs the question: What is the correct universe of textual material to check for inconsistency?

That is the very question that has divided the camps of statutory interpretation for the past half-century. Its answer results (or ought to result) from the category of textual meaning that the interpreter wants to uncover. If the interpreter wants to find *original public meaning*, for instance, then contemporaneous newspaper usage might be relevant, even if from a century ago. If the interpreter wants to find *current public meaning*, then that same newspaper may be irrelevant. In such a world, how is the *inconsistency confrontation principle* useful?

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469 144 S. Ct. 2244 (2024).

470 *Id.* at 2266 (declaring "statutes, no matter how impenetrable, do—in fact, must—have a single, best meaning").

471 *See id.* at 2249 (referencing "the best reading of a statute").

It is useful in three settings. First, all major schools of statutory interpretation agree on the relevance of a sizeable universe of textual materials. In *VanDerStok*, for instance, the inconsistencies at the heart of the case came from statutory text within the very paragraph under dispute. There is no court in America that views such text as irrelevant to the category of meaning it wants to uncover. So, we have reason to think that the *inconsistency confrontation principle* will have bite, even if it is limited to these scenarios.

Second, where major schools of statutory interpretation disagree about the relevance of textual material, the *inconsistency confrontation principle* can at least be applied to hold courts to their own professed category of meaning. For example, the Supreme Court's textualists may disregard legislative history, but they claim to care about statutory text.[472] By applying the *inconsistency confrontation principle*, this Article was able to hold them to that commitment—and to show that they neglected textual material in *VanDerStok* that their own theory suggests is relevant. In this situation, too, the principle has bite.[473]

Third, there are situations where major schools of statutory interpretation disagree about the relevance of textual material, and where the inconsistency is found in materials outside the Court's professed sphere of relevant texts. This will be the most controversial application of the *inconsistency confrontation principle*. It is worth separately considering its relevance in this situation for: (1) external critics and (2) courts.

In this situation, the *inconsistency confrontation principle* still has relevance for external critics. Here, it does the valuable work of testing whether we really think a professed category of textual meaning is valuable. Understanding that function relies upon a brief review of how the various schools of interpretation operate.

Generally, the schools of interpretation each adopt a particular hierarchy of reasoning. The school must commit to first principles: What are the *values* that you believe interpretation should promote? The answer to that query should organically produce an answer to a subsequent question: What *category of meaning*, if pursued in statutory texts, would best promote those values? That answer should determine

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472 *See generally* ESKRIDGE ET AL., *supra* note 453, at 511–16 (overviewing textualism).

473 This is the form of argumentation that Eskridge and Nourse implicitly adopt, for instance, when arguing against textual gerrymandering. *See* Eskridge & Nourse, *supra* note 90, at 1731 (arguing that "none [of the opinions in a studied case] resolved the legal issue satisfactorily, even under the standards announced by the new textualism"); *id.* at 1790 ("Our thesis is that in hard cases, *evidence from the production economy of statutes has powerful value for textualist as well as pluralist judges.*" (emphasis in original)).

the category of meaning that the interpreter selects. It also, in turn, should organically resolve a third question: What *universe of textual material*, if selected, would provide evidence that bears upon that category of meaning? In this way, a school of interpretation discovers its commitments. This hierarchy of reasoning is depicted in Figure 9.

FIGURE 9

Ideally, therefore, interpreters select a category of meaning (i.e., the intermediate level in Figure 9) strategically—that is, to align with the values they hope to promote via interpretation. If they want interpretation to prioritize the value of *notice to the reading public*, for example, that naturally leads to a focus on a particular category of meaning: *contemporary public meaning*. And that in turn generates a focus on a particular universe of textual material, such as contemporary newspapers. By contrast, if the interpreter wishes to prioritize the value of *preserving democratic decisionmaking*, then they ought to prioritize a different category of meaning (*intended legislative meaning*) and different evidence to illuminate it (e.g., floor statements from legislators).

When outside commentators use the *inconsistency confrontation principle*, even when belonging to a different school of interpretation, it is worthwhile because it tests these value commitments. When someone contradicts a textualist interpretation with statements from a key legislator, for instance, it presses on textualist commitments by implicitly asking: Do we truly not care about the alternative value of *preserving democratic decisionmaking*, which this alternative evidence bears upon? In so doing, it allows other readers to test and revisit those commitments for themselves. It pushes them to ask themselves: Does this evidence not resonate in some way, thereby suggesting that it attests to a category of meaning to which they have some value-based relationship?

This is where much of the actual fight over statutory interpretation theory occurs. The reality is that interpretive commitments often take shape upward, with our instinctive interpretive practices (and sense of relevance) coming first, and our theories retroactively scaffolded upon them. Interpreters highlight a textual inconsistency, and regardless of our professed interpretive commitments, we find the revelation embarrassing—a weakening of our interpretive argument, even if we theoretically should not view it as so. In reality, moreover, most interpreters care about a blend of interpretive values. And that means that the *inconsistency confrontation principle* will generate interpretations they find at least minimally relevant.

All of this suggests that, for external commentators, the *inconsistency confrontation principle* remains useful across schools of interpretation. It provides a way for members of competing schools of interpretation to honestly showcase the ability of their preferred school to navigate the competing evidence that bears upon a particular category of meaning. And it allows readers to explore whether comprehensive efforts to locate that alternative meaning engage their values in ways that make them revisit their interpretive commitments.

That leaves the question: What about the courts themselves? Should a court adhere to the *inconsistency confrontation principle* even when the inconsistent text is not one that it deems relevant, but that members of another school might? That is, should a judge respect the principle even for material beyond their own sphere of commitments?

To answer, judges might apply the following test. Assume that the inconsistent evidence does, in fact, confirm that their interpretation is wrong with respect to the category of meaning sought by the competing school of interpretation. Now, they should ask themselves: (1) Do they have a compelling argument that the rival school is wrong about the value their interpretation promotes, or (2) are they willing to declare (in print) that they do not care about that value, or at least give a principled explanation of why their preferred value gets priority? If the answer to either question is affirmative, they should articulate it for readers. Otherwise, the judge ought to adhere to the *inconsistency confrontation principle*, even for evidence they personally do not find relevant. (Moreover, if judicial legitimacy with an audience that may not share their interpretive commitments is of concern, they may consider adhering to the principle regardless.)

In these ways, the *inconsistency confrontation principle* may provide some baseline for evaluating statutory interpretation, even in a world in which schools of interpretation disagree on first principles. Sometimes, the *inconsistency confrontation principle* will generate helpful explanations that resolve the apparent contradiction in the statute. Other times, it will lead to a conclusion that the contradiction is irreconcilable. In either instance, it will force courts to engage with awkward and inconsistent evidence. And it is here that Linguistic Textualism may encounter some limits. The *inconsistency confrontation principle* is well served by interpretive methods that have the flexibility to acknowledge and explain that a legislature slipped up in its language usage, but understandably so. Whether Linguistic Textualism can reach a point of making such acknowledgments remains to be seen.

Conclusion

As *Bondi v. VanDerStok* showed, this is an important moment in statutory interpretation. Linguistic Textualism now is poised to play a significant part in the next chapter of statutory interpretation in America. Hopefully, this Article has helped to make this potential future into one that best serves our legal values. In part, this has involved an effort to document the troubling limitations of Linguistic Textualism. At the same time, it also has entailed an effort to illustrate superior pathways to persuasive interpretation, as well as to uncover broader lessons (both doctrinal and theoretical) that can be gleaned from the Article's comparative interpretive project. The result, it is hoped, may assist in the project of transforming *VanDerStok* into a productive moment in the evolution of our statutory interpretation.